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THE DEATH PENALTY
IN THE UNITED STATES,
A POLYMORPHOUS TORTURE

*Ensemble
contre
la peine
de mort*

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Arnaud Gaillard

*For Hank Skinner, Troy Davis, Tony Medina, Abu-Ali Abdu Rahman,
Mumia Abu-Jamal, Jonathan Marcus Green, Kevin Cooper,
and to the thousands of other prisoners confined on death row in the United-States,
anonymous and unknown in most cases.*

Foreword

It is not unusual to hear that the United States, far from leaving us indifferent, constitutes a nation generating feelings split between love and hate; as if everything in this country lead to a variety of passionate excesses. In the work presented here, it is not so much about the feelings, without connection to a sociological study, than a true analysis of a penal phenomenon based on capital punishment, still present in 34 states. Nonetheless, I am absolutely aware that empiric research, which justifies the lines that follow, would lead to believe that this report would be extremely severe toward this vast country, its culture, its population and its generous paradoxes. However, and at the opposite of an anathema thrown at the New World in its entirety, I encourage the readers to moderate their impressions while restituting the actual point of view developed here. All narration and analyses here are elaborated from the prism of penalty and the legal functioning in terms of criminality, in comparison with capital punishment. This approach should suffice to ponder this report from the moment there is no vocation to hold on forth on the United States in an exhaustive and absolute manner, but all the more so to understand the meaning and the functioning of a sentence that all other democracies in the world – except for Japan and India – have chosen to set aside along with barbarity and the past. Whether we look into the personal backgrounds of all individuals concerned by the death penalty, whether one incorporates the data, or whether one observes the most factual aspects of capital punishment at the heart of the states that maintain capital punishment in the United States, in all instances, the analysis can only generate radical conclusions, that the local actors do not fail to note. Thus it is certain that observing the United States under the prism of capital punishment, the functioning of criminal justice, the living conditions on death row, the cultural and historical justifications, which underline this situation, leads to the emergence of an extremely violent vision of this country. However, in the face of penal situations that frequently reveal torture more than justice, any shyness of expression of the context observed in 2010 would be counter productive. Following the example of other publications, often based on quantitative analysis, but revealing the same reality, it must be possible to prove wrong the too often formulated excuse for a sentence: “we did not know...”. It is why the ambition of these pages is to offer something to see and to understand.

Many American organizations, in terms of abolition, but also attorneys, most often court-appointed, do not ignore the conclusions of this report. There are in fact numerous publications¹ which review the functioning of capital punishment, most often based on numbers, outlining the discrimination, the financial inequity between the defense and the prosecution, and a large number of statistics which came to feed the mostly qualitative analysis of this report. This is the reason, in order not to repeat the uncontested efficiency of existing research, but also because this study was conducted, of course with groundwork, but with a European approach, why the choice was made as a form of sociological curiosity to translate into words the eloquence already revealed by the numbers. Therefore, I hope these pages will bring to the consciences a capacity to comprehend and to bring an acute perception of the context to favor a struggle for justice that, one day in the near future, will stop to kill.

At the opposite of a point of view that would be strictly European, the conclusions of this report, based on empiric research, rely and justify themselves from the intense groundwork, as much as in terms of encounters, methods as in terms of geographical coverage. Eight states were visited, about fifty interviews were conducted, some based on a semi-directive questionnaire (see the appendix), and participative observations were made in numerous stratum of American society, far beyond the context of penalty. To these encounters, were added questionnaire filled anonymously by death row prisoners. The graph below summarizes the groundwork done during six weeks, between June and July 2010.

	California	Utah	Oklahoma	Texas	Louisiana	Tennessee	Mississippi	Pennsylvania	Total
Death Row prisoners	1*					1*	5**	1*	8
Former Death Row prisoners	1		1						2
Victims' Families		5		2					7
Death Row Families			1	4					5
Attorneys	1			2		1	4		8
Journalists	1			2					3
Employee of department of corrections						2			2
Court Employee				2			1		3
Academics/Criminologists	1			2					3
Citizens	2		2	11	2	2	2		21
Total	7	5	4	25	2	6	12	1	62

* Death Row prisoners interviewed on death row
 ** Semi-directive interviews conducted by phone in the presence of attorneys

¹ The Death Penalty Information Center (www.deathpenaltyinfo.org) offers most of the publications about the death penalty in the USA. More specifically on Texas, The StandDown Texas Project, based in Austin, (www.standdown.typepad.com) also offers a huge quantity of information, studies and links to be informed on issues about capital punishment.

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Introduction

Seldom a population of citizens manages to realize that behind the arm of justice, such as it has been designed and practiced, behind the arm of strength and knowledge, there is a government. A power that must ensure its continuity in favor of a powerful nation, as a federal or state entity. Roughly, under some regimes, the death penalty unequivocally incarnates the strength of the decision makers. In a more disguised manner, following the example of Max Weber's conclusions on the "monopoly of legitimate violence"², behind the institutions with pompous titles and subtle philosophy, everywhere the death penalty retains the same virtues, in a democracy as elsewhere. It is on the basis of this denial, on the outermost bounds of a relative ignorance supported by the population, between the inertia of a shy curiosity and the unshakeable faith in its institutions, that abolition in the United States is still not acquired.

In this study, in regards of international standards in terms of incarceration, but also in regards of the general principles of justice in a democratic country, the death penalty, specifically in the United States, is analyzed as a polymorphous torture. It is not so much about the agony of an execution as the instant of the killing, of course violent and painful in all cases. It is about all what precedes in terms of confinement, castrated perspectives, arbitrary legal appeals, the lack of indulgence and faith in human beings nonetheless educated by life. It is about the political and legal lie aimed at a society from which it is chosen to conceal other paths that would allow the prevention of violence, and to sometimes cure it. It is about a dangerous game with death, the death from which expiatory virtues are expected, the one provoked and that imposes mourning, the one over which it is probably wise not to grant oneself any right. It is a punishment, which plays with time and weakening, ascetising the desires, to then only fill life with oblivion, humiliating submission, solitude and forced despair. In a symptomatic way, to the question of desire, the answers from death row prisoners are invariably "nothing comes to mind", "I don't know", "I have no idea".

Undoubtedly torture is also defined by emotions, by a mental certitude that does not allow for words or legal structure. The pain is not always acute. It is sometimes shooting with random picks, such as a litany of abuses, which interferes in bodies and spirits. From the discomfort of the

² Weber, Max. *The Theory of Social and Economic Organization*, 1964, p. 154

confinement, from the infinite wait nurtured with an often blissful optimism or a realistic pessimism, from the sentiment that individual fates rest in the hands of apprentice sorcerers wearing the mask of justice, from the uselessness of so much imposed suffering, brings the feeling of being the toy of executioners serving personal interests. These have multiple faces, and sometimes uniforms. Their responsibilities are divided and subdivide themselves. Only their consciences know what the blind and deaf voters prefer to ignore.

To summarize the United States to the findings of these pages would be erroneous. This report is the result of an investigative mission conducted from bibliographical sources on practices at the national level, but also from empiric research, via interviews, questionnaires, observations and an immersion in the following states: California, Utah, Oklahoma, Texas, Mississippi, Tennessee and Pennsylvania³. Of the 50 federated states, 16 are abolitionists⁴, 34 still execute, among which 8 have executed less than 2 persons since 1976, year of the resumption of the death penalty. However, even if the states forming the United States are not all totally retentionist, it must be added that the federal legislation does not impose anything to the federated states (except within the framework of the U.S. Supreme Court rulings) and the domestic political speeches officially stay clear from enhancing the debate. The federal and military jurisdictions still retain the death penalty in their criminal laws.

Even if the group of death row prisoners, interviewed for this mission, persists, despite the accumulation of the years, on feeling hope in the face of the final outcome, each one, and far more than the free world society, keeps in mind that on numerous occasions, states have executed innocents, and that post-conviction appeals eventually run out. This fear is paradoxically conjugated with a principle of reality: the majority of those on death row will die in these hostile prisons before being executed. Nonetheless, the sentence of death, because it suppresses all enviable perspective, constitutes a form of torture, distilled year after year. Because it denies and it hinders the movement of the living, physically and intellectually, it plays with the extent of an existence in summarizing those beings to what they have done in a distant past, sometimes a long time ago, the death penalty is a denial of humanity that American society covers to better integrate it. At

³ As well as questionnaires from Virginia.

⁴ The last state to have abolished is Illinois. The signing of the abolition bill on March 9, 2011, entailed the automatic commutation to life sentences for the 15 prisoners on death row.

the opposite of other countries, or even of some American states⁵ where the death penalty is hardly implemented, where executions are a rare occurrence, in many American states⁶, the death penalty is a reality that one must tame to survive.

The United States represents an idea, an icon, which conveys a fantasy of liberty and justice. During the cold war, the United States considered abolishing to appear worthier than the USSR, as Criminology Professor Steven F. Shatz confesses. This wish remains contemporary in order to legitimate the lessons in democracy given beyond the American borders. The United States wants to appear as a human country by opposition to other countries such as for example Iran and Iraq. During four years (1972-1976), the United States declared a moratorium, which could have given hope to the least convinced abolitionists. Through the legal path, at the constitutional level, the very idea of capital punishment could have been relinquished as one relegates to the past violence that has become impossible to endorse. The 8th amendment of the Constitution forbids cruel and unusual punishment, and the 14th underlines that the states cannot deprive its citizens of the right to life without due process. On this basis a moratorium is imposed by the U.S. Supreme Court after the ruling on *Furman vs State of Georgia* in 1972⁷. Immediately after, legislators of the federated states, eager to save the lawfulness of the killings, redefined the conditions of the application of the death penalty, until another ruling by the U. S. Supreme Court, *Gregg vs State of Georgia* in 1976⁸, confirmed the constitutionality of the death penalty, detailing its application making it more digestible from a legal perspective. These rulings were political and remain so today. They addressed the wishes of a majority's quest for blood, hangings, electrocutions, death rattles and staged finitudes. It is the same conclusion reached by Steve Hall, director of the StandDown Texas Project⁹, when he specifies: "The people in this country are eager for punishment. For several decades, the United-States has incarcerated more people than the rest of the world". So many emotions and opinions founded on collective

⁵ Wyoming, Nebraska, Idaho, Oregon, Connecticut, Colorado, New Hampshire and Kansas have executed less than 2 since the reinstatement of the death penalty in 1976. State execution data rates, Death Penalty Information Center, April 17, 2009.

⁶ Oklahoma, Texas, Virginia, Missouri, Florida, Georgia, Ohio, Arizona, North Carolina, Alabama, Louisiana, South Carolina and Arkansas are the states which have executed more than 20 since the reinstatement of the death penalty in 1976. State Execution data rates, Death Penalty Information Center, April 17, 2009.

⁷ *Furman vs Georgia*, 408 U.S. 238 - (June 29, 1972) U. S. Supreme Court.

⁸ 1976 being the year when capital punishment can be considered.

⁹ The StandDown Texas Project is a think-tank working mostly on identifying and advocating best practices in the criminal justice system. A Texas-Centric examination of current conditions, reform initiatives and emerging issues.

fears, the need for vengeance, and the overall ignorance allowing an almost obscurantist faith within the legal system. It is this bitter state of affairs which prevails vigorously today. Conclusions that soothe the indisputable passion aroused by this country and the residents who inhabit it; hence the accepted wish, shared by all abolitionists worldwide and nourished by the strength of an American tactician and strategist abolitionist movement which consists of perceiving this country, eminently influential, this fascinating nation, to turn its back on its demons in the near future, irremediably and without any regrets.

THE UNEVEN SITUATION OF THE STATES



On the international level, one can observe that the abolitionist process is following the path of progression; some of its stages are sometimes skirted while others mark the supposedly final halt of the movement. The specificity of the United-States is that of a federated nation, made of federated states, which respective structures similar to independent sovereignty on many accounts, and which governors act in place, by analogy, of a prime minister. Consequently, even if the general principles of law of the federated states are governed by the American Constitution, which the Federal Supreme Court remains responsible of, each state has its set of legal norms: constitution, code of civil procedure and code of criminal procedures. It is why an attempt to standardize would deny the particulars that lead to justice being rendered differently from one state to another. Thus, of the 50 federated states, 34 maintain the death penalty in their legal statutes. Factually, this situation leads to the implementation of the death penalty through very varied means. Some execute every year, others only maintained the death penalty for exceptional circumstances or for its symbolic value. Such distinctions are essential when it is about understanding, from a global perspective, the proponents of the death penalty on the national scale. It would be erroneous not to consider these differences in the implementation of abolitionist strategies, and it would be dishonest to associate the whole of the American population or the elected officials who govern them, to the excessive representation of the Southern states; hence the necessity for a sort of typology in order to evaluate the stages of the abolitionist evolution process.

Stage 1 is where the legislation authorizing the death penalty in its statutes is applied, today as yesterday, in a rigorous manner and without any sign of weakening, or even increasing in some cases. This is a neutral stage, where the abolitionist evolution is not heard or has no influence. It is, for example, the situation in Texas, Virginia, Oklahoma, Florida, Georgia, Alabama or Ohio.

Stage 2 is where the legislation aims to reduce the application of the death penalty, where executions are extremely exceptional occurrences (less than one execution every 10 years). It is the stage of the loss of faith in the death penalty. It is also the stage where the death penalty is the most symbolic. The parsimony of its use generates an aura, which draws a cathartic energy from its rarity as a response to the sentiment of vengeance, collective or individual, for the most serious crimes¹⁰. Among the states concerned

¹⁰ The definition of the “most serious crimes” remains one rule for some and another for the rest. Generally, they cover the most vulnerable victims and/or particularly horrible circumstances, as much as in the circumstances of the crime as in its commission. These are parameters that will feed the media efficiency as much as emotion in society.

can be found: Washington (5)¹¹, Nebraska (3), Montana (3), Pennsylvania (3), Kentucky (3), Oregon (2), Colorado (1), Connecticut (1), Idaho (1), South Dakota (1), Wyoming (1). It also includes the federal government (3).

Stage 3, called “moratorium” is the moment of doubt, endorsed or not, but nonetheless present. It is the stage of countries, which doubt their abolitionist conviction, or their power to impose it. In the United-States, it is currently the case in California with its questioning on lethal injection, even if the outcome seems to lead toward a return to executions. It was also the case in New Mexico, when its Governor Bill Richardson chose to suspend executions, to then abolish in the face of the defectiveness of its legal system. It is also the case in Maryland.

Stage 4 is the one of the abolition for common law crimes. It is the stage of a mature and determined choice. A choice imposed upon a majority of the population, where the number of retentionists will decrease with the renewal of the generations and the growing awareness of youth in an abolitionist country. In the United-States, it is so for the following states: Alaska (1957)¹², Hawaii (1948), Illinois (2011), Iowa (1965), Maine (1887), Massachusetts (1984), Michigan (1846), Minnesota (1911) New Jersey (2007), New Mexico (2009), New York (2007), North Dakota (1973), Rhode Island (1984), Vermont (1964), West Virginia (1965), Wisconsin (1853), District of Columbia (1981), Illinois (2011).

Stage 5 is the ultimate locking mechanism at all legislative levels and for all crimes in all circumstances. It is the stage of absolute ethical certitude, the radical will to completely eliminate a prerogative that will never again be part of a civilized society. In the United-States, one can consider that this stage of maturation has not been reached anywhere.

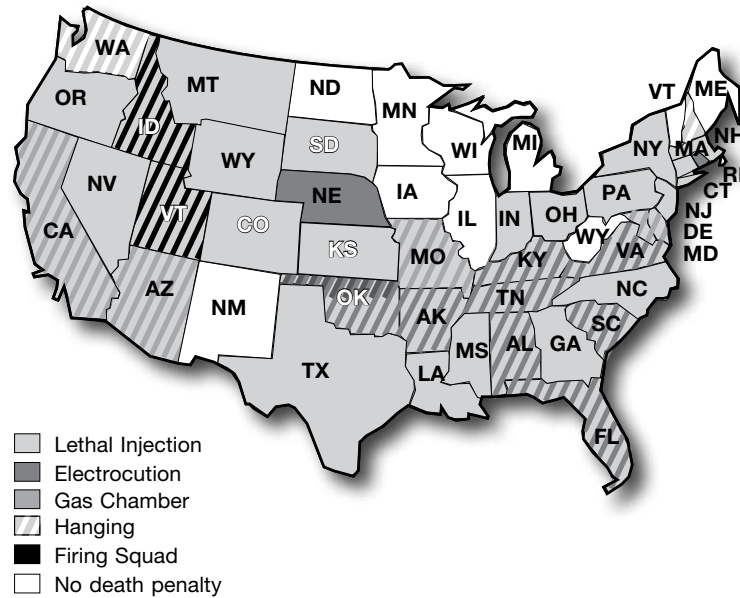
If one looks at the global overview in the United-States, it is obvious that this country, one of the flaming torches of a certain democratic concept, remains behind in the abolitionist process. Some retentionist states are in stage 1, or are entering stage 1 and 2. Other states are between stage 2 and 3. Stage 5 will never be completely accomplished as long as the Federal government will not evolve. Among several leads which bring doubt, not concerning the usefulness, but the nature of the act, the display of barbarity in some executions, combined with an acute conscience of the situations when innocent people have been executed, lead to laying the basis of a too narrow debate, likely to generate responses at least during a moratorium.

¹¹ Number of executions since 1976.

¹² Year of abolition.

This evolution and the strategies that govern it cannot spare the saving of a detailed appreciation of the cultural foundation of the death penalty in the United-States, addressing the interrogation as to the hopes and the closure expected by the population through a sentence of death.

Methods of executions in the United-States since 1976¹³



¹³ See the BBC website (www.newsimg.bbc.co.uk).

CULTURAL AND SOCIETAL PORTRAIT OF A YOUNG NATION



The cultural context in the United-States is not without value when one needs to understand the reason for the death penalty in the 21st century. Because it is not a matter here to understand capital punishment as an additional disorder expected in a country where the social and political situation is chaotic, it is essential to identify the aspects of a structured society on which rely the sentence and its justifications. It is necessary to understand that throughout the pre-supposed morals, which govern American society, how killing in the name of justice can hold a legitimized place, intellectually and morally. The death penalty in the United-States endures only because it relies on an ideological, legal, historical and societal construction, which authorizes all its supporters to defend it. It is where the death penalty, in a democracy, rests on a series of specific factors, like many antidotes against its abolition, that one would normally expect in a developed country in the 21st century. Today it is no longer ordinary in a legalist democracy, a state of laws, to continue to resort to executions. In order to make this idea acceptable, to justify and support it, opinions and speeches feed themselves from a complex landscape, which must be identified if one hopes to sow the abolition seeds. Capital punishment in the United-States is not the fruit of chaos or from a dictatorial power. It is on all points argued to satisfy, first of all the ideas of liberty, justice and law, and secondly the determination to punish, for severity, retribution, fantasies of deterrence and the ambitions of efficiency. Unfolds a series of contradictions, perverse relationships with reality and power that allow the daily justification for a sentence from ancient times, while remaining within the norms of the “politically correct”. So there is in the United-States a ground favorable to inertia in the face of this evolution of civilization that the majority of other democracies have accomplished. One cannot reasonably imagine abolition or deal with the death penalty without covering these aspects, maybe summarized by the ambivalence described in this analysis by Curtis McCarty, sentenced to death and exonerated: *“In theory, the politicians want the guards to be very harsh with us, notably during the execution process. They defend the usefulness of this sentence, and it is on this idea they get elected. But in fact, they try to make things simpler for everybody. I think they remember, somewhere deep in themselves, that human beings must be respected, they learned it at school, from their mothers, from the church”*.

This report seeks then to approach this ambivalence, which does not fail to support an intellectual and cultural conflict when on one hand, it is about defending the virtues of a sentence that consciences and rationality invalidate on the other. American history, but foremost and primarily the observation

of society today, alive and decision-making, is essential to apprehend a novel inertia in a country nonetheless capable of spectacular renewals elsewhere. Instead of existing or disappearing in major social indifference, as it is the case at the core of non-democratic countries, where political decisions are imposed de facto at the detriment of the vox populi, the death penalty in the United-States is tightly entangled in the foundations of antagonisms tied to historical and cultural aspects that must be approached. The democratic development in the United-States, with electoral principles at numerous levels of the social and institutional structure, imposes on the politicians to satisfy the visions of a majority of its electorates, including the most counter-productive ones. These elected officials market the death penalty as a tool for law and order, or remain discreetly retentionist by principle, particularly for the most violent crimes, which generate the most reactions. It is what this assumed patriot, veteran from the Navy, former employee of General Motors, testifies, after having discovered the political and legal system at his expense when his only son spent 22 years on death row in Oklahoma before being exonerated: *“The legal system in itself is great, (...) notably because one is tried by a jury of his peers, but the people who work there are bad, corrupted. There is a district attorney here, who sent more people to death row than anybody else, they are even going to make a film about him.”* It is in the United-States, as elsewhere, the emotional criteria which determines the seriousness of the crimes, associated with its rarity, to what is out of the ordinary, the criminal exceptions to which people will identify themselves. These specific forms of violence are equally and abundantly fed in films and TV series. This publicity generating emotions around the crimes committed, justifies the individualization of capital punishment, seen as exceptional, to address what Tocqueville¹⁴ defined as the response to the violence endured. It is also the cathartic value of the capital sentence, which, independently from any rational foundation, represents a totem, a murderous one though, but ideally perceived as having soothing virtues.

PUBLIC OPINIONS

To give one's opinion on the death penalty in a collective manner is not simple. First of all because the questioning is not frequent, secondly because of the recent emergence of the abolitionist debate, there exists neither popular nor institutional consensus. The difference with France, or other European countries, where in educated environments, to be in favor

¹⁴ *Democracy in America*, Alexis de Tocqueville, University of Chicago Press.

of the death penalty is henceforth regarded as a politically incorrect idea, in the United-States, and under identical circumstances, at the end of each conversation, the interlocutors met during the course of this mission, shyly wonders, lost and hesitant, whether one is rather for or against it. Although the death penalty is deeply rooted in society and supported by its institutions, it nonetheless constitutes a topic increasingly delicate, although relatively rarely discussed, which divides the population in two unequal parts. On one side, the abolitionist activists, extremely organized and energetic but not so representative by the numbers, associated to the passive abolitionists, after all quite indifferent to the cause. On the other hand, the retentionists, representing 65% of the population¹⁵, among which a small portion is also active. However the debate progresses, David Atwood, founding member of the Texas Coalition to Abolish the Death Penalty, shares this perspective on the situation: *“The abolitionist movement is recent. Our goal is to educate the citizens of the state. We noticed that when people know a bit more about the death penalty, they no longer support it. It’s frustrating that things don’t go any faster, but we feel that it’s moving in the right direction”*.

In Utah, there is a tradition to strike coins for each execution. The coins are then transformed into medals. They represent the trophy symbolizing an act of power and bravery in the service of society. This ceremonial vouches for the permeability of American society to the execution process. There is a will to perpetuate the event, to make a collective sacrifice of it, which is deeply engraved in the cultural landscape. For all that, it would be false to affirm that the benefit of torture in capital punishment is shared by all. The pride of this trophy is darkened by individual consciences in the face of a man’s death, in the eyes of the collective conscience that is not so unanimous. Independently from a raw public opinion expressed at a distance from the sentence, one must admit that there often is an uneasiness, often prude, but perceptible with the execution of a human being. *“I don’t find that really sad, but it is impossible to rejoice at the death of another man”*, confesses Barb Kirk, who came to witness the execution of her father’s murderer. Nobody can ignore that the death penalty does not gather a general consensus, that the abolitionist movement has emerged in the past fifteen years, that there are protest movements during each execution, obviously against the conservative attraction of those elected, of some preachers with a mercantile and political spirituality or of the media feeding on the “beast” for the sensational that must constantly be regenerated as it weakens. There are also

public statements by personalities, dissident artistic expressions, and Bible readings less favorable to institutionalized violence that spread contradictory views in this historical and retentionist atmosphere, skillfully kept alive. Even if, as David Atwood expresses: *“Some churches find it hard to preach for abolition because they know that many in their congregations are in favor, and it is a very controversial subject”*. Although not representing a majority, for several decades, the Catholic Church in the United-States affirmed its condemnation of the death penalty. For all that, the defenders of the right to life do not appear as liberals because it is frequently the same ones that will be found in the public arena to denounce abortion within the pro-life movement, such as this retired lady at the Prison Museum in Huntsville, Texas: *“I’m pro-life. But I’m also a person who believes that we have to have laws. I know that our laws in America are based on the Holy Bible, that says ‘you shall not kill’, but God also says ‘if you kill a man, you shall die’*. Let’s also quote the sermon by Jay Gross, pastor of the Southern Baptist church in Conroe, Texas when he justifies the death penalty with the Bible and at the same time condemns abortion, arguing that *“one has never seen a criminal baby coming out of his mother’s womb”*. It must be noted that one of the churches that is more favorable to the death penalty is the Southern Baptist, which is very powerful in the South. David Atwood adds that: *“It’s maybe for this reason that the majority of executions takes place in the South, because they base their faith on the Old Testament”*, that we all know is more violent and severe than the additions of the Evangelists in the new one.

This subdivision of opinions comes to comfort the division between the American model and the European model around the evolution of social ideas and political concepts. Let’s recall, for example, that despite the costs of the death penalty in the context of the financial crisis, despite the 704¹⁶ prisoners waiting on death row at San Quentin or Chowchilla, California, still is not on the way to abolition. In the face of such an astronomical number, Robert R. Bryan, a criminal defense attorney specialized in capital cases, makes the comment of *“a system that self-destructs, that is crumbling on itself”*. This liberal state, governed by Republicans until January 2011, is concomitantly with this legal and penal harshness, close to decriminalizing cannabis and legalizing gay marriage. One must therefore remain vigilant when one observes the ideological and cultural subdivisions which rule in the United-States. As in many countries, the sharing of ideas among progressives and conservatives rests on different historical mechanisms, drawing the outlines of social and political debates according to the specific rules of

¹⁵ According to the last Gallup Poll in October 2009, answering to the question “are you in favor of the death penalty for someone who has been convicted of murder?”.

¹⁶ As of June 10, 2011, Death Penalty Information Center.

the country in question. Along this line, the United-States can surprise and the abolitionist arguments, as much as the strategies developed on the international level, must necessarily be adapted to the specificities of this vast and young country, more and more made of cultural mixes.

KILL THE GUILTY – SPARE THE INNOCENT

The fantasy about guilt proven beyond a reasonable doubt, combined with the fantasy of a potentially infallible justice, declines and is argued: “*I believe in the death penalty, when one is certain that the real guilty one has been tried*”, states a citizen of Texas. According to this widespread belief, to kill in the name of Justice is not reprehensible in itself, on the condition that no innocent be executed. This is the elaboration of the justification for the death penalty only for confirmed guilt¹⁷, i.e. “a confirmable guilt”, ideally by three witnesses¹⁸. This description of justice is totally detached from the principles of reality, which govern the crimes and the unforeseen circumstances of their commissions. Nobody can tell how to find the witnesses, if there always are witnesses in every criminal case, if the witnesses can be corrupted, etc. Ideally it would only require a murder, a culprit and three people who could testify of his guilt, to apply the death penalty. Such statements have no other goals than to persist in legitimizing capital punishment while dismissing the possibility of executing innocent people. They suffer from a lack of realism, and apply an elaborated scenario like fiction in defiance of the singularity of each crime. Nonetheless, it must be noted this recurrent concern among the pro death penalty, to see the sentence applied wisely. In people’s minds, it is at this price that a capital sentence can retain all its credibility and therefore its deterrence virtues. The sanction for the most horrible crimes must not result in another crime through the killing of an innocent person. So there is a moral concept in the defense of capital punishment, almost a form of wisdom “*Who will he kill next if we let him live*”, wonders Barb Kirk who came to witness the execution of her father’s murderer? The arguments of the abolitionists cannot disregard this dimension. Capital punishment is not defended as a barbarity to be used excessively; it must sanction irrevocably those for whom it cannot be determined with a so-called infallibility that they are the authors of atrocities.

¹⁷ The death penalty is prohibited by the Talmud, based on the argument of the ontological impossibility of certitude.

¹⁸ This number is quoted recurrently, without rational explanation. The number 3, undividable in half, appears to be a guarantee of seriousness. It is indeed more impersonal than the number 2, referring to a couple tied by a common fate. Number 1 is too subject to partiality.

In this case, and in this case only, to execute the culprits is nothing more than the final elimination of a person who would have chosen himself to no longer deserve to live. Debra Saunders, journalist at the San Francisco Chronicle, defends the death penalty: “*When I think of this Libyan, sentenced in Scotland to spend twenty-seven years in prison, then released after nine years, although he was responsible for the death of 270 people when blowing up this plane, is it right? It is an American argument that is not heard in Europe, but when the crime is this terrible, one must punish proportionately, in such a case with the death penalty*”. Nonetheless, many are those who accept to circumvent this drawback, as demonstrated by the speech of Jay Gross, preacher at the Southern Baptist church in Conroe, Texas: “*If we no longer execute in fear of killing an innocent, we should also open the doors of prisons because we can be sure that there are innocent people inside*”. He concludes his sermon in stating: “*We are a great nation and we have never been afraid of accomplishing our duty, even when innocents were going to suffer from it. When we dropped bombs over France to liberate Europe from the yoke of the Nazis, of course innocent people died. But it was necessary to do it and we are proud of having done it. For the death penalty, it’s the same thing!*” This is how capital punishment continues to be legitimized in the United-States, despite the cases of innocence that regularly sully the application of a justice that one would like to see impeccable.

THE INVISIBLE HAND OF THE POWERFUL

The institution of justice is frequently perceived by those on death row and their family circles as dictated by the interest of the powerful, in practice exonerated from the capital sanction, and whose power depends on the social submission of the masses. These powerful ones were, at the same time, often quoted but very imprecisely described by death row prisoners during the interviews. Those who actually pull the strings of incarceration of the poorest, or worse, of their executions, are defined as those elected and the wealthy, the “rare” ones, hardly identified, who have the power to decide for the largest number. A prisoner on death row in California designates them in an undefined way by saying “they”, “them”, while pointing a finger at the distant cities of San Francisco and Sacramento. It is about the decision makers in their luxurious offices, those who have drivers and rich houses, those whose law-and-order speeches, caricaturing real-life experiences, get the media coverage. Only these voices are heard and have influence, they are based on what the majority wants to hear, that

is often a populist vision, using demagoguery to ensure the ease of a reelection as governors, state judges, district attorneys or sheriffs. The color of the skin is not what must be incriminated, even if this group is effectively composed mostly of white-Americans. One must see there the feeling of a form of domination of the masses to the benefit of powerful and concentrated wealth, expressed by the hand of the judge, the pen of the prosecution and the judiciary clockwork sufficiently imprecise to leave ample room for numerous “small arrangements with the law” often definable as corruption. E. M., sentenced to death in Parchman, Mississippi, shares his perspective as follows: *“I am not afraid of others here, except for the court and the judges, they are more dangerous for us here. I am afraid of the legal system in general. They have the power to do what they want, it is more about power than about justice, they are the most powerful”*. This legal journalist from Austin¹⁹ explains that: *“Outside people have faith in the system, because they believe that death row prisoners have ample opportunities to prove their innocence. In reality, the system does not work like this. The state has a lot of money, but the defense has much less. On death row, one meets mostly poor people, the less educated and people from minorities. And they cannot afford to hire the attorney they need to counter the power of the prosecution. The balance of power is perverted to the benefit of the state and to the detriment of the poor”*. This explains the feeling of exclusion expressed by death row prisoners, similar to the feeling of numerous prisoners incarcerated in other countries. Everywhere the legal system is always known to function at different paces depending on whether it concerns wealthy decision makers or poor citizens. However it must be noted that this assessment takes another dimension when it concerns an irreversible punishment challenging the vital process in the context of the exercise of a seemingly intransigent authority. Furthermore, contrarily to a recruitment based on the merit from the perspective of existing academic studies, the electoral process of state judges, district attorneys and sheriffs is regarded by death row prisoners as setting aside anyone without the necessary financial means to launch into costly campaigns in order to be elected. Therefore, despite the presence of jurors representing society in criminal trials, justice is perceived as an institution jealously guarded at the hands of those with a personal interest to make it work. This leads the father of a death row prisoner to say: *“When one begins to be caught in a legal case, even on the basis of fallacious motives, it is very hard to get out of it!”* He adds: *“Once elected (state judges and district attorneys), they all want to be re-elected, therefore they sentence more and more people. They don’t work to find*

out whether they are guilty or innocent, they just need to sentence and then to execute!” From a legal stand point, the system is described as an inequitable oligarchy, which power supplants the right to a competent defense, such as a trap that would close on the fate of a non-negligible number of citizens, certainly guilty even maybe dangerous, who identify themselves as victims of an implacable and unfair system. In this manner, the determination of a democratic justice based on the judgment of one’s peers, although ambitious in theory, reveals imperfections here and there, often culpable and harmful.

KILL TO PAY LESS TAXES: THE VALUE OF LIVES

This argument, as surprising as it may seem, not only in its construction but even more and mostly in its absence of complexes with which it is expressed, is a widespread thought, shared by the largest numbers. Here too, it is the ignorance of a reality, although objectivized by numbers that brings each one to consider capital punishment as a more favorable economical measure than life imprisonment. From a strictly accounting perspective, remember that the cost of a capital sentence, given the costs of capital trials and investigation process to counter the irreversible aspect of the sentence, is approximately three to five times higher than a life sentence, even without parole, thus several millions of dollars against an average of \$600,000 for a life sentence as a result of criminal trial. The average John Doe only has in mind the daily cost of incarceration: an average of \$47. To him, it is better to execute to avoid having to feed, care, heat and lock up. Like numerous opinions expressed, L., a retired woman in Texas, explains, with the bible in her hand: *“Oh no, I am against life sentences! For us to pay with our tax money? As a taxpayer, I think we must execute straight away as soon as they have been found guilty. And it has never been the case here, they wait for years and sometimes they even die in prison before being executed!”*²⁰ I think, despite the fact that maybe sometimes we have executed innocent people, that we need the system we have. I must look at the fact that we are paying for them. And also the fact that there are many criminals free in the streets!” Others explain: *“As a taxpayer, I don’t want to pay for the comfort of criminals”*.

Here again the numbered representations, which origin would be difficult to track, often express themselves, raising the idea that a delay of 30 days after the trial would be a reasonable time to proceed with the execution: *“As soon as we know they are guilty, the sentence must be applied, by all possible means,*

¹⁹ Jordan Smith, journalist for the Austin Chronicle, interviewed in June 2010.

²⁰ In California, for example, since the reinstatement of the death penalty in 1976, 13 have been executed, 52 died of natural death and 18 sentenced to death committed suicide.

hanging, lethal injection, firing squad, electrocution”, says Jo, a retiree from Texas, and “*there is no reason to wait, a guilty one is guilty!*” What about the indispensable appeals in a democratic society? What about the right of the defense to ask other judges to validate the sentence and the respect of the procedure? What about witnesses who lie, the corruption of judges and district attorneys, the police or prosecutors? What about the media lynchings? What about the political stakes and the personal careers, which seem to frequently inspire the legal process? And what about the fallibility of any human system? Each is driven by the idea that things are simple, that a good justice is an expeditious justice, from the moment the police found a suspect, from the moment when a narration allows a determination of the cause linking a person to a crime, then the person must be found guilty and executed. Why wait some more, why spend money for appeals and expert analysis, why keep them alive in prison? Things are represented in this simplistic, binary, Manichean manner. In fact the execution of a criminal does not constitute the killing of a human being. As Rick Halperin, Professor of Human Rights at the Southern Methodist University in Dallas, Texas states the death row prisoners are considered like “*trash, parasites, sub-humans, scumbags*” for whom any compassion would be useless and any expenses would be wasted. Curtis McCarty, exonerated after 22 years behind bars, recalls his arrival on death row: “*The guys inside had nothing to do with the monsters I was expecting to find. My parents also realized it. Everything is done to encourage people to hate us. To hate us, to abuse us, and then to kill us...*”

The human no longer exists from the moment he is summarized as a costly entity. To kill the one to whom one denies the qualification of equal, and therefore the right to life in order to limit public spending: this opinion, widespread in retentionist states, all generations alike, gives an idea of how death row prisoners are considered by society in the free world. Kevin Cooper, on death row at San Quentin in California, realizes: “*We are regarded as sub-shit, we are despised and forgotten. People don’t even know we are here anymore. And never could someone imagine that there are innocent people here. Nobody has a critical vision of the system. People believe in justice as a fair system that works. It reassures them. We are the bad guys. But in the name of what are they going to kill us, we the blacks, the poor? They own us as slaves were owned once before. It is torture! (...) Myself, I didn’t know anything about that. It didn’t interest me before.*” This rejection of death row prisoners is without appeals, without indulgence, it obeys the binary reasoning evidently hardly elaborated from the moment it takes into account only one dimension, the one of the charges, to summarize the complexity

of a human personality. “*Before being confronted to my son’s death sentence, I thought with such sternness*” says a mother in Texas. This specificity in the United-States comes from the fact that all aspects of existence are, at one time or another, represented by the parameter of cost or gain. It is here a cultural language with which one must know how to conjugate when one works for abolition in the United-States. It is also the reason why the revelation and the reality of the costs of capital trials, allowing, among other elements, lengthy investigations, is an argument that is being developed more and more by the abolitionists across the Atlantic.

“WHEN YOU WANT TO KILL YOUR DOG, ACCUSE IT OF HAVING RABIES”

One of the retentionist arguments is also to state that executions prevent death row prisoners from killing, outside or on death row, other prisoners or their guards. This idea rests on the fact that having nothing to lose, those outlawed would have no boundaries to incarnate what they are considered to be, criminals, sub-men to be killed, animals without consideration or emotion. Once rejected by the human community, these individuals would have no other wish but to continue to kill their peers, like bloodthirsty beasts. In the United-States this concept is based on the idea that the human community holds in its obedience of the rules only for its public and implicit recognition of its sense of belonging to a society imagined as a homogenous entity expressed with strength during the ceremonies on July 4th behind this say: “*We, the American people*”. Still, to the contrary of this vision, in supermax prisons, contacts among those detained on death row only allow very little opportunity to attempt this kind of violence. In the same way, the official restriction of possession behind bars makes the use of weapons difficult, other than through an illicit trade with guards. In isolation conditions in cages, and standard shackles of hands and feet during each move, it is unlikely for such killings to occur. However, as in all punitive confinement systems, death rows are also sometimes jungles where it is not always easy to survive. Curtis McCarty, former death row prisoner at McAlester, Oklahoma, remembers: “*One has to be stronger and impose himself with his tone ‘I’ll kill you’. There are guilty and violent people on death row. And many people are killed in prison, notably with homemade shanks. We used to make protections for our chests with issues of the National Geographic, like a homemade bulletproof shield. It’s another planet, completely mad, with racism, poverty and mental issues. To survive one must belong to*

a group, to a gang, it can be a non-gang, meaning a group that refuses gangs therefore it's also a gang. I was authoritative. Gangs made life impossible between prisoners and guards. That's why with some friends we created our own gang, with people who have since been killed in bad circumstances". In Pennsylvania, Mumia Abu-Jamal, incarcerated for 29 years on death row, declares: "Sometimes there is violence among prisoners who try, for example, to fight over plastic trays. But most gangs have disappeared in Philadelphia during the 60's and 70's. And there are in fact very few in Pittsburgh".

These rumors of unmanageable violence behind the thick concrete walls of death rows represent, in the eyes of the free world population, the denial of its capacity to change people. In practice, depending on how it is managed, the confinement and the overall deprivations do not make each one an uncontrollable beast. In fact, Ricky Bell, prison warden from Nashville, confesses: "The death row population is known to be easy to manage". The worst criminals, weaned from their demons, often soften. This concept of locked-up beasts is conveyed without any founding other than the emergence of behaviors as violent as they are exceptional, widespread to the extreme. It is used to sweep in one go the unavoidable reflection as to know what has become of the people that justice wants to kill.

THE REGISTER OF FAITH AND THE IRRATIONAL

In the individual lexical scope, spontaneous words do not fail the intentions, but hold in them the confession of thoughts and feelings. To address the questioning about the death penalty, the most common expression is: "I believe in the death penalty. I believe in our justice system". This agreement of principle, governed by a similar approach to the irrational of religious faiths, excludes any critical vision of the death penalty and justice. If the laws are such, it is because the government designed them to address the imperatives of society. The penalty, the legal and police systems belong to an untouchable domain, like a forbidden caste, defended blindly. The only way to reach a critical dimension is to be concerned in the flesh or emotionally, through a more concrete practical reality revealing human faces. After having represented a death row prisoner, pro bono, this attorney from a large law firm confesses: "I thought criminal justice worked under the same rules as civil trials. In fact I realized the inequity between the prosecution and the defense when I got hold of Michael's case. I had no right to access the whole file, the prosecutor knew more than I did and had the right to withhold evidence. It is hard in this case to fight on an equal basis". James G. Rytting, court

appointed attorney in Houston, Texas explains: "Regularly the prosecution authorizes itself dysfunctions and huge errors and it is when we, the defense, must raise evidence to reestablish justice. But in practice, one cannot be satisfied with small errors, on the contrary one must shed light on the huge ineptitudes, which often exist but that the prosecution made sure to disguise! (...) In the case of my client, Mr. Green, the expert for the prosecution chose to lie and to deny the facts. He could not tell the truth". He explains: "Machiavelism laid out: the state was not going to grant a stay to Mr. G. because it was about the rape and murder of a 12-year old girl, and in addition she was white. So it was all clear and decided in advance between the district attorney and the judge"²¹.

To criticize this faith in the system also entails the availability of intellectual tools freed from a faithful and unconditional belief for the structure of the nation. This university professor in Dallas explains: "In my country, one can easily be considered a traitor as soon as one is critical of the institutions of one's own country". The dubbing of the death penalty in the United-States comes from this faith in the system considered, not without arrogance and gullibility, as being the "best system in the world". It is about a faith that reassures and an almost structural incapacity to criticize the foundations and the specificities of American society and of the legal and political system, which governs it. This whole argument seems far from the justice rendered and belongs more, for those on death row and their families, to the expression of a feeling of injustice that the walls of the prison will gag, in a way to make the free world permeable and which can then drape itself in its deafness and its blindness. Hence, probably, the little critical vision of a penal system about which people state to believe in as one believes in God. To have faith also means to have doubts but not to express it. Steve Hall, from the StandDown Texas Project adds: "Why all the arguments are against the death penalty but nobody knows it? It is a matter of education, to teach people to draw conclusions from facts. The problem is that people have deep beliefs which do not lead them to look at the facts, which do not match the facts, which are very resistant to the actual facts". This believer met in Texas concurs, a bible in her hand, admitting without any kind of reorientation, that others frequently express even in a heathen manner: "If one of my loved ones, my husband or one of my children had committed a crime, I think he should be executed too! I wouldn't have any problem with it. I want the application of the law, that's all!"

²¹ In fact, Mr. Green received a stay of execution through another judge from the Court of Criminal Appeals in Texas, which appears to have revealed a number of misconducts by his colleagues. To this day, at the end of 2010, Mr. Green has not been executed.

AMERICAN TIME: ADVANTAGES AND DISADVANTAGES OF A SHORT-TERM PERSPECTIVE

The penalty in the United-States is also governed by a particular conception of time, which regulates the whole of American society. For the vast majority of countries on the planet, American society, such as it is composed today, is a cultural blend organized only recently. It is a young society, colored with multiple imports composing a country, a nation in perpetual movement that no ancestral root comes to regulate. The past is always relative, as time is by definition. In comparison with these numerous elsewhere, one must admit that a society with such a vitality and concomitantly such a short common past and so little shared, cannot live on the assets of the diffused shadow it leaves in its trail. Because the foundations of the past are not well known and relatively hardly ancient, initiatives and thoughts are more orientated towards the present and the near future rather than fed by a common and ancient experience. This parameter represents the genius of a society with an adolescent energy, capable of renaissance and adaptation like no other. It is also the aporia, which encloses and forbids a form of wisdom, in this instance, to recognize that guilty or innocent, the life of others is a little one's own, that the goal of a society consists in appeasing the intrinsic violence while fighting against all mechanisms that promote it. It is the visual and conceptual scope of American society, which can be assimilated to a low horizon and articulated around an approach governed by short moments. The imperative being always to satisfy a need belonging to the present or the near future, while not taking into account the impacts of this behavior on the short term. In this manner of seeing, emerges a continuous capacity to bounce, to make new, to adapt, to renew. Even if it turns out to be imprecise, this scope of vision knows little hindrance. It allows the motivations and the energies of some, while leaving others at dock, incapable of following a reckless succession, which never considers the day after. It authorizes the toughness of death as a supposedly immediate answer, to the crimes committed. Those excluded from this constant movement are in ghettos, in prisons, or worse on death row. They also have loved ones, children and spouses, that the blinded society, through the necessity of a radical punishment, refuses to acknowledge. The pain and the consequences, which result from it, already belong to the day after, i.e. a day one does not know of today and that one will define differently tomorrow. As soon as the death sentence is announced, the situation of death row prisoners is rapidly forgotten by the free world, already attracted by the emotions linked to other events. société du dehors, déjà attirée par les émotions d'autres événements.

THE AMBIVALENT FREEDOM OF THE CHOSEN PEOPLE

The word has become a slogan, which after numerous repetitions, like a mantra, ends up reaching the most tenuous consciences. Freedom is conceived as good, a bastion against evil, and the hypnotic capacities of the word often tend to subdue, or worse, to render any form of criticism immoral. During a sermon in Conroe, Texas, Jay Gross, Baptist pastor, explains to the congregation: *"Our great nation is founded on freedom, a freedom that all envy us and that we must defend, even with weapons. We are free, thanks to our laws, to our Constitution which words are inspired by God from the bible. Here is our strength!"* Because the death penalty is implemented in THE country of freedom, because the laws are often seen from divine inspiration, then nothing else needs to be added. He concludes: *"The people who apply the injections must understand that they are the ministers of the state, just as governors, the combatants during the war, they are the instrument of God, and therefore of the government"*.

As for the journalists, they declare being free to write for or against the death penalty. In this, the United-States distinguishes itself from authoritarian regimes. However, and in a certain way, the construction of American society, behind the symbols and all the forms of representations, which govern it, finds itself submitted to a sort of "brain-washing" which annihilates all resistance and reduces the debate of ideas to a sometimes murderous indifference. Behind the sleeping process of the word freedom is a more abject reality, hardly known to the general public with an amnesic conscience. This former death row prisoner from Oklahoma is not fooled by the latitude left to the abolitionist activism: *"Mrs. D can express her opposition to the death penalty because she is a "notable", she has money and consideration. But for others, the police tries to intimidate them because they go against the system, they can, for example, have problems at airports, including being intimidated on domestic flights"*. Furthermore, and paradoxically, the land of the free represents at the same time 5% of the world population and 23,4% of the world prison population²². When one looks closer, the living conditions in American prisons solely obey security and deny dignity. David Atwood indicates: *"Isolation can drive one insane. It is disastrous psychologically and it should change. The conditions they live in should be more humane. The burden of the years is inhumane"*. He adds: *"It is an extremely harsh existence,*

²² "According to the summary, (...) the USA incarcerates 23,4% of the world prison population. In this report, the total for the United-States, as of December 31, 2007 (see page 3) and does not take juveniles into account.", *International Center for Prison Studies*, Law School, King's College, London, Walmsley, Roy (2009).

some do better than others. Many attempt suicide". This acknowledgement, too contrasted with the idealized image of a dream country, is impossible to accept for a very large majority of Americans.

In reality, the freedom they talk about is more about making money, and to be able to spend it at all times of day and night: *"For these reasons, for the opportunity to do business, to chose one's life, the United-States is a wonderful country"*, explains Rick Halperin, University Professor in Dallas: *"but what about the freedom of movement without the risk of being mugged. And the freedom for a woman to be able to walk on the street at night without the risk of being attacked by armed people"*. This is where one can find the singularity of this gigantic country, always fascinating for better or for worse, but also sometimes frightening. Rick Halperin ironically comments: *"It is not because one wears a pin of America that one is free. If one lives in fear of violence, it is not freedom. And yet in my country, one is first and foremost the slave of this fear of violence"*. He adds: *"It is an easy country, it is a society of consumerism, you can buy what you want, choose where to live and choose what you want. We associate this to freedom, and it is one of its forms. But there is another form of freedom: the freedom from fear, the freedom to know that all people are as free as we are. It is a fake freedom, a society intolerant toward the freedom of other countries, social justice, human dignity..."*.

The celebrations of the greatness of the country, of the validity of its choices throughout its recent or past history, of the quasi perfection of its institutions, feed the sleeping process and inhibit their sense of criticism, with sometimes the support of religion which spreads the representation of a censor God, inspiring such as demonstrated by the sermon in this Southern Baptist church in Texas with these words: *"The only hope for America is God... (...) There is no one like OUR God (...)";* or these quotes from the sermon: *"God gives a mission to all governments to organize executions and the death penalty", relying on this biblical reality: "Jesus is the most well-known death row prisoner, He experienced the death penalty for us all, it is the founding principle of our faith (...)"*.

The criticism of the death penalty in the United-States clashes with the certain arrogance of a country whose population remains convinced by a majority that, no matter what its recurrent historical abuses, the American way of life is the best and the most enviable. Each is convinced that this new country structured itself in an efficient way and thought, without the burden of cultural heritages, with the aptitude to not repeat in the New World the counterproductive errors of the Old World. It is also compelling to note, in the newspapers or on television and in the conversations as

encounters unfolded, the ignorance of Americans towards the rest of the world. *"Really you don't have the death penalty in Europe? But how do you punish the criminals?"* they ask. Beyond a structured culture, this uncontested phenomenon is highly significant. It is maybe also down to history of a recent society made of a blend of individuals from diverse origins, who, to begin a new life in the awaited El Dorado while forgetting their own respective roots to merge in a system which machinery, from the moment their presence on the territory is the result of this fierce will to live and to survive, which characterizes immigrants who they themselves are or those who preceded them. This taxi driver, immigrated in California more than 30 years ago, remembers Great Britain, his native country: *"Over there I know they don't have the death penalty anymore, one considers the state doesn't have the right to take other people's lives. It is true that here, when we suffer from violence, then we have another point of view"*. And under these circumstances, where "here" is so vast, so incorporating by a pregnant culture, elsewhere is forgotten, it becomes inconsistent to the point of never being inspiring nor prescribing.

In the United-States, people are against torture, refuse in a credulous way the idea that their country can use it. It was, at least, the overall opinion before the population recognized the imperious need to fight against terrorism from 9/11/2001. The population decries genocides, behaves like a civilized society based on the same criteria and parameters than any western country. However society in the 21st century still struggles to support a critical vision of capital punishment. What happens abroad has no influence in the United-States. In fact, "abroad" is a vague and uniform concept, supposedly speaking the same language, which geographical location remains uncertain. The United-States is, throughout the world, the prescriber of a large number of practices, consumption, ideas and ways of life. Nonetheless this great country, probably because it is sufficient by its size and its multitude, remains mostly impervious to exterior evolutions. Jay Gross explains in his Sunday sermon: *"Other countries want to tell us how to behave, notably on the issue of justice. But we know that our system is good, that it is fair, our laws are inspired by the bible, and that is the essential. Should we listen to their criticisms? No! Our choices are the right ones, and nobody can tell us how to behave. We have structured ourselves based on freedom, and it is our success."* One commonly qualifies this as arrogance, which, without being false, remains imprecise. It is true the United-States is a country of self-made men, who therefore are not accountable to anyone else but themselves. From this feat arises this auto-centrism, which renders 300 million people amnesic as to the

fact that there are 200 other countries in the world with their respective challenges, sometimes at the opposite of the American points of view. One should note the propensity for maintaining a feeling of sovereignty. The American myth rests on these illusions of influence and success, like an unprecedented model of an accomplished society, made of the ideal conjugation of varied contributions of each immigrant, burdened with the imperfections of the Old Continent. Never mind the differences, which exist elsewhere, never mind flouting that could inspire in a beneficial manner. The American pride imposes to re-invent on the national level, to sift each topic in terms of domestic culture with contempt generating indifference and ignorance toward the exterior. From this cultural choice come excesses and energies of a perpetual renewal, but also a form of inertia in the face of the imperative for self-criticism. This irrefutable fact must be considered when expecting the results of the international movement in favor of universal abolition. Respectively the concepts of “international” and “universal” do not generate the expected results, as if it were hard, almost impossible to increment an evolutionary process on the New Continent. It must therefore be understood that beyond a political sovereignty, there is a cultural, popular, social sovereignty acting as an impervious bastion toward the identifiable civilizational push from multiple elsewhere. Although general, this comment must be toned down. David Atwood somewhat tempers this reality: “*The worldwide abolitionist movement helps us, because even if people say ‘we don’t care about what others say elsewhere’, in fact there are many citizens here for whom it counts. If we can demonstrate that the United-States is being isolated, these people will wake up and say ‘why are doing this while others are going in the opposite direction?’. We talk about this during our debates. We show the example of Europe, saying that we, one of the last industrialized country, still uses the death penalty. We prove, in every possible way, that we are isolated.*”

The American abolitionist movement makes no mistake when it develops pragmatic arguments, audible by the largest numbers, against the moral debates, which lead to abolition in other countries. Let’s quote for example the cultural and popular momentum from the Journey of Hope²³, an organization led by murder victim family members, notably Bill Pelke, joined by death row family members, family members of the executed, the exonerated and others with stories to tell, that conducts public education speaking tours and addresses alternatives to the death penalty. Through the strength of testimonies spread in the United-States, this movement addresses

23 Journey of Hope... From Violence to Healing, murder victims’ families’ organization founded by Bill Pelke in 1993.

the numerous ignorance and interrogations of a population attached to the death penalty as an imperative penal concept. There is also the promotion of strategies aiming at progressively reducing the number of capital crimes, often resulting in studies defying the rationality of the retentionist arguments. These are some of many progressive maneuvers, purposely adapted by the abolitionists to fight against the blocks of certitude and tamed practices, which drive the inertia of the American society.

A BINARY SOCIETY: THE GOOD ONES AND THE BAD ONES

In terms of penal justice, the nation itself is divided in two blocks: the abolitionist states, some actually so for more than a century²⁴, and the states which persist in implementing the death penalty. Often, the most vehement in favor of the death penalty are white individuals²⁵, sufficiently at ease financially to belong to these, somewhat numerous, who own and buy. Property determines the outlines of the need for protection. Society is also divided between those who believe in a God who sanctions and those who believe in a God who forgives, through whom the redemption of crimes is accomplished in heaven, after death. From here will emerge different sermons, which goal is no less than to enroll a category in the congregation, with a success that can be measured by the attendance achieved by certain churches. In the heart of the countryside, in Oklahoma or elsewhere, the opinions in favor of executions take a familiar form: “Kill them all!” or “Fry the bastard!”. At this level the encounter with the American population sometimes has a whiff of barbarity. These radical positions outline the binary and most accessible vision of the world, society and individuals, aiming at distinguishing the good ones from the bad ones, those whose behavior is acceptable and those who are permanently degraded. The later ones do not deserve the prerogatives granted to human beings. The execution therefore matches the paroxysmal suppression of their rights. The right to life demonstrates that as a right it is not unchangeable by fact. There is a necessity to educate in order to counter this idea. “If I kill someone, I only expect one thing, to be tried and to be executed”, says this retiree in Texas who adds: “*If it were my son or my daughter who were on death row,*

24 Michigan abolished in 1846, Maine in 1887, Wisconsin in 1853 and Minnesota in 1911.

25 See notably a poll conducted in Maryland: White people are more favorable to the death penalty than Black people (70% to 43%), and more men than women support the death penalty (66% to 54%), Wagner (John) & Agiesta (Jennifer), “Md. Voters remain divided on capital punishment”, *Washington Post*, May 11th, 2010.

it wouldn't bother me. I'd tell them 'put 'em down'. That's my feeling about it... Don't count on me to go and visit them. They've done something bad, it's their problem, let them pay for it!". Far from representing an exception, such radicalism demonstrates that capital punishment intervenes whatever the circumstances, to address a behavior identified as criminal, independently from any likely mitigating appreciation. Never mind whether it is one's flesh and blood, to be responsible for a crime is to ensure the appropriate punishment, it is to move radically on the side of evil to fight without weakness, not even the indulgence of a mother or a spouse. No reason to sway, justice by the law must always be the strongest, and never give in to the weakness of emotions and the affect.

The abolitionist activists in the United-States realize here that retentionist opinions are narrowly conjugated with the ignorance of the populations. Nonetheless, the human being becomes more civilized in naming the gestures, the facts, the matter and the experiences. What is a crime? What are the facts and who are the protagonists? What does the prison look like? What does it really mean to execute? In these circumstances, when the knowledge is not acquired, the symbolism and the beliefs take up too much place and lead to a faith undisputed and taboo in the taste of blood, perceived as a weapon of the criminal. Sister Helan Prejean, author of "Dead Man Walking"²⁶, describes the support for the death penalty in the United-States as "*a mile long but an inch deep*". Here she wanted to underline that retentionists appear to be numerous, but in reality, their determination is not strong enough to resist the power of awareness regarding what the death penalty is about as soon as one approaches it. According to her, whoever realizes the death penalty up close and personal inevitably becomes critical toward this violent and unfair mechanism. From a distance, there are only two reassuring colors because they avoid doubt and discussion. In close-up, the Manichean vision suddenly is no longer satisfying.

The binary vision means that individuals are looked at without depth. To reach a sentence of death, it entails reducing an individual to his acts, to summarize an existence to a chapter of his history. All the rest of his personality and his background are then looked into in the light of this first sentence. It is the whole purpose of the criminal trial, which must be developed to carry the certitude of a unanimous vote in favor of the death penalty among the jurors. Then it is only a matter of painting black what is already gray, to consider that whiteness is forever lost, and with the crime committed, it is humanity's identity that is lost. Forever. In the facts, that

²⁶ Adapted for the screen, in a movie with Susan Sarandon in the leading role and directed by Tim Robbins.

people strive not to mix with, there is a parallel world between all these individual experiences, which are never mentioned, in fear of compassion, of understanding or of forgiving the traits that are being severely depicted in a public or private manner to justify the necessity to kill in the name of justice. However the behavior observed with death row prisoners during their incarceration demonstrate these changes. Those who killed under the influence of psychotropic drugs are detoxified from alcohol and drugs during years in confinement. The imposed asceticism, combined with the maturity and the reading for some over the years, feed reflections and change of personal opinions, notably for those who are not mentally impaired²⁷. The anathema thrown by society via the institution of justice in terms of the death penalty thus appears to be a useless severity, disconnected from a more factual reading of fates. The reality of existences shows that the colors are never that marked and indelible. The black and the white become a multitude of grays in which each can find oneself, against all implacable judgment from which society shaped the wish for a reassuring durability. And, whatever crime they committed ten or twenty years ago, it often appears difficult to see in death row prisoners the incarnation of any danger to society. What can be said of Mumia Abu-Jamal, locked up for 29 years, author of many books and articles about American society: who can pretend that his execution will make American society better and more serene? What can be said of Cary Chessman²⁸ and the many anonymous executed to satisfy a sentence, in terms of the crime committed but also despite the actual and profound changes to their existence? What can be said of Stanly Tookie Williams²⁹, founder of the gang Crips in the free world, then activist against gangs on death row? In prison, he learned Latin and the Holy Scriptures and gradually became a recognized activist for peace and non-violence. He gave his last years to "spare others from landing here".

²⁷ Death rows, as well as prisons in the US, are as everywhere else in the world, populated with desocialized individuals who disobeyed the law, often because of mental illnesses. The US Supreme Court prohibits the execution of an individual who does not have a clear understanding of the meaning of the sentence. For others, in the United-States as elsewhere, the question of incarceration of a population in need of more care than punishment arises. Evidently, prison appears in many cases like the resignation of society that prefers to set aside from society rather than confront the costs and the structure necessary afterwards to resolve social problematics, and beforehand to care for mental issues. To bring care is no punishment, popular vengeance cannot be satisfied by a supportive approach requiring to pay taxes for treatment.

²⁸ Caryl Chessman was executed on May 2, 1960 in the gas chamber in San Quentin, California. He is the author of several books written on death row, notably on the issue of the death penalty in the United-States: Cell 2455 Death Row (1954); Trial by Ordeal (1955); The Face of Justice (1957); The Kid was a Killer (1960).

²⁹ Sentenced to death for murder and executed on December 13, 2005 at San Quentin, California. This living face of rehabilitation was not granted clemency by Gov. Schwarzenegger. His execution by lethal injection was long and painful, it initiated a strong controversy in the United-States.

He wrote books for children, translated and published in the whole world. He was even nominated to the Nobel Peace Prize. It is him, who, thanks to an audio recording, managed to bring an end to the violent conflict opposing the Crips and the Bloods, two Los Angeles gangs. Let's mention the case of David Powell, executed on June 15, 2010 in Texas for having killed a police officer 32 years ago. At the time of his execution, a police officer from Austin confesses: "*The man who is going to put to death for the murder of Ralph Ablanado is not the man who committed the murder*". He adds that David Powell has long become "*an old man who expressed what I would call true remorse for his crime*"³⁰.

THE STRANGE COMPLICITY OF THE MEDIA

Except for a few, executions remain after all confined to the recess of the death chambers, and only benefit from a weak publicity in the media. Lost in the brouhaha of respective existences, therefore for a long time, the killings took place in the general indifference of the American citizens. The topic of the death penalty was only rarely mentioned. There are only few public debates about this civilizational cause, as if being in favor of capital punishment is admitted overall, while being abolitionist represents an opinion against the trend of a system.

In the facts, the death penalty only concerns a minority of citizens, a silent minority, which does not produce anything. As stated by Steve Hall, director of the StandDown Texas Project: "*Most people do not think the death penalty will impact them. Only the worst of the worst would one day be impacted by it. It is the idealized version that people want to believe, but it is very far from reality.*" In fact, unless it is about a very famous death row prisoner because of the media coverage, it is just about if the media announce the executions. There is a mixture of the duty to keep informed, the indifference and the conscience of no more to tell than an old crime, forgotten during the years of appeals, when the news are swarmed daily with fresh blood, grossly depicted assassins and the recent successes of the legal process.

To the contrary, the media feed themselves daily on a perverse and sensational trade, based on criminal cases³¹, dragged out and detailed, used

and abused to hold a population on spellbound which is always inclined to justify the reality of the feeling of continuous fear. To insufflate paranoia in dormant doses aimed at a population of voters awaiting "exemplary punishment" from the political power and the television, followed by the press, feeds a daily trade of criminal cases which there is no shortage of in this vast country. Between gore and sensational, the narration of facts takes on a very particular importance in the application of capital punishment. The descriptions of the most horrific crimes under the most horrible circumstances feed the need for vengeance, without hindsight, analysis, as if the reality of the facts must be treated like fiction from TV series, echoing them for a collective and common profit. Everything is a possible show: the crime committed, the executed person, the person granted pardon. In parallel, Steven Kreytak, journalist in Austin for the Austin American-Statesman explains that it is his duty to inform his readers with a certain number of details, sometimes crude, in order to give the most precise information in a democratic society. He admits this transparency of facts can effectively have a side effect on the popular call for justice. On the other hand, one must also hear that the media looking for scandals can be a substantial help to promote abolitionist campaigns, notably when revealing the great contemporary nonsense of capital punishment: the cost of the sentence, the innocent executed, the cost of exonerations, the legal and police dysfunctions, etc. In this regard, and because the divisions are not immutable, let's quote the recent turnaround by the Dallas Morning News, until then a proponent of capital punishment in Texas, whose editorials and the handling of legal cases have shown since 2007 an affirmed criticism of the danger of the death penalty: "*We do not believe that any legal system devised by inherently flawed human beings can determine with moral certainty the guilt of every defendant convicted of murder.*"³²

A GREGARIOUS NEED FOR BLOOD

By habit or instinct, the population demands the death penalty like a need to kill, remaining deaf to the consequences and even more to the exterior judgments. Blood must flow, force must be exercised, leniency must be prohibited: "You killed someone, we kill you!" say with one voice the Americans interviewed. It is almost a divine punishment, embodied by the power of the judges. In an America of believers, the death penalty belongs to this degree of justification. It is the paroxysmal solution of punishment

30 "David Powell, model prisoner, is set to be executed 30 years after his death sentence", *Le Monde.fr* with AFP, June 15, 2010.

31 The crime rate in the United-States is estimated at 5,4 (homicides per 100,000 residents), a rate four times higher than the average European countries. Crime in the United-States 2008. Department of Justice – Federal Bureau of Investigation (USA). 2009-09. Retrieved 2010-06-16. In comparison, France has a rate of 1,35 homicides per 100,000 residents – International Homicide Rate, UNDATA 2008.

32 "Death no more", *Dallas Morning News*, April 18, 2007.

when one must address the paroxysm of crimes. Because public opinion summarizes its radical position based on the law of an eye for an eye, without ever detailing its means of application or leniency, the actors of the law and the moderate experts, demand the application of the death penalty, as written in the law, for the most horrible crimes. To offer blood when the people demand it, such is the symbolic and concrete function of this system, which contains, in the United-States as elsewhere, the resurgence of a sacrificial dimension. This is what an attorney in Mississippi, who witnessed the execution of his client, summarizes: *“Contrary to the death of an 85-year old grandfather, to be there and watch someone die under such circumstances resembles a sort of ceremony, something solemn, it is surreal, I found it immoral, I was very angry and I understood that never again I would be able to take part in this type of masquerade. Nothing can prepare you for it.”* With the death penalty, the expiation is not only the one of the executed, it also the one of his family members, of his friends on death row, who see in Texas, for example, their friends disappear one after the other. E. M., on death row at Parchman, Mississippi recalls: *“Five men have been executed since I’ve been here, each time, I told myself it could have been me, and it depresses me”*. The mother of T., on death row at Livingston, Texas for fourteen years adds: *“His illusions disappear, with each execution, he dies a little more. He tries not to think about it, he thinks of his family, his children whom he cannot raise.”*

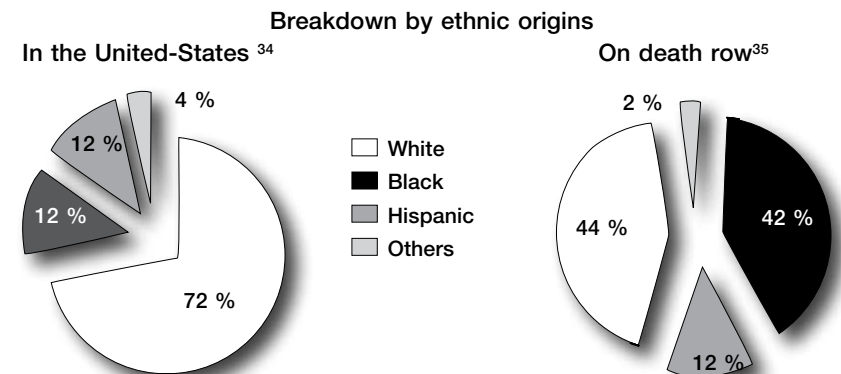
The death penalty so designed is not only the negation of life, but also the negation of human beings and their feelings, for the benefit of a population that demands tears and death to fulfill its fears and hatred. It is once again the totemic dimension of the death penalty in a democracy. An expiatory symbolic value which gives the illusion of protecting society in eliminating dangerous deviants, a ceremony to give death set up within the frame of a show reserved to a few initiated, whose legal system will give a measured publicity but necessary to inform the citizens about the deeds of power in a democratic country. Rick Halperin recalls: *“Here everybody supports the death penalty, democrats, republicans, white and black, straight or homosexual, they grow up with the idea that we can kill people, that this is something good for us.”*

Once the blood has flowed, the media, the citizens must be informed in order to give capital punishment the whole dimension of justice accomplished that American society expects. With solemnity, after the execution of Ronnie Lee Gardner by firing squad on June 16, 2010, Tom Patterson, the director of the Utah department of corrections, gives all these details during a press conference organized at 1:00am, after he was put to death. The exercise is meant to draw, for the whole of society, a detailed picture of what the

institution accomplished in the name of justice rendered: *“At midnight, Mr. Gardner left the observation cell and was taken to the death chamber. He was escorted by employees of the department of corrections. Mr. Gardner was calm and resolved. He went to sit down without resistance and was then strapped. We asked him whether he had a last statement. Mr. Gardner said no. Following this statement, the execution could begin. Mr. Gardner was pronounced dead at seven minutes after midnight. I would like to take this opportunity to thank all the staff of the department of corrections. It was an honor and a great responsibility to accomplish this mission with absolute dignity and deep respect for human life, but also for the lives who had already been lost through the acts of Mr. Gardner. This act attempted to be fair both for those who had lost a loved one before and for those who have a lost a loved one tonight”*.

SOCIAL OR RACIAL DISCRIMINATION

In terms of discrimination in the application of the death penalty, pretty much as in the use of industrialized confinement, it is necessary to detail the elements on which the inequities are based. Overall, it is probable that it is mostly a primary discrimination of the cultural, economical and social capital, in part from a secondary discrimination based on the color of the skin. This former prison warden in Texas admits that: *“Many blacks have been executed for raping a white woman. It didn’t work like that the other way around”*. The facts are eloquent: Afro-Americans represent 11% of the population in the United-States and make up 42% of those sentenced to death.³³



³³ Facts about the death penalty, Death Penalty Information Center, updated August 13, 2010.

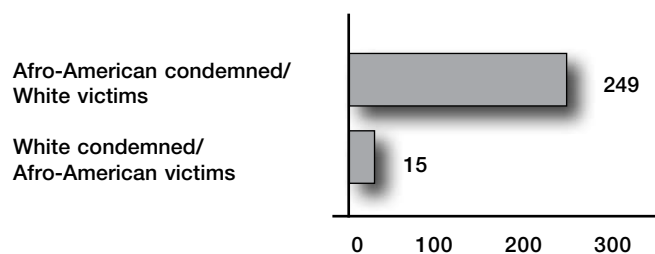
³⁴ US Census Bureau, updated November 4, 2010.

³⁵ Facts about the death penalty, Death Penalty Information Center, updated December 17, 2010.

Race is a constant parameter in the United-States, as much in daily life, as in all administrative processes and statistics. Where in Europe the profiling of individuals according to their origins is absolutely prohibited, the United-States functions at the opposite with an official and exposed classification of the social melting pot. It is therefore possible to establish precise statistics as to the functioning of the legal system per races: White, Black, Hispanic, Asian and Native-American.

From this visibility on the racial trajectories in the United-States, it becomes obvious to note that the criminal who killed a white person will be more severely punished than the one who killed a black person. On the national level, the majority of victims are not white. However 80% of the death sentences are handed for white American murderers³⁶. Through this, we note on one hand that the death penalty is a process mostly at the service of the people from the white race³⁷; and on the other hand, that life does not hold the same value depending on one's skin color or one's financial means.

People executed for interracial crimes³⁸



Therefore it is clear in the United-States that the life of a white person is worth more than the life of a black person, like a never appeased resurgence of slavery. This incites Rick Halperin to summarize the situation as follows: *“Equal justice is written on the front of the Supreme Court in marble, but it has never been the concept in criminal justice because the law has always been used to discriminate people of colors, Catholics, Jews, Women. That’s the story of America, done for the privilege of white rich men. And it’s still today with*

³⁶ Executed on a technicality, Lethal Injustice on America's Death Row, David R. Dow, Beacon Press, Boston, 2005, page 195.

³⁷ Numbers from the Death Penalty Information Center, Facts about the Death Penalty, updated December 17, 2010.

³⁸ Executed on a technicality, Lethal Injustice on America's Death Row, David R. Dow, Beacon Press, Boston, 2005, page 195.

lesbians and gays: justice is everything but fair, but people don't know and don't care.”

To this concept, which dangerously blends economy and justice, enter racist demands towards the Hispanics who populate the American prisons at the expense of the American taxpayers. The Whites would like them to be sent home, in Mexico or elsewhere, to serve their time in their “shitty prisons”, implied in their poor and under-developed countries that they should never have left. For the number of WASPs, nationality does not represent much when the skin color recalls another country. Racial discrimination is everywhere it can be found and the assimilation of a growing population, from these countries where one speaks Spanish, is not acquired. Actually, activists pretend that in terms of living conditions on death row, the Latinos are often treated worse than the Afro-Americans. Their sentences come to confirm the failure of integration and the supposed nature of immigration: *“These men leave their country to come and spread disorder in our country.”*, complains this young student from Huntsville, Texas. The personal interrogations about the death penalty very often raise the problematic of immigration. As if it were obviously impossible to dissociate the penal sentence, whichever it may be, from this necessity intrinsic to society, to identify the scapegoats. Evil not being from home, it has to be from the other's homes, the one who is different, the one who comes from elsewhere, the one, with the certitude to belong to the same species, is more doubtful, more fragile. It is therefore not surprising to observe that the poor, made of Afro-Americans, Hispanics or Native-Americans, compose the majority of those locked up on death row.

The racial debate largely initiated with the civil rights movement, then incarnated by personalities such as Malcom X or Martin Luther King, got a new life with the election of Barack Obama; at the highest office, a legitimate president through half of his blood, the existence of Afro-Americans in a nation which bi-colors remains difficult to fulfill. Today, the statute, largely unfavorable in society, can be better expressed. The strong coloring of death rows and the prisons overall is not, however, ignored by the poorest. Undoubtedly is it one of the explanations for the fact that, without having run a poll, and all things being equal elsewhere, proportionately to white people, the vast majority of the Afro-Americans people have a very critical vision of the death penalty. In a report published in 2007³⁹, the Death Penalty Information Center observed that 75% of blacks were in favor of

³⁹ “A crisis in confidence, American's doubts about the Death Penalty”, Richard C. Dieter, Death Penalty Information Center report, based on a national opinion poll, June 2007.

a moratorium on executions⁴⁰. Nonetheless their mobilization in favor of abolition is extremely weak, as if they were detached from this necessity to bring forward the debate that concerns them as a relative priority.

HISTORY AND THE STENCH OF SLAVERY

*The United-States currently incarcerates a greater percentage of its black population than South Africa did during the height of its apartheid regime. More black citizens are disenfranchised today than on the eve of the passage of the Fifteenth Amendment, which gave African-Americans the right to vote in 1870*⁴¹.

Eighty per cent of executions in the United-States are implemented in the Southern states, meaning the former states of the Confederation, the states where slavery has engraved a more tenacious memory. There is indeed no doubt about the direct link between slavery and capital punishment, as Rick Halperin confirms: *“Most Americans know that we had slavery, it belongs to our past. But most Americans have no knowledge about geography and they do not make the connection between slavery, racial denial and the modern system of criminal justice, although they are absolutely linked. It was discrimination about skin color, and people think it’s not America today, but nothing has changed!”*.

The death penalty in the United-States is also the direct heir of numerous episodes of public lynchings, which were shows of collective and racist fury until 1968, highlight of the movement for the emancipation of the African-Americans. Between 1882 and 1968, 4742 black men and women were lynched, half of them in Mississippi, Georgia, Texas, Alabama and Louisiana. The lynching consisted of summarily executing a person, a defendant, without a regular trial and by a collective decision, and with serious violence to the person as a public spectacle. Lynchings were mostly organized by the Klu Klux Klan in reaction to the will of President Lincoln to abolish slavery. Often lynchings were motivated by the pretense of punishing a black person

40 In an October 2010 poll by Gallup, “The largest proportion of the defenders of the death penalty are men (71%); white (69%); sympathetic to Republicans (78%). But women are nonetheless also in favor of the death penalty by a majority (58%), as well as non-white people (55%) and the supporters of the democratic party (55%). (...) The Gallup Institute recalls that in this poll the permanent support of the death penalty in the United-States for the past 75 years. When it began its studies on capital punishment in 1936, 59% of Americans were in favor, while 38% were opposed to it. After having dropped below the average (between 47 and 49% in favor) between 1954 and 1972, the support for capital punishment increased drastically to reach 80% in 1994”. Release by Agence France Presse, November 9, 2010.

41 *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander, New Press Edition, New York, Fall 2009.

accused of raping a white woman. In reality, imaginary acts were sufficient to motivate these instincts of violence. The crowd would sometime even go and fetch the suspect in his cell at the county jail to commit this racial violence, under the pretense of private justice. The police and all the institutions were totally complicit in these public practices when nobody was hiding from. Photographs were taken, and were often printed as postcards for souvenir that the U.S. post office accepted to mail until 1908. Sometimes teachers would grant the right for children to attend these tortures, which sometimes could be mutilations (notably sexual), lacerations, stakes, hangings, etc. Between 1882 and 1927, 92 were lynched to death. These spectacles set up for white people were denounced by people of all colors. In 1939, the success of the song “Strange Fruit”, first sang by Billie Holiday⁴², expresses the ignominy of such practices. The black community gets organized into two movements; one non-violent around Martin Luther King and the other calling to take arms with the Black Panthers.

These episodes of an extreme violence are hardly known today from the public at large. Although, in an illegal way but very real, the Ku Klux Klan still exists in the United-States and counts many active groups in the Southern states. It must be noted that many witnesses or actors of such atrocities are still alive. James Willett, former warden of the Walls Unit in Huntsville, Texas, timidly talks about these episodes: *“The condemned ones, in the 40’s, spent an average of three months on death row. Exceptionally they’d stay ten months, and then the media would mention it. There were appeals, but it was fast. In those days, we used to hang the condemned. Each county applied the hanging as it saw fit, some held public executions, organized by the sheriff, even in the days when the electric chair existed.”*

Such practices are hardly ever mentioned by the American people. They drags with them a cohort of guilty feelings that each is striving to forget since the civil rights movement was launched between 1945 and 1970 to bring segregation to an end. Still, the negation of the right to life, so frequently applied to the people of color, notably to defend the crimes committed against white people, bears the same forms as the denial of humanity towards the slaves. The map of the retentionist states shows that it is still difficult to consider abolition where slavery was the rule for so many years. As the numbers reveal, the death penalty, as a political tool, remains a power used by the whites “to dominate, under the cover of the law, the African-Americans, but also the Hispano-Americans”, according

42 Later, Nina Simone interpreted this song together with Martin Luther King, and when he was assassinated, she also called for an armed struggle between blacks and whites.

to the conclusion of David Atwood. He also adds: “*We can still see posters ‘legalize lynchings’, not only to hang from trees, but it’s a manner to control, dominate and keep the population in fear.*”

The cultural distribution and the sharing of wealth do not allow the racial minorities to have the same legal representation as the whites. This is a bitter state of affairs because it challenges the integration effort that nobody would like to consider as already achieved. This situation also results from the fact that justice, and notably the prosecution process is mostly in the hands of white people. A study published by the Death Penalty Information Center in 1998⁴³ shows 1794 white district attorneys for 22 African-Americans and 22 Latinos. Testimonies also demonstrate that black people are poorly represented in juries, their candidacies being dismissed without any obligation of an explanation, in fear they would refuse to vote in favor of a death sentence for a black defendant. The reverse does not apply. Lindy, juror in a capital case in Mississippi, explains the kind of selection she went through. She was a conservative republican, pro death penalty before this trial. She became a strong abolitionist since: “*When I arrived at the court house for the jury selection, there must have been 200 people. Maybe 30% were black. In the end, not one black person was selected for jury duty. I didn’t really consider it because the defendant was white, but I realized after that here, in the Southern states, the blacks are mostly democrats and vote for a life sentence rather than for the death penalty. I think, as far as I’m concerned, I matched the criteria they were looking for, a white collar employee.*” In a very official way, “*In 82% of the studies, the race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e. those whose murdered whites were found more likely to be sentenced to death than those who murdered blacks.*”⁴⁴. Since 1976, 15 white individuals have been executed for having killed a black person, while 244 black individuals have been executed for having killed white people. It is always very hard to incriminate the skin color as a primary factor for discrimination, when the economical and cultural conditions allow some to be less delinquent, to disguise their delinquency with more ease or even just to afford a competent defense. Nonetheless these numbers oppose racial groups in an unequal fashion. This statement is not the prerogative of the death penalty problematic. It covers the overall process of the justice system and one must note the deafness of the American people to explain the absence of criticism of the death penalty from this angle: “*When people*

of color are killed in the inner city, when homeless people are killed, when the ‘nobodies’ are killed, district attorneys do not seek to avenge their deaths. Black, Hispanic, or poor families who have a loved one murdered not only don’t expect the district attorney’s office to pursue the death penalty—which, of course, is both costly and time consuming – but are surprised when the case is prosecuted at all.”⁴⁵ Many retentionists believe, without challenging the use of the death penalty, that this situation is indeed scandalous. Others justify it without any will to resolve it, by the facts that Whites commit less crimes. In all cases, nobody here sees the sign that such an irreversible sentence underlines the political weight in the justice system and the incontrollable flaws of its dysfunctions and its corruption. The death penalty shows the parameters of a determination for a paroxysmal domination because it challenges a vital process. Without talking about executions, the process of the trials in these conditions where the prosecution is at the hand of white people, the procedural errors orchestrated by mostly white courts after the arrest done by policemen of the same color, allow, if need be, its leaders to hold a political tool, under the cover of justice, authorizing them to gag all opposition. Behind the argument of justice rendered, it is hardly a disguised way to perpetuate the domination of some by others. Guilty or innocent, the case of Mumia Abu-Jamal is a prime example, a standard carried by the media, to represent hundreds of other dominated in the silence of American prison recesses. These states of affairs sully the face of the land of the free where everyone would have his chance. They are, however, irrefutable, worrisome and denounce in a blunt way in which respect freedom and justice are only words, which definitions and functions operate within a variable geometry, in the United-States probably more than elsewhere.

ABOLITIONISM AND POLITICAL SPLITS

Overall democrats are more favorable to abolition than republicans. It is how New Jersey, Illinois and New Mexico recently abolished. Notably because of the influence of the conservatives, it is less probable that, one day, the republicans will bring the abolition project to the national debate. However this political split is not a principle, which the abolitionist movement could lean on for a political electoral choice. In fact American activists find their strength in both camps, and also in raising the debate from a perspective generally more pragmatic than ideological, without allowing a political color to interfere with it. The extent of the abolitionist struggle is too important

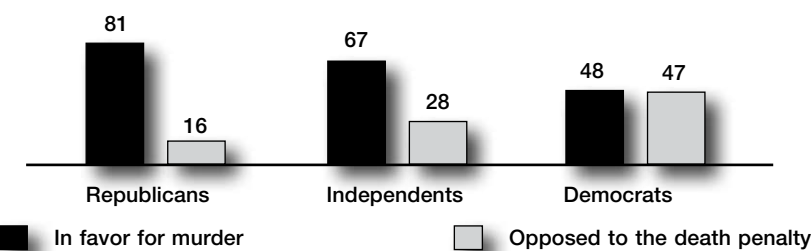
43 Richard C. Dieter, Esq. Executive Director, Death Penalty Information Center, June 1998.

44 United-States General Accounting Office, Death Penalty Sentencing, February 1990.

45 H. Prejean, Would Jesus Pull the Switch? Salt of the Earth, March/April 1997.

to tolerate the omission of certain combatants. Still, some progresses should be noted. Specifically the current governors of Maryland and Virginia were recently elected after having voiced their abolitionist positions during their electoral campaigns.

Distribution of opinions on the death penalty per political orientation⁴⁶



**DEATH PENALTY AND HUMAN RIGHTS:
A RANDOM COMBINATION**

In the United-States, everything happens as if human rights, often accused of being a European centered concept, only represented a distant value in the minds of the citizens. Among the different interlocutors interviewed, the expression is never mentioned for itself except by Rick Halperin: “*From the 300 universities and colleges, there are only 19 programs to study human rights in my country. When we talk about human rights, it is about a foreign country we are in opposition with: China, Iraq, Iran, North Korea. While we should, on the contrary, point the finger at ourselves because we have a real problem with human rights. We are in denial of what we allow ourselves to do to other human beings, it is in fact our challenge*”. In fact, the retentionists explain that the death penalty is not generally perceived as a contradiction to human rights. For the defenders of this relatively widespread idea, the death penalty is a sentence, which has always existed, like an extension of a life sentence, to punish the most serious crimes as a deterrent. This non-challenged of a phenomenon allowed by the law, echoes the reasoning of Christians who see no contradiction between the execution in the name of justice on one hand and the 6th Commandment “you shall not kill”, on the other. These opinions contribute to the same reasoning, a reflection, which

46 Gallup Poll, 1-4, - 2009

authorizes a rare partitioning between what is found in the undisputable and unquestionable law with a dogmatic character, and the parallel ethics. Some existed before the others, but both falls within an unchanging institution. The abolitionist movement must draft these arguments with such affirmed illogicalities that need to be progressively weakened if one wants to avoid generating a radical opposition which would relegate abolition to a soiled posture of modernism and of all criticisms linked to it, in a country where conservatism enjoys an extended arena and power. It is why the strategy chosen by the abolitionist movement since it was born in the United-States, approximately 20 years ago, is to gradually bring the cause forward while acting to show the indecency in the application of the death penalty in specific cases. It is a strategy of incrementation, which generates benefits in stages. It has taken thirteen years to instill in Americans and politicians that the mentally retarded should not be executed. It has taken seventeen years to convince the Americans and the politicians that juveniles cannot be executed. Since a ruling in 2005⁴⁷, the U. S. Supreme Court prohibited the execution of juveniles. Twenty-two juvenile death row prisoners had already been executed since 1976 for crimes committed as juveniles.

With each evolution, it is about moral posture, aimed at deciding that it is not fair to apply the death penalty to some individuals. Such evolutions are undeniably inspired by the philosophical approach on human rights, but nothing today allows the U.S. Supreme Court to establish a contradiction between the respect for the right to life and the effective right to execute.

Today the abolitionists work on cases of the mentally ill, who represent a substantial proportion of those sentenced to death. An important proportion of psychiatric pathologies indeed lead individuals to commit capital crimes. Like many countries, the prisons as the death rows, have a clear tendency to become the substitute for mental health institutions⁴⁸. The incarceration answer, more satisfying for the public opinion and less costly is favored in all cases. Mumia Abu-Jamal, incarcerated for 29 years on death row in Pennsylvania, gives his perspective on the situation of the mentally ill in prison: “*The problem with mental illness, it is death row itself, the fact of being locked up without any other horizon than the execution, to have to fight with weapons against an all powerful system. Medications cannot do anything for that, and it is mostly the addicts who take them. Here, it’s no place for the mentally ill*”.

47 U.S. Supreme Court, Roper v Simmons, 543 U.S. 551 (2005).

48 According to the DOJ Bureau of Statistics, 56% of state prisoners and 45% of federal prisoners show symptoms, or have a recent history of mental illness. Mental Illness, Human Rights Watch statement during a testimony to the sub-committee on Human Rights for the Senate Judiciary Commission, September 22, 2009.

The U. S. Supreme Court prohibits the execution of the mentally ill from the moment experts testify that the prisoner on death row is incapable of a “rational or conscious understanding of the sentence and of the execution” that would deem him “competent” to be executed. In practice, this ruling left a discretionary power to the judges for its interpretation by the states. Dennis Longmire, criminology professor at the University of Huntsville, Texas adds that: “*The question is what does mental illness mean? It is unconstitutional to execute, but the U. S. Supreme Court has not given an actual definition*”. The reality of these hearings with judges, prosecutors and psychiatric experts⁴⁹ are sometimes an absolute masquerade of justice, as we were able to see it on June 28, 2010 during the competency hearing for Jonathan Marcus Green in Conroe, Texas⁵⁰. On one side was the psychiatric expert for the prosecution, supported by the prosecutor eager to get the defendant’s life. He had met with Green on three occasions for two hours. He did not find it necessary to present his three-page long report at the hearing, in which he concluded, without the support of standard psychological tests, that Green probably was not as mentally ill as he seemed to be. On the other side, there was the expert for the defense. She had met with the defendant several times during more than eight hours. Her thirty-page long report included psychological tests, analysis and comparisons. She diagnosed schizophrenia and a notable incapacity to relate to the upcoming execution, which he knew of, with a penal sentence in relation to a crime he was not able to confess to. Then there was Green’s testimony, the individual concerned whose execution was scheduled 72 hours later. From beginning to end, his speech was blatantly and objectively incoherent. His regular interventions even demonstrated that he did not understand anything about the stakes of the hearing. Green talked about the voices that haunted him, the sense of his death to come, dictated by malignant spirits that, since his birth, attempted to kill him. His thinking exposed to the light of day a clear mental illness, of a psychotic type. He offered a living confirmation of the conclusions from the defense, that could not allow the supposition that this mentally ill man had the intellectual capacity for any simulation. Totally endorsing the paradox between his decision and the evidence of the implacable reality displayed publicly, the judge, however, decided the defense did not demonstrate “through sufficient evidence”, Green’s incapacity to be executed.

49 Within the course of his mission, the author attended the competency hearing for a death row prisoner, Jonathan Green, three days before his programmed death on June 20, 2010.

50 Montgomery County, Texas.

Beside the respect for the formality of the American procedure, in essence this hearing appeared to be mistaken for a parody of justice that history taught us to observe in authoritarian regimes, far from the concept of democracy. With absolute impunity, this recently elected judge obviously decided Green’s death. It took the impetuosity of his attorney to gain, a few hours from his execution, a stay from the Court of Criminal Appeals in Texas. Such situations, far from being exceptions, constitute a denial of justice and a lie to the public, who, although in favor of executions, continue to have faith in the integrity of judges, prosecutors and the district attorneys they have elected. It is the demonstration of two-level justice, the justice of the poor and the insignificant in society, struggling in an unequal fight against the authority of a flawed legal system and sometimes even corrupted, in opposition to the justice of the rich, surrounded by experts and investigators able to discredit the accusation process. It is the summary by David Atwood when he says: “*For the poor, the worst, it is their legal defense that is appalling. This is why the poor are sure to end up on death row. Then, it is hard to reverse the sentence. Furthermore, in Harris County (Houston, Texas) all the judges are in favor of the death penalty, including those at the Texas Court of Criminal Appeals*⁵¹. *The Governor as well, and also the Supreme Court, then it is very tough to hope to get out of there. The criminal justice system is a vicious circle from which one does not come out. It is an absolutely unfair justice*”.

51 In Texas, the State Supreme Court does not handle criminal cases, the Texas Court of Criminal Appeals is the highest state appellate court.

SOME ELEMENTS ABOUT CRIMES IN THE UNITED-STATES



CAPITAL CRIMES

In theory the death penalty is reserved for the most serious crimes⁵². It is also what the population remembers as a wish for an exemplary sentence for the unforgivable and inalienable crimes, to which the public opinion allows itself to deduct a delinquent behavior that would be part of the repetition. The death penalty is therefore, in people's minds, reserved to fundamentally dangerous individuals. This definition is subjective, open to interpretation and eventually detached from the reality of the criminal justice system in retentionist states, although all very diverse. In the federal jurisdiction, a litany of offenses are capital crimes⁵³, from murder with multiple added qualifications, to spying, as well as destruction or hijacking of a plane having caused death, treason, etc.

In the jurisdiction of the states, three types of crimes are qualified as capital crimes.

- First-degree murder with aggravating circumstances⁵⁴, about which the authors of Model Penal Code⁵⁵ declared in 2009 that it was impossible to define objective criteria.
- Felony murder⁵⁶, it is a crime committed as a group (rape, kidnapping or break-in) during which a person is killed. All the accomplices can be sentenced to death.
- A series of crimes, defined according to each state, from hijacking a plane⁵⁷, to high treason⁵⁸, etc.

At the opposite of a basic justification for the death penalty using the "an eye for eye" law, it is not necessary to kill to be executed in some American states. In fact, with the application of the law of parties, conceived as an extension of the principle of complicity, each individual concerned, at whichever level, by a capital crime, is eligible for the death penalty. This law lives on in some states like Texas, as testifies the young teenager Gavin

Been, founding member of the Kids against the Death Penalty⁵⁹: *"My uncle, Jeff Wood, was convicted under a law, which very few people know about, called the Texas law of parties. He was convicted of murder and sentence to die even though he was not the shooter in the crime, and even though he was not even present when the murder took place. Furthermore, my uncle had no knowledge that a murder would even take place. The actual shooter in this crime, Daniel Reneau, already paid the ultimate Texas price with his life and was executed for this crime by the state of Texas back in 2002. The law of parties is a law that allows men and women who are factually innocent of murder to be put to death."*

In practice, the Criminology Professor, Steven F. Shatz, from the University of San Francisco delivered a scientific work based on an empiric study on the application of the death penalty in California. He draws this conclusion: *"I observed that a death sentence is completely arbitrary in California. Thus, among all the adults sentenced to die for first-degree murder, 94% are eligible for the death penalty. In the facts, less than 6% are actually sentenced to death. Therefore the district attorneys and the jurors pick some of their fellow citizens without any legal control and obey no logic at all. While the U.S. Supreme Court says that the death penalty is only acceptable for the most heinous crimes that it is inadmissible for ordinary murders, that it must be only used for the worst of the worst. As to them, the numbers show that equally bad people receive or not the death penalty, it depends..."*. Also his research⁶⁰ underlines the fact that the application of the death penalty depends a lot more on whether who is killed: *"If one kills a woman, one is three-times more likely to get sentenced to death than if one kills a man, as if the value of a woman was superior to the one of a man, and it is the same thing if one kills a white person"*. All this work demonstrates that the death penalty is subject to the arbitrary of situations, which ignores the notion of justice, residing in the emotion felt by the citizens-voters in the face of a particularly hideous and high-profile crime, or in the political interests more often based on the satisfaction of a dominating class, powerful and rich. Professor Shatz

⁵² See the appendix for specificities by state.

⁵³ Federal capital offenses, Death Penalty Information Center.

⁵⁴ Among the aggravating circumstances, one can find: kidnapping, break-in, death of a child under 6 years of age or of a police officer, rape, etc.

⁵⁵ The Council of the American Law Institute (ALI) recently voted to withdraw a section of its Model Penal Code concerned with capital punishment because of the "(...) the Institute recognize that the pre-conditions for an adequately administered regime of capital punishment do not currently exist and cannot reasonably be expected to be achieved". Report of the Council to the Membership of The American Law Institute On the Matter of the Death Penalty, April 15, 2009.

⁵⁶ Only three states use this qualification to seek the death penalty. In Texas, it is called the "law of parties", in Oklahoma and Virginia "felony murder". All other states using this instrument in their codes of criminal procedure do not use it to seek a death sentence.

⁵⁷ Georgia and Missouri.

⁵⁸ Arkansas, California, Colorado, Georgia, Louisiana, Mississippi, Missouri, Washington.

⁵⁹ Kids against the Death Penalty is an organization founded by three teenagers, brothers and cousins, concerned by the death penalty from a very young age as one of their family members is currently on death row in Texas. These youngsters work to educate and raise awareness among the population, notably the young generations, about the injustice of the death penalty, as this mission statement reveals: Kids Against the Death Penalty (KADP) is an organization dedicated to ending the Death Penalty across the World. Yes we are kids, but we know that Murder of ANY kind is wrong, and that includes state-sanctioned-murder! In order to accomplish the goal of worldwide abolition, we must unite with other anti-death penalty organizations in an effort to raise awareness, and to unite in strength and in numbers. We are the people, and if we stand in solidarity we can affect change!

⁶⁰ Cases and materials on The Death Penalty, third edition, Nina Rivkind, Steven F. Shatz, American press book series, West Academic Publishing, 2009.

concludes: “The death penalty is only used to protect certain categories of people, in fact, in all my research on California, nobody has been sentenced to death for having killed the member of a gang! Why? Because nobody cares that they kill each other. Who cares?”

FACTS AND NUMBERS

Since the reinstatement of the death penalty in 1976, the American justice system has killed 1234⁶¹ people, including 12 women⁶² which represent 1,6% of the death row population, an average of 59 executions per year for the past ten years. In total, 54 women await their execution, they represent 1,6% of the death row population. In 2010⁶³, among the 58 countries that maintain the death penalty, the United-States is number five in terms of executions, after China, Iran, North Korea and Yemen.

Since 1976, executions have been carried out with the following methods⁶⁴: 1060 by lethal injection, 157 by electrocution, 11 by the gas chamber, 3 by hanging and 3 by firing squads.

Ordinarily, each state gathers its death row prisoners in two different death rows⁶⁵, one for men and the other for women.

The January 1st, 2010 report⁶⁶ includes the following statistics:
The number of inmates on deaths across the nation is 3261, a decrease from 3279 reported on July 1st, 2009.

Jurisdictions (having 10 or more inmates) with the highest percentage of minorities on death row: Connecticut (70%), Texas (69%), Louisiana (69%), Pennsylvania (69%).

Jurisdictions with the most inmates on death row are: California (697), Florida (398), Texas (337), Pennsylvania (222).

The death penalty in the United-States since its reinstatement in 1976
With regards to the 34 retentionist states, the following graph⁶⁷ shows that executions are mostly concentrated over a few states, Texas leading the way.

STATE	EXECUTION TOTAL	EXECUTIONS IN 2010	EXECUTIONS IN 2009	MURDER RATE PER 100,000.
TEXAS	463	17	24	5,6
VIRGINIA	107	3	3	4,7
OKLAHOMA	92	3	3	5,8
MISSOURI	67		1	7,7
FLORIDA	69	1	2	6,4
NORTH CAROLINA	43			6,5
GEORGIA	47	2	3	6,6
SOUTH CAROLINA	42		2	6,8
ALABAMA	47	5	6	7,6
OHIO	40	8	5	4,7
LOUISIANA	28	1		11,9
ARKANSAS	27			5,7
ARIZONA	23	1		6,3
INDIANA	20		1	5,1
DELAWARE	14			6,5
CALIFORNIA	13			5,8
NEVADA	12			6,3
MISSISSIPPI	13	3		8,1

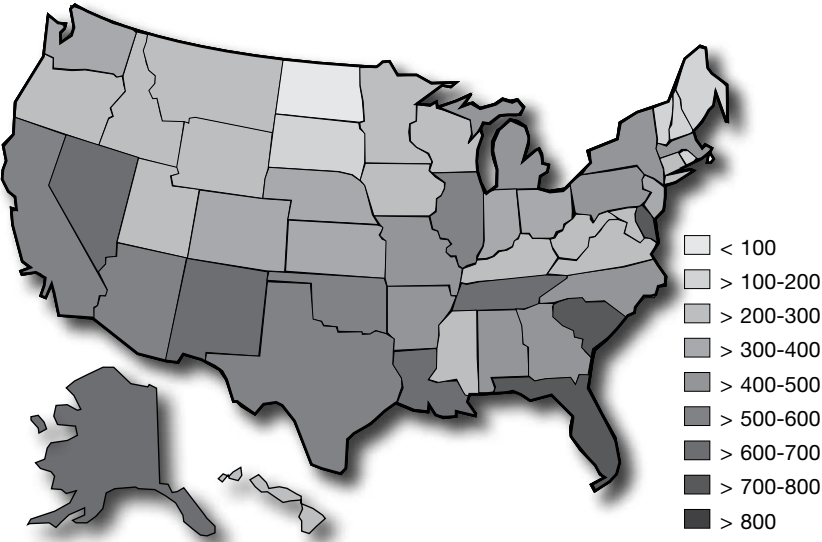
61 Facts on the death penalty, updated June 16, 2011, Death Penalty Information Center.
62 Execution database, Death Penalty Information Center, up dated July 2011.
63 Death sentences and executions – 2010 Amnesty International.
64 By comparison with the crime rate in abolitionist states, see the chapter on deterrence. Facts about the death penalty, updated December 17, 2010, Death Penalty Information Center.
65 In Pennsylvania for example, death row prisoners are housed in different locations.
66 Source: NAACP Legal Defense & Educational Fund, “Death Row USA”, Winter 2010.

67 States having executed more than 8 persons since the reinstatement of the death penalty in 1976, Facts about the death penalty, Death Penalty Information Center, updated December 17, 2010.

**CULTURAL VIOLENCE,
SOCIAL VIOLENCE AND CRIMES**

Crime rates are particularly high in the United-States, in fact specifically in the retentionist states in the South, where the population continues to naively expect deterrence and unrealistic virtues⁶⁸ from the death penalty. For Patricia Lykos, district attorney for Harris County in Houston, Texas, this criminality would be due to the fact that *“American society is particularly heterogeneous, therefore not comparable to the European people”*. For Rick Halperin American society is specific in this way: *“We love violence as a Nation, we use it in our language, in sport, in our own policy, we export it all over the world. We say that we don’t like violence, and the effects of violence on individuals and families, but we have no hesitation using it”*.

Map of violent crime by state



68 The urban rate crime fluctuates a lot in the United-States. It goes from 1,6 for 100,000 residents in Lincoln, Nebraska to 63,6 in New Orleans, Louisiana, an average per year of six murders per day in Saint Louis, Missouri, for 350,000 residents. Table 08, Data Declaration – “Crime in the United-States 2008”. FBI.gov. Retrieved 2010-03-16.

Crimes in the United-States is estimated at 5,4 homicides per 100,000 residents, a rate four times higher than the average European country⁶⁹. The role played by the possession of weapons, recognized as a constitutional right, remains a rare and less mature debate. Very few admit a cause-effect link from having a weapon close by, and the fact to be implicated in a murder, even without premeditation. Very few see the roots of capital punishment in this will imposed by the 2nd Amendment of the Constitution, to make individual justice accessible by the mere fact of being armed. Very few recognize, in the United-States, that violence is at the core of human nature, with multiple faces, that the civilization process consists of taming these purely animal reactions that are part of us, and that the use of weapons facilitated by legal possession, increases the commission of infractions. Very few accept that the temptation to use a weapon, supposedly meant for self-defense, is frequent for the one who would not have a perfect control of his urges. Yet it is undeniable that the United-States is a particularly violent nation. When one crosses a street, forcing a pick-up truck to break, it is impossible not to think there is one chance in two that the driver is armed, and therefore capable of shooting. Every situation that heats up, challenges egos even involuntarily, for any feeling of fear or need to dominate, can, under multiple circumstances, lead to the use of a weapon that a majority of men insist on carrying with them, as if they were in a war situation or in a never ending quest of the Wild West. In the United-States, the widespread use of weapons is a mean to express defense, jealousy, homophobia, humiliation, etc. There are some states, like Texas, where this violence is underlying everywhere, implicit, latent on a daily basis. There, or elsewhere, in civilized societies, the emotional challenges and the power struggles find a resolution in the estrangement or in verbal violence, the reflex in the United-States is to use a weapon to avenge one’s honor, to protect a property or in self-defense. The need of some is legitimized by the presumption of the danger in others, under the cover of a particular definition of freedom. Rick Halperin continues and states: *“We are slaves of this fear of violence. The fact that somebody can walk into this office and shoot all of us, that’s not at all freedom, it’s perversion, madness”*. This situation emerges from a vicious circle that nobody dares interrupt, not even the mother of this death row prisoner whose path was, very early on, marked by violence and gang affiliations: *“I do not see a correlation between violence more and more present here in Texas and the fact that we can bear arms. We*

69 Crime in the United-States 2008, Department of Justice – Federal Bureau of Investigation (USA) – 2009-09. Retrieved 2010-06-16.

have always had weapons. Personally I don't like it, but most of us like to shoot at targets like a game, or to hunt, it does not make us murderers."

Intellectually and politically, it would be wise to project an evolution of responses to address crimes, conjugated with a reflection on the right to bear arms. In practice, it is certain that the debate on abolition, if it is to have any chances of success in the near future, must avoid challenging this constitutional principle of violence in the United-States. The banning of firearms is not a lost cause, it would be fatalistic to think so, it is however an immature debate, especially in a culturally self-sufficient society, which ignores and persists in ignoring the criticisms or the exemplarity from abroad. Robert R. Ryan, attorney from California specialized in capital cases, concludes: *"I am certain that if tomorrow we threw all the weapons in the ocean, things would change"*.

THE FANTASIZED DETERRENCE AND THE REMEDY TO RECIDIVISM

Along the same lines as the relationship to violence, a violence sometimes defensive and sometimes offensive, like many untamed and visceral reactions of a young society, one must recognized in the United-States a pronounced taste for punishment. The upholding of the death penalty also falls within this tradition, which tends to imagine that killing, in the name of justice or in one's name, constitutes an acceptable and efficient solution that one would be wrong to do without. In everyone's mind, the death penalty would be the essential answer to the most serious crimes, the only way to prevent them. The ambient phobia justifying the upholding of the death penalty is founded on recidivism. The death penalty aims to stop some from harming others because they have killed, thinking they will kill again. Along this line, the phobia on recidivism and the fantasy of deterrence are interdependent. While being questioned, each one wakes up to realize with surprise that there are countries where people believe otherwise. Then comes the question: *"But how do you do it? How do you punish?"* This interrogation could also be about penal solutions set up in the 16 abolitionist states in the United-States, but this is a vast country, the horizons of judgment are limited to the state where individuals live, like the affirmation of belonging or the sovereignty at the state level by opposition or resistance to the neighboring states, but also to the federal power, more global and less identified.

The death penalty as a solution to social violence emanates from the denial of an evidence, which expression is weary almost as it compelling because of

it being so irrefutable: violence is a behavior that is self-generated. Despite an overuse of the death penalty in Texas, although this state is not the most populated, persists in having a much higher crime rate than other states. Actually it is a fact in all the states where justice kills, crime rates are much higher, in eloquent proportions, as demonstrates the following numbers⁷⁰:

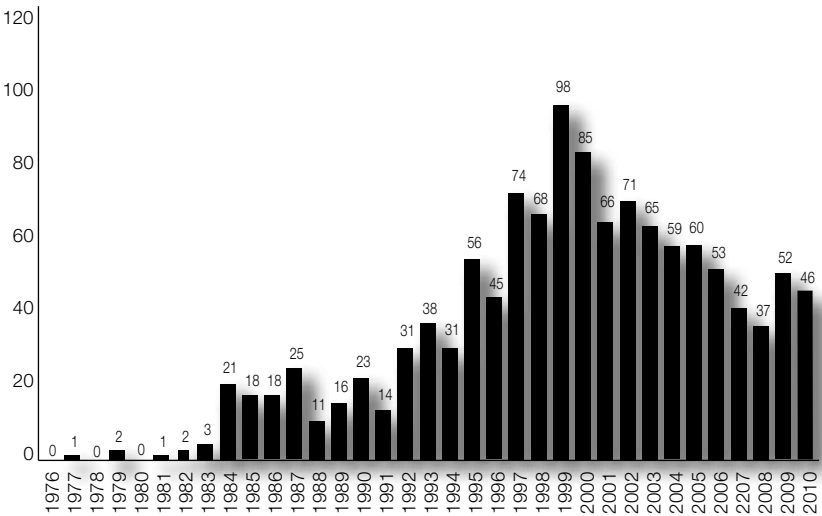
Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Murder Rate in Death Penalty States ⁷¹	6.51	5.86	5.70	5.82	5.82	5.91	5.71	5.87	5.9	5.83
Murder Rate in Non-death Penalty States	4.61	4.59	4.25	4.25	4.27	4.10	4.02	4.03	4.22	4.10
Percentage Difference	41 %	28 %	35 %	37 %	36 %	44 %	42 %	46 %	40 %	42 %

On can wonder about the ignorance of such numbers, while political speeches promoted by the media, praising the severity of death as the efficient solution against crimes. Debra Saunders, journalist at the San Francisco Chronicle, dismisses the deterrence question in explaining: *"There are studies that prove the deterrent effect of the death penalty, others that say the opposite. Personally I believe in this study which demonstrates that if executions happens within two or three years after the crime, then capital punishment is a deterrent"*. If this fantasy is supported in the United-States, it is also because no one attempts to contradict it. On the contrary the lie is repeated and satisfies the institution as much as those who are elected. It is true that it is easier everywhere to prefer the benefit of repression to the one of prevention, often more costly in the short term. Yet the research done by the American abolitionist movement shows scientific seriousness. And there are numerous abolitionist organizations in the United-States, that speak from statistical data expressing both the flaws of justice, discrimination in the application of the death penalty, financial

⁷⁰ David Cooper, Death Penalty Information Center.
⁷¹ Includes Kansas and New York in the years after they reinstated the death penalty, 1994 and 1995 respectively. New Jersey and New York ended the death penalty in the latter part of 2007 and are not counted as death penalty states in 2008.

evolutions concerning the cost of the sentence, the percentage of resolved crimes, etc. In this respect, the abolitionist cause is not dormant. It mobilizes legal competences represented by a battery of attorneys specialized in capital cases, sociologists, historians, lobbyists, publicists and activists of all sorts. Still the fight is on unequal terms. The ignorance combined with the indifference of the population is in fact the product of passive censorship. Norman Hile, attorney in Sacramento, notes that: *“People believe in the deterrent effect, even if the opposite has been proven, but people continue to believe it. When I used to meet with speakers on the death penalty, who bring studies with numbers, people do not believe them, including when one talks about the costs, people simply refuse to believe”*. Schematically the word of the most powerful, even when it is fundamentally in error, or even more the instincts for radical punishment or the calls for vengeance provoked by the crimes committed and reported daily by the media, will always be more audible than the strictness of the work by abolitionist actors whose existence in the public arena is continually lost in the permanent turmoil of American society. Despite this seemingly pessimistic portrait, if one refers to the decreasing number of states implementing the death penalty or to the evolution of executions carried out, unquestionably the abolitionist cause is advancing.

Number of executions (1234 executions from 1976 until December 2010)⁷²



72 See the numbers compiled by the Death Penalty Information Center, www.deathpenaltyinfo.org

THE DNA REVOLUTION

To base the quest for the innocent or the censure on the legal dysfunctions solely on the existence of DNA testing would distort the debate. First of all because the circumstances of its application (choice of the sample, the limit period of the support, etc.), the results are not always adequate, and secondly because in terms of law, whether it is about the form or the substance, the numerous dysfunctions of the legal system can show very different faces: hidden witnesses or evidence, false testimonies, corrupted jury selection, coerced confession, etc. Yet this scientific revolution also turned out to be a legal revolution. With the help of new technologies emerged from genetic discoveries, it is the forensic science overall that must be rethought. Now, if the United-States is the first to promote scientific and technological evolutions, from which each expects an increase in profit and efficiency, we have to admit that in terms of criminology, the processes written by the FBI often remain on the margins of scientific progress. With the advent of DNA testing, it is the first time that an independent scientific progress comes to feed the necessary autonomy in the rational approach to guilt, and hereby contradicts the antiquated conceptions of the criminal justice system, as Steve Hall explains: *“Many Texans still see Texas as it was in the 19th century with a exemplary and supposedly efficient justice, when people had the ‘law in their hands’, but this is mythology which still exists here. Yet one must conjugate criminality and punishment in the 21st century with the new technologies like DNA testing”*. This serious intellectual evidence, parried with the attires of technology and science, did not wait long to bear its fruits. It is since the beginning of its use that 280 prisoners have been exonerated⁷³, among them 17 death row prisoners who joined the other 122⁷⁴ death row prisoners exonerated through other means. This success is due notably to the organization “The Innocence Project”, which reviews cases where guilt appears questionable and thanks to an army of attorneys and experts, including students, manages to save individuals from the claws of the American justice system.

The new type of evidence disrupts the story of the crimes, those confessed to but also those which story were coerced or fabricated by a justice system grasping for the culprits. Actually, 25%⁷⁵ of the 280 exonerated through DNA

73 An average of nineteen exonerations per year since 2000. Facts on Post-Conviction DNA Exonerations, Innocence Project, New York, November 2011.

74 Among them, Curtis McCarty, freed in May 2007 after 22 years behind bars including 18 years on death row in Oklahoma while he was innocent. He is one of these exonerated death row prisoners met for this mission; as well as Ronald Williamson, freed in 1999, after eleven years on death row in the same state, and whose story lead to a book entitled “the Innocence Man” by John Grisham.

75 Executed on a Technicality, Lethal Injustice on America’s Death Row, David R. Dow, Beacon Press, 2005, page 97.

testing had signed a confession, following the mechanism of constraint, which directly points the finger at the practices of the police and the prosecution. This number, outrageous for a democracy, should suffice to raise awareness. In terms of criminology, DNA testing outlines a new scale of knowledge and induces the writing of a new chronological causality. The scientific character of this technique brings credit to the prosecution or to the defense. It also is a serious communicator, comprehensible and credible by the largest number. With DNA testing, inanimate objects become revealing. When a hair testifies about a portion of the reality, public opinion follows. In terms of chronology, DNA testing allows for ulterior reconstructions, extends the statutes of limitation in the quest for the truth, and authorizes to explore the causality within a larger time frame. This progress in criminology is a considerable advance to the mechanism of discovery. It has allowed the underlining of the fallibility of the criminal justice system, either due to incompetence or to corruption. Throughout the situation of the exonerated, the citizens of the United-States realize that neither justice nor the police force can master the truth. It is, for all to see, the discovery of the limits, until now ignored, regarding the certainty of guilt. The execution appears, in a scientific way, as a potential error, fatal and irreversible, and the words to prove it are audible. It is from this awareness that emerge major criticisms of the death penalty in the minds of the citizens who defend it or defended it. Besides, when they are proven, these dysfunctions are publicized, as with the case of Cameron Todd Willingham⁷⁶ in Texas, whose guilt was challenged before and after his execution, by scientific expert reports on the arson he was accused of. Steve Mills from the Chicago Tribune⁷⁷ explains that the scientific reports on which the prosecution relied on: “*are nothing more than a collection of personal beliefs that have nothing to do with science-based fire investigation*”. Hence that second scientific assessments and the progressive access to DNA testing, beyond saving innocent people, also comes to comfort the recent abolitionist debate. Unfortunately DNA testing is not applied across the board and many death row prisoners are being denied by the courts access to the use of this new technique that could exonerate them.

In this respect, Hank Skinner, sentenced to death in Texas in March 1995, is a prime example of the arbitrary application of the post-conviction DNA law. As soon as Texas passed a law for post-conviction DNA testing,

his attorney filed a first motion in 2001, it was denied. A second motion for DNA testing was filed again in 2005 and denied again in 2009. On March 24, 2010, Hank Skinner came within 35 minutes of his execution when the U.S. Supreme Court granted him a stay of execution and two months later accepted to review his case. In March 2011, the Justices voted in Hank Skinner’s favor by 6 votes to 3, granting him the opportunity to sue the district attorney through the Civil Rights Act in federal court. The ruling, however, did not make any recommendation as to whether he should be granted the DNA testing, although 90% of the crime scene evidence remains untested to this day, including the murder weapons, a rape kit, fingernail clippings from one of the victims and a man’s jacket found on the crime scene that did not belong to Hank Skinner.

Paradoxically, even if a human life is at stake, the U.S. Supreme Court has not set a principle that would impose the use all available tools and techniques to uncover the truth in criminal cases. Therefore, and contrary to what the American population believes about the fact that this technique, for now on and all cases, makes human justice infallible, the American state of law does not systematically offer death row prisoners the opportunity to prove their innocence with DNA testing. The battle with the courts is costly and uncertain. Nothing is ever acquired for the defense team, despite the litany of doubts over guilt, and despite the irreversible game of capital punishment, justice sometimes prefers to send a person to his death, rather than authorize the review of an individual case⁷⁸.

INNOCENCE OR GUILT: A MATTER OF CONVICTION

Quite often, in terms of capital punishment and of guilt overall, the central question remains a matter of conviction. Some can be convinced of guilt, others of innocence. The truth, if there is one, rests in the conscience of the authors or of the defendants; simply, and nowhere else. This posture forces the modesty and humility of those who have the power to judge. Yet guilt is a strong conviction and, for the prosecution, the trial is truly constructed to ensure its demonstration with such efficiency that in a recent case, despite the fact that the death row prisoner had been exonerated through DNA, the jurors stated they would not change the verdict. The disowning of

⁷⁶ Because he refused to plead guilty, Cameron Todd Willingham, accused of having killed his own children in the fire of his home, was eventually executed in Texas in 2004, although several independent forensic reports stated that the fire was not arson.

⁷⁷ Steve Mills, “Cameron Todd Willingham case: Expert says fire for which father was executed was not arson”, *The Chicago Tribune*, August 25, 2009.

⁷⁸ Cf. *Herrera v Collins*, 506 U.S. 390 (1993) “the Supreme Court of the United States (in a 6 to 3 decision) ruled that a claim that the Eighth Amendment’s ban on cruel and unusual punishment prohibits the execution of one who is actually innocent is not ground for federal habeas relief”.

personal convictions is detrimental to respective self-esteems or to the aura of the authorities which reputation is built around a presumed infallibility, such as the police or district attorneys' offices. In these situations of guilt, it happens that facts only be visible through interpretations, which leaves an important part to subjectivity to finally substantiate personal convictions. It is the case, for example, of Kevin Cooper, sentenced to death, who I met for this mission on death row at San Quentin in California. To listen to him or to his attorney or his numerous supporters, his innocence is beyond a reasonable doubt. His case contains multiple elements making his guilt extremely doubtful. In parallel, personalities from the legal and correctional communities met in San Francisco express the opposite conviction, namely that this man is guilty. From the same story, we find opposite certitudes, that, in the end, rely on subjective points of view and personal convictions, and in the absence of evidence or undeniable flagrante delicto, the whole art of prosecuting or of defending will consist in respectively convincing the jury to obtain or to spare from the sentence of death. From the moment the crime committed allows the option of a capital sentence, these numerous cases, for which the narration of facts leads some to be convinced of the innocence and others to be certain of guilt, do not stall the courts to seek an irreversible sentence.

Therefore it is wise to consider that, in many cases, the register of conviction to be a dangerous certitude governing legal decisions. Criminal cases are often far more complex stories than what the media or legal investigations are contented to write. There is *to know* and *to pretend to know*. In court, the jurors will have to decide as if they had access to a form of reality, the one presented before their eyes by the prosecution with more or less skills on one hand, and the defense on the other. Yet and most often, intangible and material evidence does not allow for a reconstruction with the certainty of facts and the acts of the accused. In fact, in 70%⁷⁹ of cases, the conviction of guilt for the 140 exonerated had been based on eyewitness testimonies, generally considered as supreme and irrefutable evidence.

The judgment is found in the far reaches of narrations expressed on one hand, excluding all that has not been told or presented, and of what each one understands according to one's personality, namely his cognitive tools on the other hand. It is from this play that will unfold, a play in which the prosecution leans on superior financial means to substantiate its point of view that the jurors will have to decide on the life or death of an individual.

⁷⁹ *Executed on a Technicality, Lethal Injustice on America's Death Row*, David R. Dow, Beacon Press, Boston, 2005, page 98.

Jordan Smith, journalist at the Austin Chronicle in Texas, explains: "*In theory criminal justice is a super system, in reality people are not infallible and make mistakes voluntarily or involuntarily, yet with the death penalty, if one changes conviction, one cannot go back.*" These dysfunctions are totally unknown to the public. In fact, the whole legal mechanism is ignored, therefore no one is able to evaluate the stakes during a trial, to then have a critical vision on the potential flaws of the system. "*I discovered this mechanism when my son was charged, and there I saw that it was totally out of our hands, while I believed, first and foremost, that the whole legal system was fair, that the presence of 12 jurors would suffice for the verdict to be serious*", confesses this woman whose son has been trying to prove his innocence for 14 years. T., sentenced to death and incarcerated at Parchman, Mississippi, states: "*I didn't choose my attorney and I didn't know anything about justice, how to defend myself, etc. I had the feeling that everything had been decided before. I didn't know the evidence against me. To prove all this was false, it was necessary to know the law and it's too late after the trial. The district attorney and the police said I wouldn't be sentenced to death if I said what they told me to. In fact, they didn't know anything, and me either. My attorney tried to plead guilty to get a life sentence. Now I have changed attorney and I'm pleading that I'm not totally innocent, but innocent of what I've been accused of.*"

This widespread ignorance is in denial of many written pieces, books and articles, often outlined by the abolitionist movement, which regularly raises the awareness of the American consciences and that their representatives cannot ignore. In this way, the work of the abolitionist actors is remarkable in its precision and seriousness. Sometimes academic, sometimes journalistic, sometimes militant, this situation is denounced from the East coast to the West coast of the United-States. Despite this freedom to speak and to criticize, the infallibility remains an idea that governs, except when it is awoken by exceptions, the one of innocence technically acknowledged when the judges accept to reopen cases and reanalyze the causal narration leading to guilt. But this desire to seek the truth and to spare the innocent is not very common. Norman Hile, attorney in Sacramento, tries in vain, to save his client's life, Kevin Cooper's. He confesses: "*When we speak to the prosecutor and the whole prosecution team, they are convinced of guilt and refuse to reopen the case, even if the defense introduces new elements. (...) The state uses everything to avoid coming back on a sentence. It is a fight on their part.*"

A MATTER OF YOUTH RATHER THAN RECIDIVISM

The large majority of crimes is committed by men before they turn 25 or 30. The numbers drop drastically after this age. This statistical reading calls for some explanation which combines medically established numbered data, and the qualitative sociological and psychological dimensions. Scientists establish a direct link between violence/crimes and the volume of testosterone. From a sociological and psychological perspective, it is true that with age, the question of the role of self in the group can sometimes take time to determine itself, and among the unfortunate adjustments that belong to the maturation periods, depending on the education received, depending on the norms of good and bad, delinquency overall fades with age and experience. It is demonstrated with the allocation of crimes committed per age of the defendants⁸⁰.

Offenses	Violent Crimes*	Thefts**	Total	Distribution in %
15	4,8	9,7	342 096	4,5
18	15,4	26,7	1 106 830	14,6
17 à 24	33,5	34,7	2 597 696	34,3
25-29	14	10,1	1 003 505	13,2
30-34	11	8,7	792 906	10,4
35-39	9,8	8,5	723 350	9,5
40-44	8,8	7,7	690 722	9,1
45 et +	11,6	9,5	981 707	12,9
Ages	100	100	7 597 240	100

* Murder, rape, aggravated theft
** Break-in, simple theft, theft of a motor vehicle and arson

This situation must, however, be counterbalanced with the fact that from experience, it becomes also easier to professionalize one’s delinquency, therefore, to escape arrests. Nonetheless, this element must be integrated as one of the responses to the paranoid fear of recidivism, and to the too often widespread certitude, leading to believe that criminals do not change, no matter what. So what is the purpose of eliminating individuals who would no

longer be dangerous after a certain period of incarceration⁸¹? It is the question that sends the pro death penalty to their most essential motivation, far way from the pragmatism of protection: it is firstly about vengeance, to kill the one who killed, just like societies from the previous era⁸². Debra Saunders, journalist at the San Francisco Chronicle, gives little credit to behavioral changes: *“I don’t believe in the formulation of remorse. It is easy to be nice in prison, but once back to normal life, a man can kill again, be bad, rape and it is impossible to stop him. (...) What would make me believe in redemption is that they endorse their guilt. The one who does not admit his guilt has not changed. Stanley Tookie Williams said he was repentant for having been an odious character, but not for having killed people. The abolitionists talk about how wonderful he was, but in fact he never repented for having killed these people. He simply wanted to be free in the street and maybe kill more people.”*

81 This work is about criminals whose behaviors are considered a form of delinquency and not about mental health. The question of psychiatric patients treated in the United-States, as elsewhere, through incarceration, should in fact be subject to other punitive, social and medical treatment. In such situations of known mental illness, the question of recidivism requires an adequate psychiatric response, independently of standard penal policies.
82 Let us not forget that among the religious in favor of the death penalty are conservatives and fundamentalists, belonging to Evangelist and Baptist Churches, more concerned by preserving ancient beliefs and practices rather than contribute to the progress of society. Modernity is assimilated to evil, to evil inspiration in contradiction with a contemporary study of the bible. Then, for example, the origin of men is taught from Adam and Eve, in spite of all scientific discoveries. This phenomena must remind the Old Europe of its own phases of obscurantism, notably at a time when religion barred the theories of Copernic and Galilée. Earth was known to be flat with a sun above it; to admit its spherical appearance and the principle of heliocentrism was considered heresy that could be punished by death in the 17th century.

80 Males Arrests, by Age, 2004 [10,830 agencies; 2004 estimated population 209,671,644], Table 39, FBI.

THE LEGAL MACHINE



The possibility to seek a sentence of death supposes a legal process, all the more particular since the reinstatement of capital punishment in 1976. First of all because it is about criminal justice, there are procedural rules, investigations imperatives and specific appeals that come to underline the importance of the case to be tried. Secondly because it is an irreversible sentence, the trial must obey contingencies thought and written by the legislators, as a mean to avoid committing the irreparable. This difference between a life sentence and capital punishment justifies the difference in costs between these two sentences⁸³, but also the duration of the trials and of the appeals, whether at the state level or at the federal level.

JURY SELECTION

To be picked from the pool, one must answer favorably to a question: “Will you be able to vote for capital punishment if it were a possible verdict?” This is how the procedure in place ensures the judge that the death penalty can be applied if the prosecution demands it. The participation of abolitionists is therefore excluded from the legal machine in their own country. They are in fact considered as able to provoke an obstruction of justice, a justice system run predominantly by retentionists. It is the reason why Dennis Longmire, criminology professor at the university of Huntsville in Texas explains that: *“the Catholics and the Jews, known for their abolitionist opinions, are not welcome as jurors. Regularly, white Protestant, Baptist or evangelist citizens, whose morality does not prohibit to vote in favor of the death penalty, are favored.”*

For a regular criminal trial, one must gather a pool of 50 people, picked from the voters register or from the driver’s license records. The judge qualifies them, the attorneys interview them during three hours, then proceed with an elimination by vote, without any stated motivation required. The cases of discrimination are therefore difficult to identify and seldom disputed. For a trial where the death penalty is sought, 200 people are called to finally make up the panel of 12 jurors. The media, authorized to cover all stages of the trial, can also be present during jury selection. The system wants to appear very democratic, however the restrictions can be broken at other levels during the investigation, or in against-nature connivance between the judge and the prosecution; and sometimes even the defense when it has been court-appointed. During some trials, the jurors cannot communicate with the outside world, or with their families. They are all isolated in a hotel without

telephones and television, completely cut off from the outside life. They are taken to the courthouse by bus, and the jurors, among themselves, are not allowed to exchange about the case in question. Lindy Wells, former juror in the trial of B. in Mississippi, who was previously in favor of the death penalty, until she had to make a decision in a trial that lead to a death sentence and then to the execution of the condemned, revisits the legal system; she believes instrumentalized her. *“I was convinced I would not be picked, but I was chosen as juror n°2, it shocked me! For the duration of the trial, we were sequestered, we had to hand over our phone to the deputy sheriff, with the instruction not to call whoever during the trial. We were not allowed to talk outside of the deliberation room. It was somewhat stressful at night. We were not allowed to read the newspapers or to watch television. At the hotel or during transportation, we could talk with each other about the weather, but not about the case. And we all complied! We were isolated from everything that was going on outside. Yet, me, I don’t even know the case of this man. Nothing at all. I only knew that it was a murder case and that we would have to decide the sentence. Until the pleading of the prosecution, we did not know what it was about. The days were quite full. To deliberate, the judge gave us instructions, points to follow, to guide us between the death penalty and a life sentence. In fact, according to the questions he was asking and to which we could answer, there was no alternative to the death penalty. We were objectively forced to vote in favor of this sentence. Yet I was the only one who was not really in favor of sentencing him to death, and I said so. Then the others told me that if we did not vote in favor of the death penalty, Bobby could be released on parole in a few years: ‘would you want him to be free on the streets again?’. They gave the example of a murderer who gets out and kills other people. So I did not want the responsibility of maybe freeing someone who could hurt again later. So I gave in to the pressure because it seemed to be the only thing to do then. (...) During the trial, my eyes crossed with his, and I began to want to judge beyond what the prosecution said about him. Something changed in my heart. I began to feel compassion for him. My opinion then changed. I felt he had no defense during this trial. Nobody came to help him. His sister came to ask that her brother’s life be spared, but he didn’t really have a defense. All that we saw was done and said to sentence him. And I think it is the same thing with all death sentences. The whole trial had been against him, and I felt it was unfair. But I could not answer differently from what I did to the questions of the judge, and our unanimous replies lead to the sentence of death. We did not even know that the judge was the same one than for his first trial! They knew he would get death even before the trial. Yet there is so much information the jury does not have access to! I discovered lots of elements*

⁸³ As a reminder, a capital trial costs four to five times more to the taxpayers than a trial leading to a life sentence, including the incarceration costs involved with a sentence of life without parole.

afterward. How can one judge properly if one is not given all the information? For me, the system is broken, it does not work. When I came home, I was angry because I did not have all the necessary information. I then read all the articles about what had happened during his first trial... I contacted his parents. I understood then that there were lots of mitigating circumstances, which could have gotten him a life sentence instead of the death penalty. After the trial, I was telling myself: 'How am I going to feel the day I'll hear on the radio that he is going to be executed on such a day at such a time?' It does not leave you and it changed my perspective. I could not discuss it with my friends because they are in favor of the death penalty. So I went to see my pastor who showed me the Old Testament, explaining to me with the 'an eye for an eye' that the death penalty is something biblical... It did not convince me. Thirteen years after the trial, I received a letter from him. I wanted to know how he was doing. In his letter, he told me he knew about my feelings, that I should not feel guilty. I kept the letter with me for two months then I asked his attorneys the permission to meet him. I needed him to pardon me, because I did not want to be an accomplice to this calamity... I went to ask him for forgiveness, and he forgave me... (...) We each have a responsibility as citizens. When one is called for jury duties, one must obey the laws of our country. But these laws are totally flawed, there are so many political implications in the trials. So since then, I have been angry against the system. Bobby has been executed. I became an abolitionist, even if I remain a conservative republican. It does not go together, I know, but this case changed my life, I still think of it almost every day (...)."

THE TRIAL

There are two trials, one to determine guilt and the other for the sentence. The duration of the trials vary greatly depending on the complexity of the facts and also on the respective investment by the prosecution and the defense. It can take a few days or several months. Then the deliberations begin, without time limits and a unanimous vote is required for both verdicts to confirm the sentence. Jurors are not generally inclined to compromise, their judgment is binary and the questions they must address, written by the judge, do not generally tolerate contradiction as to the process of the trial. When there is a disagreement, at the end of the day the judge, announcing he is making a hotel reservation for an additional night, hastens the final decision and customarily each joins the overall majority. It is also under such circumstances that men are sent to their death. Criminal trials are held mostly within the year following the arrest. The emotions linked to the crime are still very vivid.

While executions often take place more than ten years after the sentencing, in a frequent indifference unless it is a high profile case.

Therefore, in many cases, one explains the number of innocents in prison or the harshness of the sentences with two factors, which are conjugated in a similar and common motivation associating the political stakes for district attorneys, state judges and governors. This combination of excesses expresses the potential perversity of the legal system. Even if all cases of death sentences do not satisfy these extremes, the pattern remains unfortunately very realistic, with a reliability sufficiently noted to address two essential issues. Firstly the people want the criminal's blood to flow in retribution for the victims' blood. Secondly, the edils are elected on a program of merciless severity, formulated as many answers to the collective fears in the face of widespread criminality and many sordid cases commented daily in the media. It is a matter of assuring the victims of a swift and efficient justice, as demonstrated by the campaign commitments of Lisa Benge Michalk's⁸⁴, judge in Montgomery County in Texas: "I believe people should be held accountable for their crimes. Ronald Reagan said 'We must reject the idea that every time a law's broken, society is guilty rather than the lawbreaker. It is time to restore the American precept that each individual is accountable for his actions'. Victims deserve better. They deserve an efficient court so they don't have to wait years: 'justice delayed really is justice denied'".

The incarnation of power and strength, capable of defying life, of confining it to prison or even of suppressing it, remains the most accessible pledge for who wants to be elected to most offices in the United-States. It is necessary to represent the symbol of fatherhood, a protecting force capable of shackling to the benefit of an order that reassures. It is the mission of the institution of justice and of the actors who articulate it, supported by all symbolic aspects of capital punishment, that represent a phallic totem, from which is expected, as in all ancient civilizations, to appease the collective fears and hatred. In the end, the people demand, and sometimes obtain, blood and symbolic castration, in order to subdue its phobia and to reassure its anxieties, while feeling the supreme domination of an authority capable of killing on a local scale.

OF EXECUTIONERS AND MEN

The profession of executioner does not exist in the United-States. The execution is the task of the department of corrections. A professional mission, that is an integral part of the job, which is assigned to one or another. To

⁸⁴ The judge quoted earlier in the case of G. in charge of his competency hearing, "his rational understanding establishing good cause for his crime and his sentence".

work in a prison where executions take place means that one can be designated as the executioner, even if neither the word nor the function exists.

The case of the execution of Ronnie Lee Gardner, which took place on June 18th, 2010, shows the will for pragmatism and the motivation of a sense of accomplishment for the executioner of menial tasks as a legitimization of the killing. There is no other space for notions of ethics or morals. A shooter⁸⁵ explains: *“To me it was just an assignment, nothing more than getting an order to do something like kicking in the door to serve a warrant”*. Three hundred men, all members of the police force, were volunteers to shoot Gardner. It is mostly a masculine function. In the end, four of them formed the firing squad, one of them shooting a blank⁸⁶. In the execution protocol, the dimension of guilt is not omitted. Therefore the execution needs to be set like clockwork; this is what also gives it an institutional dimension from which flow its authenticity and its distinction from a simple and unprepared murder. The officer in charge of the execution justified his choice: *“The officer said he chose the members of the squad for their maturity and responsibility. They were well trained and I knew they wouldn’t go around bragging about it. I wanted the best in order to get the job done right”*.

Despite this idea carried by the sense of ridding society of a dangerous element, the killing of one’s peers, that cannot be completely be detached from the words to describe it, inevitably brings: *“My wife was concerned by the possible retaliation if the people found out I was one of the shooters”*, stated one of the officers who also exchanged with a representative of the clergy. *“I struggled with morality. I am not a super religious or spiritual person. I go to church every Sunday. I confronted myself to the ‘thou shall not kill’, but still I felt it was part of my job.”*

The matter in question here in Salt Lake City was to shoot man at short range, in an enclosed room, in an anonymous fashion. If the qualifier “barbaric” can convey a personal ideological connotation, it is unanimously acceptable to qualify this act as violent. Therefore, the authorities prefer to leave a doubt about the actual one responsible for the death. Each one can go to sleep, reassured that this killing was a collective one, institutionalized and semi-public, but also potentially stay in the clear thanks to the existence of the blank bullet, which benefits serve to attenuate the feeling of guilt: nobody can have the certitude of having killed the condemned man. This system also offers another advantage, it avoids hearing one or another

bragging with certainty about having killed the presumed guilty one, an intention that one of the shooters stays clear from: *“I don’t think any of us were motivated by a sense of revenge”*, another of the trio said: *“We took it seriously and we wanted to do it right.”*

In other situations, the death penalty forces the citizens to become accomplices of death system, sometimes in spite of themselves. A prison guard in Nashville, Tennessee, admits he has, on several occasions and against his will, been in charge of watching death row prisoners during their days on death watch that precedes the execution. He also stated his wish to never be designated as a member of the execution team. But if the orders require it, most likely he will not escape from his mission. As in other historical periods, there are executioners of menial tasks who accomplish tasks refused by their conscience, motivated by the exercise of a profession and the difficulty of disobeying the system. For example, the former warden of the San Quentin prison in California was a convinced abolitionist. However, she had to organize four executions during the course of her duties: *“I’ve always been against the death penalty, but I tried to accomplish my work with as much humanity as possible. It is a part of me now, I have to live with it.”* The warden of the prison in Nashville refuses to share with anyone his feelings concerning the executions he supervised: *“I never talk about it, voluntarily. I don’t say anything about it. I’m just doing my job.”* His dignified look and his sad expression are nonetheless eloquent. The former prison warden of the Walls unit in Huntsville, where executions take place in Texas, had to organize 89 executions during the three years he was there as warden: *“I liked my job as prison warden, it’s normal. I began here as a mere correctional officer, and I ended my career at the highest level of the hierarchy. The executions were part of my assignment, of my duties. In any case, someone else would have done the job in my place. It belongs to the past, I cannot change anything about it. But, knowing what I know now, I would have preferred to continue my career without having been confronted to all this. And retrospectively, if I had to do it again, I’d want to be senior warden, but I wouldn’t want to deal with the killings. It’s not that I often think of that, but... no I wouldn’t want to do it again.”* As long as it is only about a sentence, announced coldly in the courtroom, but always fed by the hope of the appeals and the inertia of the process, the death penalty is only a word with an almost harmless flavor. Unlike the numerous participants to the executions who expressed honesty with dignity and decency, how much the actual part of the killings appears a painful mission, extremely unpleasant, an unprecedented and deadly moment, with which one must

85 R. Kirby, “Executioners share motives, describe their roles in death by firing squad”, *Salt Lake Tribune*, June 2010.

86 Kirk Johnson, “Double murderer executed by firing squad in Utah”, June 18, 2010

continue to live. There is the abstraction of a sentence announced and the reality of a sentence executed. Both these stages are distinct as confirmed by this attorney, who for the first time in her career, worked on a case to represent a prisoner on death row who was executed in July 2010 in Texas: *"I've always had a good relationship with all other legal participants during the trial. But a few days from the execution, I actually found myself confronted to this huge machinery made of very nice people who, in reality, elaborated plans, a whole organization, to actually kill someone, my client in fact. It was weird and monstrous!"* The civilizational process, including in the United-States, reached this stage: the officious denunciation of the abnormality of a sentence, which only deludes when it is a word.

THE MURDEROUS IMPERFECTIONS OF THE CRIMINAL JUSTICE SYSTEM



One of the main criticisms about the death penalty consists of observing the dysfunctions of the criminal justice system, and to accept that human beings are fallible. Even if, in theory, the system appears to be wise, the existence of corruption, the fact that police forces sometimes eliminate exculpatory evidence or fabricate incriminating evidence with the always more intense determination to find the guilty one, that the legal system is instrumentalized for electoral purposes, are so many factors, which jeopardize trust in the legal process. Let's quote the case of Ricky Ray Rector⁸⁷, a mentally retarded prisoner whose execution in Arkansas in 1992 that was supported by Bill Clinton, then governor of the state during his presidential campaign. He did not want to appear too lenient toward the crime with regard to his republican opponent. He also meant to distance himself from his democratic predecessor who was critical of the death penalty during his 1988 campaign for the primaries and who lost the election. Given this instrumentalization, Ricky's execution remains bitter in the abolitionists' minds.

This fallibility is also subject to the cultural context of the United-States, to racial discrimination, to forms of obscurantism and to a determination for violence. Although sadly factual, this fact could have been contested by the public if it had not only emerged from the abolition activists. Nevertheless, the facts, more and more frequently listed thanks to the painstaking work of a series of activists who have a different perception of justice, are corroborated on the political level, notably with this decision by the republican governor of Illinois made before leaving office, George H. Ryan, in favor of the death penalty for the most horrendous crimes, but also aware of the numerous imperfections he witnessed, who commuted the death sentences of the 167 death row prisoners in his state on January 10, 2003: *"Because the Illinois death penalty system is arbitrary and capricious – and therefore immoral – I no longer shall tinker with the machinery of death"*⁸⁸. On March 9, 2011, Pat Quinn, the current governor in office, signed the abolition bill in his state and justified his decision: *"Since our experience has shown that there is no way to design a perfect death penalty system, free from the numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish it"*⁸⁹.

87 Ricky Ray Rector shot a police officer in 1981 before turning the gun on himself. The shot seriously impaired his mental capability, causing a lobotomy. A few hours from his execution, he did not realize what was about to happen to him and therefore he did not fit the criteria set by the U.S. Supreme Court in 1982 for the mentally ill: "a rational understanding of the meaning of the execution".

88 Several years prior, under the same circumstances, just before the end of his mandate, the Governor of Arkansas, Winthrop Rockefeller, implemented a similar commutation.

89 John Schwartz and Emma Fitzsimmons, "Illinois Governor signs capital punishment ban", *New York Times*, March 9, 2011.

"They wanted him and no other!" says M. G., mother of a death row prisoner trying to prove his innocence. *"They did all they could to make a case out of my son, because he had been the terror of Houston. At his trial, everything was aimed against him. They even proved that he no longer was in this gang, but they didn't use this element"*. The paradox is that defenders of capital punishment declare to be in favor of an implacable and irreversible harshness in the name of justice, an institution that does not bother to legitimize or credit this sentence with accurate investigations. Sometimes, despite hints of innocence, the support of the international community, the discovery of new evidence likely to reinforce the defense, the killing reflects the determination. Sandrine Ageorges-Skinner, married to a death row prisoner in Texas, recalls her husband's case: *"Everything is available to challenge Hank's guilt, nonetheless, with seven votes to zero the board of pardons and paroles refused to commute his sentence or to grant reprieve, taking the obvious risk of executing an innocent man"*. The death sentence is frequently used in cases where guilty itself is an issue, even if innocence is not proven. This situation is also expressed by Jordan Smith, journalist with the Austin Chronicle: *"In many cases, we don't even know if the condemned is actually the guilty one. We have surely executed innocent people, now we know it."*

MORBID RECIPES TO OBTAIN A SENTENCE OF DEATH

The legal dysfunctions do not always lead to the death sentence of an innocent man. However, capital punishment is sometimes applied where mitigating evidence should allow for an acceptable prison sentence. In other cases, bargains with the law or with the employees of the system allow capital punishment for the less fortunate, regardless of all rationality. As Professor Shatz demonstrated: *"The death penalty is completely arbitrary"*. This young woman who came to witness the execution of her mother's young killer expresses her anger: *"The fact that Michael was executed tonight doesn't give me anything in terms of justice. Ok, he was guilty, but this triple murder was committed by three of them. One was sentenced to a prison term and has already been released, and the other, a girl, because she was the district attorney's niece and because she testified against the other two, was freed immediately at the very beginning of the investigation and was never sentenced to anything. You think that's fair?"* The ineptitudes in the application of the death penalty are numerous. Regularly they follow a recurrent pattern by steps, that would be funny if it were not murderous, and that comes to thwart this system,

often described as “*perfect on paper*”, but absolutely unfair in practice. This leads Sandrine Ageorges-Skinner, wife of Hank Skinner, on death row at Livingston in Texas for the past 16 years, to say: “*Unfortunately, here the exceptions are those who are tried and sentenced fairly, in an equitable manner. That is exceptional!*”

Step 1: to finally accept a presumed guilty, described through an ideal profile according to certain interpretation of the facts, whose personal background (criminal records, social exclusion, unusual activities) legitimizes this designation, even when refutable evidence⁹⁰ is available. It was the case for Curtis McCarty in Oklahoma: “*Nineteen years later, the Innocence Project and the FBI realized that the police had committed perjury but at the time, I was the ideal guilty one. I had a criminal record, like most on death row, it is also what gives the police a pretense to pick a guilty one and the prosecutor to make a public speech. This man was never correct!*”. His father, J. McC. recalls: “*I knew they were all lying, from the police to the prosecutor, but what could we do? When one is trapped in this type of vicious circle, it’s very tough to get out of it. It took more than twenty years. It was a grotesque situation!*” Preferably, it is better to choose someone whose defense is precarious (lack of knowledge of the legal process, impossibility to pay for competent representation). So it has to be someone poor, with little education, proportionally a large percentage of the African-American or Hispanic community. Robert R. Ryan, criminal defense attorney from California, in fact shared that the majority of death sentences are mostly due to the incompetence or the indifference of court-appointed attorneys during the first trial⁹¹. He mentioned that in order to spare a life when the death penalty is sought by the prosecution, “*One has to be very passionate and invested, all the more so because the common point between all of our clients, is that they are poor and ignorant about the legal system.*” Lionel Barrett, as former attorney for Abu-Ali Abdur Rahman admits, a few years after his client’s death sentence: “*It was the perfect storm. Everything I could have done wrong, I did... Abu-Ali is on death row because of me. I failed him.*” Even if the financial resources of the defense are never in line with the resources available to the prosecution, expert analysis can be done, witnesses can be called to testify, investigation about the past can

explain the events, even sometimes justify them. Still, for many prisoners on death row, the first trial was botched in a few days, sinking individuals into a feeling of injustice and anger. “*I didn’t even know what or who I needed to defend myself. I had the feeling that everything had been decided from the very beginning of the trial. I didn’t even know the evidence against me, I discovered a story in the courtroom, but too late to elaborate my defense*”, says this young man of 24 on death row at Parchman in Mississippi. It is also from this obvious injustice that some feed their fierce determination to get the sentence commuted under more lenient circumstances. To attempt to correct the obvious errors is the burden of the attorneys who get the cases to handle the appeals. They have to attempt to identify the procedural errors to postpone the execution, and at best to obtain a new trial. Unfortunately, they can rarely introduce new evidence or call new witnesses. Even if the principal of habeas corpus allows the possibility to introduce new evidence or to call new witnesses, in reality such requests are almost systematically denied. To obtain a new trial is never acquired, particularly since the AEDPA was signed into law in 1996⁹², even when the circumstances call for it. To get the authorization for DNA testing and to use the results is also a procedural sinecure, solely within the hands of elected judges or nominated judges (federal courts), this has already cost the lives of several death row prisoners.

Step 2: to obtain an agreement in principle from the victims’ families, who must be favorable to the “an eye for an eye” rule in order to satisfy their desire for retribution and vengeance. This victim’s family in Utah recalls: “*At the time of the trial, we were asked if we wanted the death penalty to be sought against my husband’s murderer. I said the law should be applied, that I would have been disappointed had he not been sentenced to death. But if it had been the case, I would have accepted the jurors’ decision. (...) A few days before the execution, they asked us again, for the clemency hearing. My reply was the same. (...) Ultimately, he did not get clemency.*”

90 One in six death sentences (...) is based on circumstantial evidence without conclusive scientific evidence. David R. Dow, Executed on a Technicality, Lethal Injustice on America’s Death Row, Beacon Press, Boston, 2005, page 120.

91 “Actually, with a court appointed attorney, capital defendants are 44% more likely to be sentenced to death than those who can afford to retain their own lawyers.” David R. Dow, Executed on a Technicality, Lethal Injustice on America’s Death Row, Beacon Press, Boston, 2005, page 83.

92 Since a law signed during the Clinton administration in 1996 (AEDPA), the appeal process following a capital trial is limited from six months to one year, which restricts the opportunities to raise funds to hire a competent attorney. Generally, death row prisoners will only file one habeas corpus petition, and there are strict limitations as to the filing deadline. The immediate result of this law is that those executed are spending less time on death row. It becomes difficult to introduce new evidence, in order to get a review of the substance of the case and to reverse a guilty verdict. It is the problem facing death row prisoners, such as Mumia Abu-Jamal (Pennsylvania), Tony Medina (Texas), Troy Davis (Georgia) or Hank Skinner (Texas), who are attempting to prove their innocence. Anti-Terrorism and Effective Death Penalty Act (AEDPA), 1996.

Step 3: to pick jurors who will not oppose moral principles to the idea of sentencing to death. Sociologically, the choice of the jurors is very important to obtain the appropriate result. Other parameters must be satisfied though. First of all, to favor the discriminatory reflex: if the victim is white and the defendant is black, the death penalty is easier to obtain from a white jury, who will find in this role the expression of his racist feeling, conscious or subconscious, aimed at a population with a different skin color. Lindy Wells, a juror who regrets having been turned into an accomplice to a death sentence. She in fact befriended the death row prisoner a few weeks before his execution. She tells: “Yesterday I wasn’t able to answer about why did I think there were no blacks on the jury. Retrospectively, the light came on, and here is my answer: the vast majority of blacks in Mississippi are democrats – the vast majority of blacks do not believe in the death penalty and usually vote in favor of a life sentence – as do many white democrats. Therefore, if there had been a black on the jury, there existed a large probability that Bobby would have received a vote for life instead of death. Something, I was unable to do!” In the composition of the jury, it is necessary on one hand to favor the identification mechanisms, allowing the jurors to endorse the feelings of the victims, in a way to better satisfy them. Let’s recall that in practice the criminal trial is first and foremost designed to accommodate their expectations.

Step 4: this step is independent from the determination to give death. It is more a philosophy of written law to express strict harshness, very attached to the form and authorizing the twists and turns of the appeals, without ever guaranteeing the review of the facts, the evidence and testimonies with urgency and objectivity⁹³. Some ineptitudes can be tried this way, for example, during a robbery with homicide, based on the principle of “felony murder”, the accomplice in charge of driving the car can be sentenced in the same manner as his killer accomplices. The law of parties, mentioned before, a sort of principle on complicity with extended effects, also allows to sentence to death people whose will and behavior are totally dissociated from the actual crime. To be considered party to the commission of a collective offense and everyone is responsible of the worst acts committed by one. These ineptitudes, which lead mere delinquents, who haven’t killed anyone, to the guillotine are at the same time frequent and not well known from the public. In that, the American retentionist population, who defends the death penalty solely for the most serious crimes, exceptionally and exemplarily, is in fact abused by a legal system that largely oversteps this approach to harshness.

⁹³ See the case of Hank Skinner.

THE ROLE ASSIGNED TO THE VICTIMS

Commonly the term “victims” describes the relatives of the murdered person, whose crime justifies the sentence of death. The criminal justice system is mostly focused on satisfying them. It is in fact a frequently admitted preoccupation, notably by P.L., the district attorney for Harris County in Houston, Texas. It is not about doing justice in the philosophical sense of the term, it is to satisfy the parties that are considered to have been hurt. She states: “*Here we have a special office dedicated to victims’ rights. A person from the administration remains in contact all the way through the procedure. We now work on restitution programs, but I don’t forget that the only person who makes victims is the condemned one himself through the murder he committed.*” According to this concept of American justice, there is a notorious collusion between the criminal procedure and the civil procedure, as we know in Roman law. In the United-States, beyond the sanctioning of the crime, aimed at protecting society, the criminal proceedings aim to satisfy the victims, as if the criminal trial included the benefits of an action for civil damages. Steve Hall, from the StandDown Texas Project, explains: “*In fact we have a culture which supports and feeds violence, which legitimizes violence in order to address the victims*”. The prosecution, the criminal proceedings and the final sentence are instrumentalized to serve reparation or compensation. It is a personified sentence, singularized depending on the victims and what they represent, instead of being a penal sentence, serving the overall interests based on the review as objective as possible of everything that can sustain guilt on one side and innocence on the other. The whole penal mechanism is taken hostage by this goal meant to satisfy. Jo McCarty remembers the trial in Oklahoma City against his son, exonerated since then: “*During the trial, everything was done to demonize us as parents of the defendant and to influence the jury. During the trial, the victim’s father frequently gestured like hanging himself with his tie, to tease us, that should not have been allowed. But the judge didn’t care, he let it happen, the important thing for him was to win my son’s sentence, to satisfy the victims, who in fact were never satisfied because the actual murderer was never arrested*”.

Before a trial, it is frequent for the district attorney to organize a meeting between the prosecutor, his team and the victims’ families. It is when he asks if the family would like for the death penalty to be applied to the murderer. Depending on the answer, the prosecutor shares his position with the district attorney, who will later decide if the court will or not seek the death penalty. Steven Kreytak, journalist in Austin for the

Austin-American Statesman, confirms that: *“The family’s opinion weighs a lot in the prosecutor’s decision to seek the death penalty or not to”*. He says that in fact 70% of victims’ families demand the severity of a capital sentence, while 30% mostly ask for the defendant’s call for forgiveness and/or a prison sentence. Symbolically, it is indeed in the name of the victims that judges will render justice and not in an undifferentiated way, in the name of the whole of society and the general interest. Other district attorneys seek the death penalty in each case. For them it is a matter of personal opinion, it is also sometimes on this argument that their next election will be decided.

It is not so much about making a situation equitable while considering multiple factors, including the backgrounds of the defendants, which motivates American society. It is about subrogating justice to the desire of vengeance in society, following the “an eye for an eye” law. There is nothing philosophical anymore, nor moral in the American concept of criminal justice in terms of death. It is not about a meticulous search for the truth, upon which should be based the judgment of human beings in respect of their guilt, their innocence or the consideration for circumstances that outline the incriminated behavior. Behind the argument of protecting society, this is much more of a desire to punish and avenge the situation of the actual or potential victims, all voters.

Besides, if the respect of the procedure appears strict, behind this strictness it is possible to hide evidence, to gag or threaten witnesses, and the prosecution process becomes totally unfair in comparison to the defense process, notably in terms of financial resources. The goal is to stigmatize the defendant, even if sometimes the ideal culprit has nothing to do with the real one. There must be an answer to real and subjected social violence. Norman Hile, attorney for Kevin Cooper in California, summarizes these practices: *“They destroyed the evidence, they fabricated others because they wanted a death sentence. I believe it is because he is black and that the victims’ family was white”*. This goal is the only one pursued to establish or reestablish social peace, without ever taking into the account the social prejudice of injustice, the inequity and the scorned moral. Often the American justice system does not care that one generates more violence in society when the institutions do not keep their promises. This criminal justice process comes to compensate the loopholes and the dysfunctions of a police force that, on the national scale, in spite of the progress of criminology, notably with the use of DNA testing, struggles

in some states to resolve two-thirds of the crimes⁹⁴. When a guilty one is identified, when his profile satisfies the credibility, even superficial, of the prosecution, society appears to be satisfied with the work of its institutions. This satisfaction is superficial but nonetheless sufficient in the temporal perspective of the short term.

THE INTERFERENCE OF INEQUITIES

In the United-States, more than elsewhere, criminal law is the replica of public prosecutions: the prosecutor is there to secure a conviction. In the New World, this idea is extended to its extreme, well beyond the protection of a nation. It is the power to avenge society’s ideas, to defend its paranoid fears, to exorcise its collective phobia towards criminals, benefiting from an intense and varied cultural representation through media, literature, television and films. Under certain angles, everything happens as if justice in the United-States more than elsewhere, constituted a political exorcism against the collective fears and individuals often actually dangerous. However in theory the criminal justice system appears perfect in its project. It allows a defense, although inequitable in practice from a financial perspective, and lets the citizens speak with the verdict entrusted to the jurors. This leads this man from Oklahoma, who defines himself as a patriot, to say: *“Here the judges work hand in hand with the prosecutors, and recruit jurors whom they know will vote in favor of the prosecution’s theory.”* While Lindy Wells, juror in Mississippi, remembers that her own reluctance, at the moment of deliberations, to vote in favor of a death sentence was openly criticized. She was told: *“This trial has lasted too long, the state spent delirious amounts of money, it is our duty to reach a consensus for the same sentence.”* Between the defense and the prosecution, most often, the weapons are inherently unequal. Jordan Smith, journalist for the Austin Chronicle in Texas, explains: *“On one side, the state has unlimited resources for the prosecution, they spend astounding budgets to prove guilt, and on the other side they don’t give enough money to the court-appointed defense attorneys, who are paid thousands of dollars less than if they were in private practice. It is obscene. It is very perverse. It is inequitable.”* She adds that this difference in financial resources is the starting point of

⁹⁴ According to a study based on FBI archives, the rate of resolved homicide cases since 1980, on the national level, is 63% with major disparities depending on the cities. In comparison, the rate of resolved homicide cases was 21% in Detroit and 22% in New Orleans. Each year in America, 6000 murderers are not arrested, which means that 185,000 murders were unsolved between 1980 and 2008. “The rate of unresolved homicides increases in the United-States”, *Times Record News*, Thomas Hargrove, Wichita Falls, Texas, May 24, 2010.

the economical discrimination in the application of capital punishment, and summarizes it ironically: “*Nobody pays to stay on death row*”. Steve Hall says: “*On the national scale, the question of resources between the prosecution and the defense is obvious. The best example is in the state of Georgia. They have not received the funds they were expecting, and today some defendants have to wait years for their trial because the court-appointed attorneys are no longer paid. Then before one gets the opportunity for a new trial...*”

For each execution in Huntsville, Texas, some shy protest movements take place. In short, less than 10 people are frequently present behind the security tape. At the same time, other protests are held in other cities. Some days, in front of the Walls unit death penalty supporters come to encourage the American criminal justice system and to contradict the abolitionist protesters who are present. The prison administration takes care of this group. If it is raining, a tent is set up for them to find a shelter. If they are thirsty, drinks are offered to them. In an incongruous way for the foreign spectator, but in an open manner, the prison administration favors the comfort of the pro death penalty and remains indifferent to its opponents. There is a displayed complicity between those who are going to kill in the name of justice and those who come to support this legal murder. This situation demonstrates the cultural tie to the death penalty, a tie supported by the institutions, as an absolutely flawed debate. Citizens are not treated from an equal standpoint depending on whether they are opposed to or supportive of capital punishment. This situation is accepted with irony and calm on the part of the abolitionist movement, strengthened by its belief in all circumstances. It is the perfect illustration of the position of the American abolitionists. It remains a marginal movement by the numbers, powerful by the variety and the competence of the activists mobilized and credible by the seriousness of the numerous arguments and strategies developed. Its legitimacy gradually forces respect from the core of the American society. In front of the prison in Huntsville, a handful of activists are present during each execution. “*I have protested here with a candle more than 450 times, which represents also more than 450 executions!*” says Dennis Longmire, criminology professor at the university of Sam Houston in Huntsville, he adds ironically: “*There is an average of 7 people present here, with always 80% from the international community, Denmark, Germany, France... Sometimes they know the condemned, they sometimes exchange correspondence and come here in support. So it is a very international street corner. In fact at times I feel like a tourist guide!*”

A TOUGH SELF-CRITICISM

In this context, hardly favorable to self-criticism, when a procedure is initiated, when the taxpayers’ money has been spent to sustain the guilt of a person, it is hard to reverse the machine. Even the procedure seldom allows for a review of the facts. The U. S. Supreme Court can affirm the procedural aspect of a sentence, without having to review new elements that could exonerate the defendant. It was the case for example of Lionel Herrera, executed in Texas in 1993, whose last statement was: “I am innocent, innocent, innocent... I am an innocent man and something very wrong is taking place tonight.” New evidence that exonerated him was raised by the defense but the U. S. Supreme Court⁹⁵ found that it did not challenge the validity of the trial and did not violate the 8th amendment of the Constitution. The procedure, by then final, respected the rules of the law and the execution could take place. An innocent man was therefore put to death.

Yet many investigations quickly conclude with an ideal culprit, whose criminal records and consumption of drugs, even if occasional, will come to sustain the presumption of guilt. After such a portrait, it is tough to admit to having been wrong. It can also turn out to be costly for a state. In Texas for example, the Timothy Cole Act⁹⁶ allows a compensation of \$80,000 per year behind bars for the exonerated. The exonerated death row prisoners sue for damages, very often thanks to the help of law students. Few succeed, but considerable amounts of money are in play, with the risk of becoming unpopular tied to the outcome. This leads Michelle Moore, court-appointed attorney in Dallas County to say: “*It’s a great step (...) but they just didn’t give thought to how it would be handled.*” The abolitionists can still lean on the financial argument to criticize the legal system and the financial consequences that burdens society. Norman Hile speaks about the case of Richard Williams: “*Exonerated recently with evidence for having murdered his wife, the federal judge reversed his conviction but he is still in jail waiting for a new trial. The prosecutor now says that he must be tried again at the state level, so he waits in prison for more than twenty years. It will be his fourth trial, and he still waits. And it costs a lot of money*”. Curtis McCarty

⁹⁵ See *Herrera v Collins*, 506 U.S. 930 (1993). Sandra Day O’Connor (first woman nominated to the U. S. Supreme Court) concurred with the majority decision, stating that the execution of an innocent is not unconstitutional when no constitutional claims have been raised: “Consequently, the issue before us is not whether a State can execute the innocent. It is, as the Court notes, whether a fairly convicted and therefore legally guilty person is constitutionally entitled to yet another judicial proceeding in which to adjudicate his guilt anew, 10 years after conviction, notwithstanding his failure to demonstrate that constitutional error infected his trial.”

⁹⁶ Tim Cole was sentenced to 25 years in prison in 1985 in Texas for a rape he did not commit. He died in prison in December 1999 before his innocence was proven in 2007, when the actual rapist confessed to the crime, confession confirmed by DNA testing. He is the first prisoner in Texas to get a posthumous pardon.

was exonerated in 2007 after spending twenty-two years behind bars because of an agreement between the prosecutor and an forensic expert. Today in 2011, his criminal record remains soiled with this conviction, which makes him a criminal in the eyes of bankers and employers, forcing him to bear outside the stigmas of the inside, despite his release.

UNEQUAL JUSTICE DEPENDING ON GEOGRAPHICAL LOCATIONS

Depending on where the crime was committed, the sentence can be very different and vary between a prison sentence, a life sentence or the death penalty. This unequal situation is due to the huge power of the district attorney. Remains however the large disparity due to the quality of the defense, among the states but also among the counties: the same crime can lead to death or to a prison sentence, sometimes even reduced. The sentence depends in fact not on the standardized application of a sentencing scheme, but truly on the determination of the prosecution through the voice of the prosecutor or of the district attorney. To illustrate this, the case of Harris County in Houston, Texas, is eloquent. Since 1976, this county sent 282 defendants to death row, against 98 for Dallas County and an average of 5 in other counties. Even if Harris County is the most populated among the counties in Texas, these numbers show that the number of death sentences is not a coincidence, but clearly the result of a political determination.

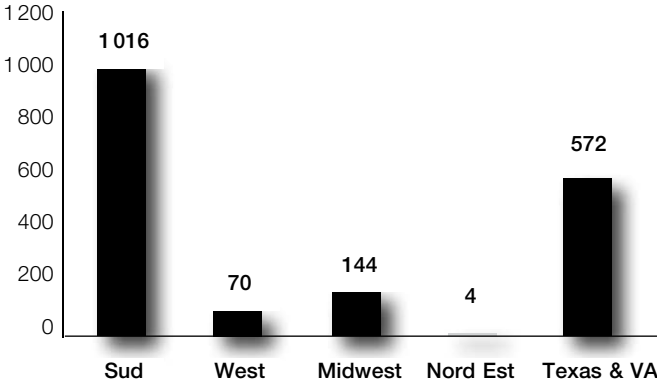
The public is hardly aware of this inequity. It is nonetheless a phenomenon that a portion of the citizens could be the potential victims of. At the opposite of centralized states, the legal system, although governed in its great principles by the Constitution regarded as a supreme national norm, is tied to the jurisdiction of each state. Therefore major disparities appear on the national level. For example a study by the ACLU in 2004 shows that out of 900 executions, 83% were conducted in 10 states⁹⁷. These disparities also exist on the state level⁹⁸. To seek the death penalty remains the responsibility of

97 In North Carolina, the unfairness of the capital punishment system was illustrated by a 1988 study that found the chances of defendants in cases with the same quality of evidence being brought to trial on a first degree murder charge depended on which judicial district processed the case. While most districts brought only 5-15 percent of the cases to capital trial, in two districts the rates were 42 and 40 percent. In the latter districts, an accused was 2.8 times more likely to be tried on a capital charge than in the county with the lowest rate. "Scattered Justice: Disparities in the Death Penalty", ACLU, March 5, 2004.

98 For example, prosecutors in Baltimore County were 13 times more likely to seek the death penalty than those in Baltimore City, the state's largest city. Baltimore County was also found to be five times more likely to seek the death penalty in an eligible case than was Montgomery County, and three times more likely than was Anne Arundel County; both counties had larger murder rates than Baltimore County. "Scattered Justice: Disparities in the Death Penalty", ACLU, March 5, 2004.

the district attorney or of the prosecutor, while the request for DNA testing to sustain the defense rests with the trial judge. Hence the discrepancies in the treatment, as much in the legal process governing the appeals, as in the manner in which death rows are organized. Under these conditions of implementation, it becomes difficult to consider the death penalty as an exceptional supreme punishment, indispensable for the safety of the city. It is more an arbitrary verdict, from which it is tough to expect deterrence and equity. It is also a situation that contradicts the very idea of justice, theoretically founded on the principle of *justice for all*.

Graph presenting the number of executions per region, since 1976⁹⁹



THE PERVERSE COLLUSION OF JUSTICE AND POLITICS

The campaigns in favor of the death penalty are the mere continuation of a culture that exists everywhere in the United-States. One must be "tough on crime", harsh, ruthless against the authors of these acts. This is what the attorney of a death row prisoner explains: *"The system means that those elected, even the democrats, must be tough on crime, without really considering how to create an efficient system for the victims. They are not looking to reduce criminality. It's just a political way to address the feeling of*

99 Numbers updated on December 17, 2010. Federal executions are excluded from this graph for the regions where the crimes were committed.

insecurity, to position oneself as the solutions to the danger.” This reflex has the disadvantage of causing deafness, muteness and blindness on any analysis on the circumstances and the motivations of criminality. Yet American society does not want and cannot challenge its model, always presented as the best and the most innovating. This is what this university professor in Dallas summarizes here: “*We are told from day one that we live in the best country. And if you criticize America as an American, people will think that you are not grateful to live here. They prefer to say: why don’t you enjoy more than criticize.*” This gullibility is reinforced by politicians. In reality, the state judge or the district attorney are political figures. They are all elected and build their value on their ruthless determination to punish: find the guilty and punish without leniency. For them it is a matter of representing strength, implacable harshness, the phallic symbol of the protective father in all circumstances. It is to this paternal image of a legal and political system that American society combines its blind faith in its institutions, often designed on the same level as a system from divine inspiration. This other attorney in California explains the situation after more than 30 years of experience: “*The death penalty brings nothing, except politically, it is a practical tool. When one wants to campaign, to say that one wants to be tough with the death penalty, it works very well, to say that one will kill people (...) Yet if it is wrong to kill, when the state kills it is wrong too. Still the state continues to want to kill my clients. It is a permanent feature in my profession. In the case of my client, Mumia Abu-Jamal, I have never seen such zeal on the state’s part to authorize itself to execute him.*”

The district attorneys, the first prosecution characters in the death process, try to present the determination of the population where they were elected. Some namely instrumentalize the death penalty, others hardly mention it. Rick Halperin, professor at the University of Dallas in Texas, underlines: “*Politically, it is suicidal to say that one is against the death penalty.*” To be elected, one must promise a exemplary severity, to assure the strict application of the law, in order to endorse the fears, the paranoia, and the sustained desire for vengeance of the collective majority opinions. This situation constitutes a true lock ensuring the continuity of retentionist ideas. Rocked by this speech in a setting of relatively high crime rate, the majority of citizens remains fiercely in favor of the death penalty, which leads the district attorney from Harris County in Houston, Texas to say: “*The people say that the death penalty is good, so I use it*”. She adds: “*Paradoxically the role of the death penalty is to enhance life, it is the law.*” And as there is also a frequent collusion between the police and criminal justice behind the role

of the judge, the prosecutor and the district attorney, to identify the guilty one and to punish him harshly are two actions from which this trio will draw a personal and political benefit. W. M. incarcerated on death row at Parchman in Mississippi, recalls: “*The judge and the prosecutor worked hand in hand. I was already in jail, at the top of the suspects list, I didn’t think then that it could be serious for me, but I was the perfect suspect. At trial, many of my witnesses weren’t able to attend and one was even threatened by the police so he would not attend.*” This is a situation often described that is no secret in the United-States as reported in the article from the Wall Street Journal¹⁰⁰: “*Criminal justice researchers say it’s difficult to quantify how often perjury is being committed. According to a 1992 survey, prosecutors, defense attorneys and judges in Chicago said they thought that, on average, perjury by police occurs 20% of the time in which defendants claim evidence was illegally seized.*”

In the same manner as there is a collusion between civil and criminal jurisdictions in the course of procedure, as well as with the decisions made by the prosecution and the judge, the collusion between the politics and the judiciary directly dictates some verdicts. In the United-States, the election of the prosecutor’s office and state judges is considered a democratic blessing, on which rests the certainty of justice protected from criticisms, making in theory, everyone a potential major actor of popular justice. On paper, it is the people who judge people. Each one can run to be elected as district attorney or state judge. In practice, the power to punish and the public life tied to it arouses greed and leads to dishonest moral compromises detrimental to abolition. To be elected judge or district attorney leads to acquiring an obvious power in the counties, a lucrative and honorary respectability. The challenge is sufficiently large to suggest efficient dishonest compromises, shielded in a small arena of well-informed people who move from one public office to another according to their career-development. It is not unusual to see a criminal defense attorney become district attorney and/or prosecutor, and then judge. And vice versa. This combination of genres among initiated has the advantage of giving a global knowledge of the legal mechanisms because it moves from the defense, to the prosecution to the bench. It is also the breeding ground where individual interests are organized by a handful of elected officials, who together will remain in control of the ambient speech and of the application of the law.

100 Amir Efrati, “Legal System Struggles with How to React when Police Officers lie”, *Wall Street Journal*, January 29, 2009.

INCARCERATION ARROGANCE: INDUSTRIALIZATION CONFINEMENT



The arrogance of the correctional power, which must appear infallible in its capacity to manage prisoners, in an irreproachable tightness, is incarnated in the new prisons called “maximum security prisons”¹⁰¹. These are fortresses surrounded by electrified barbwire scattered with razor blades, sometimes managed by private companies, some of them quoted on the stock exchange in Wall Street¹⁰². To want to get out of them is to accept the idea of being shot coldly and legally, or to reach beyond the succession of metal fences that will tear the body apart, leaving the flesh in shreds and individuals charred with the electrical charge. It is also an argument of tightness that is founded, for some conservatives, on the idea to abolish a death penalty that would no longer be necessary since escapes of the most dangerous felons have become the acts of suicidal individuals. For Jeanne Woodford, former warden of San Quentin death row in California, the abolitionist “arguments” must feed on this evolution of incarceration: *“Before, the number of escapes was very important, it is also for this reason the death penalty appeared as the only mean to protect society in the long term, today with the model of maximum security prisons applied everywhere in the United-States, there is no way to escape. Therefore, executions have become useless.”* From this tightness, departments of corrections draw their pride, assurance and authority. It is, in fact, the whole reason for any mechanism of incarceration.

Maximum security prisons in the United-States remind us of the vast camps, with a battery of cameras that reproduce, with the assistance of techniques, a perverted vision of the Panoptic by Jeremy Bentham¹⁰³, where the principle of individual cells is conjugated with the imperatives of permanent exposure, allowing a maximum behavioral control of the individuals locked-up. Build on vast rural areas, dozens of buildings recall the scale of incarceration¹⁰⁴, approximately 1% of the adult population is locked up in the United-States, which makes up the highest rate of incarceration in the world. Independently from a critical vision on capital punishment, this number, alone, should scare the national and international community.

101 Supermax prisons are the pride of the American correction industry. They are the prisons where escapes are impossible or extremely rare.

102 See Nils Christie, “The Punishment Industry and politics in the Western world”, Publisher Autrement, Paris 2003.

103 The panoptic model was invented by Jeremy Bentham in 1787. It is the modernized accomplishment of a desire for disciplinary incarceration, where individuals are in constant view of their guards. The institution has the goal to correct behaviors through relentless surveillance, with a discreet and forgotten eye, in order to obtain a progressive improvement of individuals.

104 With an adult population of 230 millions, 1,6 million individuals are incarcerated in prisons and 723,000 are locked-up in county jails. See: “US Adults Behind Bars, New Study says” Adam Liptak, *New York Times*, February 28, 2008.

THE TRIVIALIZED HYPER INCARCERATION

While this is a democratic country, selling the concept of freedom as one of its definitions marking out the greatness of the nation, the United-States has the highest incarceration rate in the world, before China and dictatorial regimes. The U.S. population represents 5% of the world population and 24% of the incarcerated population. With an incarceration rate of 750 per 100,000, 0,75% of its total population behind bars, the United-States incarcerate more than 1% of its adult population. The American Justice states to be supervising 7,2 million¹⁰⁵ people, 2,3% of its overall population¹⁰⁶. The correction industry employs more people than General Motors, Ford and Wal-Mart, the three largest employers in the country, at a cost of 200 billion dollars per year¹⁰⁷. If this country did not have the aura of a “great world power”, it is probable that this excessive and unprecedented use of incarceration would be denounced on a geopolitical level, if not on the economical level. This situation is particularly preoccupying because it contradicts the international norms¹⁰⁸ in terms of incarceration, which encourage to practice incarceration only as the last penal solution. In any case, the incarceration system is particularly authoritative, to the measure of the absolute power it represents. And this authority is particularly effective when it is about these “inhumane animals” set aside on death row. Rick Halperin adds that: *“The death penalty is not perceived as something violent, it simply rids America of its garbage, with the aim to purify America and society.”* This analysis meets the most “common” opinions: *“There is no reason to keep these murderers alive. We must get rid of them”*. The rhetoric recalls here the one used for animals, as if there was a danger in keeping alive some individuals whose criminal behaviors suffice to define their fate. Gloria Goodwin-Killian, exonerated after more than 17 years behind bars for a capital crime she did not commit, remembers: *“We were called and considered like trash. And in spite of that, I was part of a superior class of human trash, because in fact prisons reflect society with an internal social hierarchy.”*

105 In 2009, the overall population of United-States was 307 million. Meanwhile, the same year, the population behind bars (county jails and prisons) was 2,28 million, 0,74% of the overall population, while 7,2 million citizens were under the supervision of the criminal justice system (on probation or on parole), representing 2,3% of the overall population of the country. Sources: “Correctional Population”, Bureau of Justice Statistics, 2009.

106 Which in 2007 represented 5% of the adult male population and 1% of the adult female population. These are the most recent numbers published by “Demographic trends in correctional populations by gender”, by the Justice Bureau of Statistics.

107 Equivalent to a budget multiplied by four (in stable dollars) for the past 25 years. “Report by the International Center on Prison Studies”, King’s College, London, 2005.

108 Preamble on the recommendation Rec(2006)2 by the Committee of ministers from member states on European incarceration rules, adopted by the Council of Ministers, January 11, 2006.

A relative majority of the people met during the course of this mission, notably in Texas, had already been incarcerated several days or weeks in county jails, for small offenses. Most often, sentences for offenses tied to alcohol-related convictions or possession of cannabis. This context illustrates the hyper use of incarceration in the United-States, like a penal environment in which the death penalty is engraved as the remedy for the worst disobediences. It is also the demonstration of the submission of a population to an all powerful police and legal system. This authority reflects the situation of a society with questionable maturity, where even the citizens, as if they were not adults enough, are at all times likely to be reprimanded by an ascending authority from the institutions and the law enforcement. Because being arrested and detained during several days is something trivial, against of all forms of dissuasion, develops mechanisms of hidden disobediences, that recall the childish behaviors of teenagers in fear of being caught: *“I continue to drink and go out under the influence. I am not going to change my behavior. If they arrest me again, well I’ll go back to county jail for a few days. I am not going to stop living because of it, especially because I’m not doing anything dangerous”*, says this student from Huntsville, Texas. This situation is regressive and matches society’s degree of maturity, when little possibility of self-regulation is recognized. The sanction can fall for any wrong doing, like a Damocles sword. David Atwood, known for his abolitionist views notably inspired by his Catholic faith, was also locked up for a few days: *“It was in 2004, the day of Anthony Fuentes’ execution. I knew his grandfather well, he had done his maximum to support his grandson. He was a witness at the execution and we were standing close to the yellow tape. Suddenly the wife of this grandfather began to shake. Then I felt that I had to protest more openly than usual. So I just walked across the yellow tape ‘do not cross’, and I was arrested immediately. Then I spent five days in the Walker county jail. I had a choice, I could have paid a fine, but I refused, so I stayed five days in prison (...) (laughter)”*. In the face of many prohibitions, the socially aware practices are therefore all about avoidance behavior to avoid being caught in a series of behaviors, which bear no sanctions in a majority of countries. *“Now we try to drink at each other’s homes or we walk close to the walls when we leave the bar, but really, if they want to arrest us, they do and they lock us up”*, declares a fatalistic student in Huntsville, Texas. The submission to incarceration, even for a short time, is an admitted fact because it is common, to the contrary of the exceptional character of being in custody in most other democracies.

The power of the police forces disturbs all travelers landing on American ground, even those with the most neutral intentions. Potentially, and according to a rationality that escapes as its vocation is to affirm omnipotence,

those wearing the uniform of the state represent a threat to everyone. Even after his exoneration, Curtis McCarty confesses his haunting fear to again being associated to a police or legal matter. He is aware that there still is a will for vengeance from those who arrested him, then sentenced him and who still refuse to admit his innocence, since then recognized by a court. To limit the situations that could be used by the police force in order to nail him again, he explains: *“I prefer not to drive anymore in Oklahoma and to restrict my movements outside of my home. If I travel to another state, then I drive, but here, they’re capable of planting dope in my car, to arrest me and nail me, just the for sake of pride to make me look like a delinquent because I’ve been exonerated and they won’t admit it. I don’t take the risk¹⁰⁹”*. His father says: *“One day, policemen came and knocked on the door in the course of an investigation about a fight in the neighborhood. He (Curtis; ndlr) got scared. He didn’t want me to open the door. He was terrorized. He knows that at any moment, they can try to nail him again.”* A notable attorney in San Francisco, specialized on capital appeals, also confesses: *“I would never call the police in fear of being implicated or implicating someone else in an unpredictable and uncontrollable story. With them, it can degenerate. I prefer to sort things out myself rather than worsen a situation in involving the police.”* Far from this assessment, the majority is not aware of the continuous risk of being arrested. The population is deluded by the daily denial of this industrialization of incarceration independent of any rational understanding of the issues of justice. The population is closing its eyes and believes to be protected from such legal or police excesses, supposed to happen only to others, those who have truly violated the law. It is true that prison feeds many people in the United-States; it is why nobody dares criticize it. Public order is the symbolic keystone of this industry, the economics are its engine, and at a time of financial unsteadiness, Americans are afraid of changes. *“Here in the area, nobody is going to criticize the prison. There are more prisoners than residents in the town. In all families, there is at least one person working at the prison. Even when I tell them how absurd it is to lock up so many people, they tell me to shut up”*, states this youngster met at the bowling in Huntsville, Texas, who feels *“totally isolated with his critical views”*. There are states full of prisons that owe their economical model to the prison industry. It is somewhat the case with Huntsville, small town in Texas, where executions take place, which has seven prisons in its county¹¹⁰.

109 According to this former death row prisoner born in Oklahoma, this state is considered as a “retarded cousin” in comparison with Texas. Only three things would be worth observing: the death penalty, oil and football.

110 It is also the case in Canyon City in Colorado. See the web documentary: “Prison Valley” about the industrialization of prisons, directed by the journalists David Dufresne and Philippe Brault, produced by Arte/Upian, 2010.

In Waynesburg, where the majority of Pennsylvania¹¹¹ death row prisoners are confined, the population of the town tripled as soon as the prison was built in 1993. As for many other places, it is the economy on the local and federal scale, based on incarceration, that the United-States will have difficulty undoing, because it is about funds and benefits regarded as important, but also a source of taxes and employment, therefore of consumption.

MASSIVE INSTITUTIONS, SYMBOLS OF PRIDE AND PROSPERITY

Prisons are institutions from which emanates pride and arrogance. It is about the authority of a surveillance system designed to be as infallible as possible. At the front gate of these prisons, on the wall one can often find the name of the warden, in big letters, as well as the name of the unit. In the area, the warden enjoys an honorable social status. In the hallways, portraits of governors, senior wardens and wardens as well as of the director of the department of corrections can be seen. This is how the system is personified, as a power incarnated through careers, trajectories, public commitments, statements and speeches which contribute to the general prescription of the power of the departments of corrections and the criminal justice system. In supermax prisons, wardens are the sovereigns of kingdoms where they organize the existence of thousands individuals, for the benefit of a personal career, but sometimes to the detriment of the thousands behind bars. The sister of a death row prisoner explains: *"Since we've had this new warden in Livingston, every week there is a new restriction. The daily regime is worsening for death row, and even for us, visitors, it's becoming harder and harder. Last week, it was decided that they can no longer possess more than two books in their cells. They made them throw everything away. (...) Now, they have become so paranoid that they search our cars when we leave the unit. (Laughter) I cannot imagine what we could take with us. They make me open the trunk, as if I were a terrorist, although I've been coming here for years and that I only visit my brother through a glass partition. We have no choice, we obey otherwise they withdraw our visitation rights. And my brother only has me. I must not fail, so I comply..."*

The promotional film made by the Texas Department of Criminal Justice¹¹² praises its activities through the exponential development of prisons,

111 Including the writer-journalist Mumia Abu-Jamal, sentenced to death 29 years ago, met during the course of this mission.

112 TDCJ.

the increasing number of those behind bars¹¹³, as it were about expressing the pride of a prosperous and unlimited company with a healthy evolution. Incarceration is one of Texas' prides. The increasing rate of incarceration is presented as a success without ever mentioning the social failure, which accompanies the incarceration success, nor the rate of criminality, horrifying for a Western country. The financial challenges are not kept silent, they are described with a self-assured and satisfied voice, reminding us of television commercials from the 60's. Still, this prison inflation comes at a cost¹¹⁴, and with the economical crisis badly hurting some states, the population is beginning to wake up and to realize the incarceration non-sense on a large scale: *"It is us, the taxpayers, who pay for these thousands men and women locked up. It is very expensive for the community."* As often, the cost, true and main significant, awakes the consciences, more than a real criticism of the system. Few are capable of worrying about the fact that incarceration is also a crime school, that rehabilitation efforts are insufficient, which in this case do not apply to the death row population... In the meantime, Mumia Abu-Jamal¹¹⁵ says that: *"There were 52,000 people behind bars in Pennsylvania. It is so overcrowded that some have been sent to Michigan and Virginia. They are going to build four new prisons. Pennsylvania is the only state to always increase its prison budgets, 2 billion dollars per year, in fact the same as in California."*

113 With a population of 24 million in Texas, "there are 738,000 adults under the supervision of the criminal justice system (prisons, county jails on probation or on parole) and the rate of this supervision (number of prisoners supervised per 100,000) is 34,87% higher than the national average. Today the department of corrections in Texas manages 106 prisons. Also Texas is made of 254 counties and 268 county jails, which represent a capacity of 71962 people". American Civil Liberties Union of Texas, 2010.

114 In Texas, the average daily cost for a prisoner is \$47.

115 Mumia Abu-Jamal is 55 years old. He has been on death row in Pittsburgh, Pennsylvania for 29 years.

DEATH ROWS



It is in this incarceration vista that death rows exist in the United-States. American prisons, particularly the ones labeled as “supermax” are guarded fortresses inside as much as outside. The authority from the inside transpires through all the details and even affects the outside population. The buildings are surrounded by several fences of barbed wire with scattered razor blades, reflecting the sunlight like an evil halo surrounding the site. The authority appears to be without limits, almost above the law. There are no possible negotiations and each behavior is considered potentially suspect as a declaration of hostility toward the prison. This presumption is animated by an acute paranoia, a collective pathology, which appears to be more and more prevalent in the United-States. Each person is a potential suspect, and the wisdom taught tells to beware of everything and everyone, as if all animated objects could be assimilated to a threat. When we were parked on a public road, 100 yards from the entrance to the Polunsky unit parking area in Texas, a guard, leaving work, stopped his car, reported our presence to those on duty with his walkie-talkie, and told us coldly that security would open fire with live bullets to force us to leave. The concept of proportionality escapes the prison authority. There is a will to mark a supreme power that nothing will stop, as to discourage, de facto, the will to know what the department of corrections intends to control.

The image of American prisons is on the level with the nation’s gigantism. From a distance, these units recall oversized camps, with numerous buildings housing thousands of people. Curtis McCarty, sentenced to death and then exonerated, describes these prisons: *“From here, one cannot imagine what goes on inside. It could be a factory. That’s the danger, not being able to see the violence of the place: it is just bleak. Everything is done to make it look sterilized, but it is not so. It’s also what is shown on TV, a quiet site, near the lake, while in fact they can shoot and kill anytime. And they execute people there. It is the madness of the system.”* In these compounds, death rows are located in designated areas with specific surveillance rules to address the fact that a prisoner on death row having nothing to lose is supposedly tempted by the most extreme behaviors.

Numerous speakers, academics, journalists or lawyers, explain that their country is sick. Rick Halperin details: *“We are a nation in terminal phase, we do not want to be cured from this disease, it is the tragedy of the United-States, we believe that we are free, but we are dying because of our love for violence”*. Jessica Mederson, attorney in Austin, adds: *“The true nature of all this system is not about justice, it is about oppression, and in the end it’s about killing someone. That is something I cannot explain to my daughter. I told her*

that when people do something wrong, when they kill, that is the reason why they are sent to prison. But here with the death penalty, tell her that the state kills, it seems too crazy to explain”.

THE PAINFUL CONSEQUENCES OF CONFINEMENT IN CAGES

The principle applied on death rows is the use of single cells, therefore a regime of isolation. The cells are very small spaces, most often less than 97 square feet¹¹⁶, where death row prisoners are locked up 23 hours per day. A.R.¹¹⁷ confesses: *“I’m confined in my cell 23 hours per day. I only spend one hour in the yard. There is nothing to do in this cage, except to watch the time go by. We cannot smoke. Any pleasure is forbidden. My cell is my only world. I spend Christmas in my cell, alone and I try to keep up to date with life outside...”*

In some states, and depending on the trust level granted to them, they can accomplish assigned tasks, then death row prisoners can leave their cells several hours per day. Time marks out wearily. It is the case for example in Tennessee, on death row in Nashville, where Abu-Ali Abdur’Rahman¹¹⁸ explains: *“I don’t have to wear handcuffs because I’m level A, that means that my behavior has been correct after three years on probation. So I can walk around my pod, to clean between 8:00am and 7:00pm. I only spend 14 hours per day in my cage. Levels B and C are locked-up 22 to 23 hours per day.”*

In other states¹¹⁹, despite the suffocating heat, day and night, the death row prisoners must deal daily with 104°F temperature, or more, without any kind of air conditioning. E. M., on death row in Mississippi, explains: *“There is no air conditioning here. The heat is overwhelming and sometimes it is impossible to sleep.”* W. M., housed in the same unit, adds: *“It’s 90°F outside and 100°F inside, it’s just horrible and on top of that it’s very humid. They have air conditioning in their offices, they do something for the civil servants, but nothing for us. It is a denial of our humanity.”* At the opposite, in the winter, it is too cold. One must have an immense mental strength to survive years, with no other perspective than death in these inhumane conditions. In fact, the death row prisoners met for this report displayed

¹¹⁶ It is the case, notably in Oklahoma, Mississippi or Texas: on weekdays, each can spend one hour per day (if disciplinary status permits) outside of his cell, to go to recreation in a small yard, that is simply another cage with a ceiling made of wire mesh.

¹¹⁷ A.R. is 63 years old, he has been on death row in Mississippi for the past eleven years.

¹¹⁸ Abu-Ali Abdur’Rahman is 60 years old. After a very rough childhood, from violence to sexual abuses, Abu-Ali Abdur’Rahman spent thirty-eight years of his life behind bars, including twenty-four years on death row in Tennessee.

¹¹⁹ As it is the case notably on death row in Jackson, Mississippi.

a philosophical distance to fight the pessimism dictated by their situation: “I meditate over positive things, I try to think about the future”, says E. M.; “Me, I simply try to maintain my sanity, to improve things. I don’t need much to be happy”, states W. M. Undoubtedly death rows in the United-States are filled with astonishing minds, that society is wrong to deprive itself of. Curtis McCarty¹²⁰ says it ironically: “Who knows which personality hides behind those they execute, maybe a genius capable of doing a lot for our country!”

Under such living conditions during several decades, death rows share the same traits as a “kennel”, where occupants are being taken out, from time to time during an hour or two, to place them in another cage, called “the yard¹²¹”, a recreation area, alone, or sometimes with another person depending on the state’s rules and the degree of harshness. Independently from these collective discussions, composed of words yelled on the run through the mesh wires or the food slots of the cell doors, then it is THE moment of sociability, the moment to meet one of his peers. Each one must recall that friendships are forbidden by the rules on death row; but then “what’s the point of being the friend of someone who is going to be killed?” asks W. M. who adds: “It is hard to trust anyone.” Always under the cover of security issues, the connivances are discouraged through the use of distances, the transfer to another cell, or even worse, on another pod. Weaned off femininity for so many years, death row prisoners “smell the letters from women”¹²² and rediscover, like sleuths with an acute sense of smell, the scents of desire, of this absent gender on death row. The sexual dimension is of course denied. In some states, masturbation is even punished. The American morals, supported for the benefit of the ambient conservatism, even condemns, behind bars, the presence of any form of erotic material. Curtis McCarty explains: “Pornography is prohibited in any shape or form because it is considered to be a potential disturbance to the functioning of confinement and to promote homosexuality! We are condemned to a sexual death. There are no girly magazines¹²³. In the United-States, for

120 Curtis McCarty is 49 years old. He spent twenty-two years behind bars, including eighteen years on death row at McAlester in Oklahoma, until the Innocence Project proved that the prosecution theory was based on a lie from a forensic expert, in complicity with the prosecutor and the judge. He was released in May 2007 and he has not been compensated for the aftermath of the legal corruption. To avoid a scandal, the forensic expert was fired, but she has not been charged for her misconduct.

121 The word “cage” is the one used spontaneously by death row prisoners when they describe their living conditions.

122 Quote from Curtis McCarty who spent twenty-two years behind bars, including eighteen years on death row before being exonerated.

123 In all states, pornographic materials are prohibited, while in some states, erotic magazines (girly magazines) are allowed if they do not show genitals, with the goal of reducing prison rapes and to moralize those behind bars.

the conservatives, sex is always bad.” The control of desires and pleasures contributes from the desire to dominate in a global institution to this vision of human beings reduced to a physical mechanism of organs¹²⁴, denying pleasure and social interaction. The very concept of deprivation incarnates a punitive determination that interferes in every detail. Everything is designed to elaborate the conditions of a nightmare, minute after minute. Curtis McCarty summarizes here the situation on death row: “The idea is ‘get in your cage, be good and wait for your meal, we don’t want to hear you’.” The motivations are sometimes security related, sometimes strictly sadistic; the difference between these two aspects is certainly thin. It is about breaking rhythms, habits, to dissolve the references of reified and degraded individuals. Sandrine Ageorges-Skinner is married a death row prisoner, Hank Skinner, detained in Livingston, Texas. Contrary to the process of prison marriages in the Western world, the authority never allowed them to be in the same room to celebrate their marriage. Since they have known each other, these two lovers never touched each other, only ever met through a thick safety partition. Marriage is not prohibited by the law, nonetheless the department of corrections in Texas refuses any kind of clemency that one would expect for such a personal moment. Tenderness is prevented, denied to the death row prisoner and to his wife. No kiss, no caress, skins ignore each other, as a punishment or for security reasons. This intransigence constitutes a structural and regulated torture, against which the individual consciences of the guards, in charge of obeying orders, struggle to challenge. Furthermore, as strict as it may be, the internal rules also leave room for corruption. The same Curtis McCarty remembers the “small arrangements with the rules” when he was incarcerated at McAlester in Oklahoma: “Everything can be bought in prison; even weapons, music CDs, food, women, drugs. The guards were paid to bring all this inside. The women who offered their services were among the staff, they had to be paid one way or another. At the beginning, there were conjugal visits, but only for the married ones and for religious reasons, simply because according to the law, when one is married, one must be allowed sexual intercourse, it is part of the prerogatives of marriage. But it’s no longer possible.”

Through consented ignorance, the American population finds itself to be an accomplice to these inhumane living conditions on death row. The living

124 Arnaud Gaillard, *Sexuality and Prisons, emotional deserts and desires under pressure*, Publisher Max Milo, Paris, 2009.

conditions affect the men as much as the women¹²⁵. Undoubtedly a majority of citizens would not have any objection to such a regime of constraints. Still the outside perspective can only be outraged to find such a negation of human dignity in 2010, in a supposedly democratic and developed country. L., a criminology student at the University of San Francisco, recalls: *"I visited the prison at San Quentin, they are locked-up like animals. It is an incredible feeling to see them stored in cages like this, and next to that, one can see the gas chamber with two chairs inside, to kill two people in one go. I had no idea of the treatment reserved to the criminals in my country."*

The lack of complex with which the United-States has illegally confined individuals at Guantanamo, or the frequent blunders of the American troops in Iraq, in terms of torture, also find its roots in the easiness of the institutions of this country to affirm power. Rick Halperin explains the torture phenomenon that exists on the death rows in his country: *"It has nothing to do with fairness and justice. Most people don't know death row, what it is like to live with this sentence. People complain about physical abuse, sexual abuse, bites, invasive body cavity searches, especially for women in prison. Who hears their cry? This country is a signatory to the UN minimum standards about treatment and punishment: the right not to be tortured, abused, starved, health, heating. These are basic human rights and we violate them every day, but nobody cares. It is torture! It's not a form of torture, it's torture! This country is a main torturer in the world. It's not only in Abu Ghraib, but we torture people every day in this country, on and off death row, and we get away with this in silence"*.

It is true that after this statement, there is a fundamental paradox between the perspective of the Americans on their own country and the penal reality, between the slogans praising the freedom of the United-States, harangued on July 4th by a crowd ignorant of the legal, political and prison system, displaying American flags repeated through make-up and clothing colors, and the reality of a harsh justice system, inequitable and impenetrable. With thousands on death row, surviving in the living conditions we now know of, with the highest incarceration rate in the

125 Too often forgotten, the women represent 1,58% of the death row population in the United-States. Twelve have been executed since the reinstatement of the death penalty in 1976. As in all other countries, their crimes are frequently caused by delinquent behaviors dictated by their relationship to men. Very often they are arrested by men, judged by men and confined in prisons, where the living conditions are designed and adapted to surveillance conducted by men. Gloria Goodwin-Killian, exonerated in California in 2002 after having spent more than 17 years in prison for having been falsely accused in place of a man, founded an organization to support incarcerated women, whose number is increasing, and women on death row. She also hosts a weekly radio show to raise awareness on this topic. Action Committee for Women in Prison (ACWIP).

world, leading analysts¹²⁶ to speak of the "American gulag", and given the inequity of many legal procedures, it becomes sadly clear that the United-States only represents a pale and distorted shadow of the image that its residents and its leaders keep on projecting. Jo McCarty, father of a former and exonerated death row prisoner in Oklahoma, says: *"I realized that my country was not the one I believed it was."* His son adds: *"My parents believed in the American dream. They became richer, they were able to live in this pleasant lot where, in fact, nobody talks to each other. But after all, the system turned against them. They were the victims of the corruption of the system."*

DIVERSE SADISM, DEPENDING ON THE STATES

One would show bad faith if one ignored this reconstructed hell and unequal depending on states, the guards, even the wardens, endeavor to respect the humanity of men and women locked-up to die. For example, if the incarceration regimes on death row in Oklahoma, Texas or Mississippi appear to be particularly eager to destroy the confined individuals, this characteristic is softened in other states. Thus the death row warden in Nashville¹²⁷ opted for a pragmatic and pacifying management of the individuals detained, without vengeful zeal, taking into account the necessity of each: guards or prisoners. He justifies it as follows: *"I don't see myself as particularly easy-going but there is no point in being particularly harsh if nothing requires it. It is also in respecting everyone that makes each day smoother. In fact, I try to collaborate to the maximum with the families and the attorneys. My job is simply about keeping these people locked-up. I have no reason for doing anything more."*

On the other hand, the conditions have worsened drastically at the Polunsky unit in Livingston, Texas since the arrival of the new warden, Tim Simmons. The mother of a death row prisoner explains that despite her legal right to visit her son, new restrictions are regularly added. *"Sometimes, in an arbitrary manner, our visits are cancelled at the last minute. Women*

126 See "American Gulag" by General Barry McCaffrey, speaking of anti-drugs programs in the Clinton administration. Also see Laurent Laniel in the magazine *Alternatives Internationales* n°6, January-February 2003. See *The archipelago of the American Gulag* by Denis Langevin. See *American Gulag: Inside U.S. Immigration Prisons*, Mark Dow, Publisher University of California Pr, 2001. See "American Gulag", *Washington Post*, May 26, 2005.

127 The rules in the visitation rooms at Riverband in Nashville, at San Quentin in San Francisco and at Raiford in Florida are more permissive. They are known to be "nurseries", because of the contact visits (open visitation, allowing to sit face to face with the death row prisoner, without any partition) that lead to many births of "visitation babies". The most famous being Rose Bundy, daughter of Ted Bundy, one of the most famous serial killer in the United-States.

must now remove their bras if those have under-wires, and a whole battery of humiliations as if it was meant to discourage us from coming. At one point, even wearing sandals was forbidden! Why? We don't know!" Clothings are checked based on the criteria of a conservative mind: nothing must reveal desire or sensuality. Each time, there is for the visitors at the last stage of the numerous security checks, which underline, second after second, the need of the department of corrections for supreme domination, as much as the fear that governs it. She adds: "Now they even search my car when I leave, as if I was going to hide my son, whom I have not been allowed to touch, in my trunk or under the car. I think they have gone mad, but I have no other choice but to comply." If in California or in Tennessee, death row prisoners can, when their disciplinary status allows, spend several hours outside their cells, in a fenced yard, a few feet square wide, with four or five other death row prisoners, in Livingston, Texas or in Jackson, Mississippi, death row prisoners are locked-up 23 hours per day during the week and 24 hours per day during the weekend. Here is how Curtis McCarty explains it: "We are locked-up 23 hours per day for five days and 24 hours per day for the remaining two days because of staffing problems during the weekend. It is too expensive to pay guards for the weekend, to watch us outside our cells, to handcuff us, etc. So they leave us in our cages."

No national norm appears to truly control the conditions of incarceration. There are, however, standards established by the American Correctional Association, a private company, which holds a now ancient monopoly and which accreditation comes at a financial cost. Each state establishes its own standards, undoubtedly inspired by the governors' authority and political vision, governors who are mostly elected on hyper-security programs, particularly in the retentionist states. In Texas for example, the administrative code¹²⁸ allows for the following: "Each inmate shall be allowed one hour of supervised physical exercise or physical recreation at least three days per week." At the warden's discretion¹²⁹, the living conditions can be improved within the scope of the rules, but also within the scope of budget parameters. Consumed by hatred against the system, but also anxious to find a meaning to these days that feel identical, these long hours spent in the loneliness of their prison cells, death row prisoners practice sport in a cage, try to write or to create artwork, when the rules allow. T.P.¹³⁰ explains: "Every day, we

lose something of ourselves, of our spirits, of our families. We try to maintain hope, but it is hard. People compare this place to hell. A man is supposed to grow, but one has nothing to do, it's the absolute nowhere." The management aims to destroy everything that expresses life, all form of resistance against a system designed to kill people. Therefore, everything is forbidden, the guards can take it upon themselves to destroy artistic expressions, denying hours of work. M. G. remembers an artistic piece made by her son, made of paint and papier-mâché: "He had worked on it for weeks. It represented a gurney, held like a puppet by one hand coming out of a sleeve representing the American flag. The management ordered it to be destroyed using the pretense that the hand made of papier-mâché represented an escape threat... There's no sense to be found, it's simply irrational and malicious!" It is about humiliating and reducing individuals to dominated sub-humans. These practices are psychological abuses that one can find in all forms of concentration camps. This intention to dominate largely contributes to the process of torture that governs capital punishment, as much in the real-life of confinement as in the determination to avenge subrogated to the outside world. It is an intention of maximum oppression, leaving guilt aside with the deep feeling that murderers no longer belong to the human race, and therefore that one is authorized to treat them worse than pets. Why invest in them since they are destined to die? The sole preoccupation of the department of corrections is to maintain the tightness on death row and to allow justice to carry out the sentence, even participate in the process in interfering illegally with the post-conviction appeals of those on death row. This determination is incarnated in the social functions authorized to express, up-close in prisons, or further away in the courtrooms, the necessity to constraint, to degrade and then to kill.

Ordinarily the slightest move leads to handcuffing, and sometimes even shackling. Leaving and returning to the cell leads to body searches during which the guards scan, without any consideration for dignity, the smallest body cavities. T.P. details: "Our hands are tied for each move outside our cages. We are badly treated everywhere, 'bitch, dick sucker'. To maintain order, they use pepper spray, if we don't open the windows, we can't breath anymore". These precautions are taken as the rest of a cohort of security measures to anticipate all eventualities in gigantic units¹³¹, housing thousands of people. The prison only rests its authority on its capacity to remain tight. The power

128 Texas Administrative Code, Title 37, Part 9, Chapter 285, Rule 285-1.

129 The Minimum Standards for local correctional facilities, as found in the Rules of the Tennessee Corrections Institute Correctional Facilities Inspection, does not detail the length or the frequency of recreations.

130 T.P. has been incarcerated on death row at Parchman, Mississippi for five years. He is 24 years old and is not the youngest death row prisoner in the state.

131 Among the units visited for this mission, let's quote the official capacity of the following units: San Quentin, California: 5000 prisoners; McAlester, Oklahoma: 1200 prisoners; Riverbend Maximum Security Institution, Tennessee: 714 prisoners; Parchman, Mississippi: 4500 prisoners; Polunsky Unit, Texas: 2900 prisoners.

of an institution, discredited and despised to the degree of the humiliations it inflicts, must express itself at every moment and under every circumstance. The 1,300 riots identified in American prisons¹³² in the 20th century prompted state agencies to define an extremely severe agenda, reacting at the same time to the architectural structure of prisons and to the internal prison rules and regulations. Incarceration is therefore designed as a war against those meant to be hindered, beyond the deprivation of freedom. Pragmatism and the goal set, in terms of managing human camps, supplant human rights with a disconcerting easiness where confinement and punishment are concerned. And as there is a climate of terror in the criminal justice system, court appointed attorneys sometimes hesitate to denounce these conditions, in fear of no longer being appointed cases by the state or to encounter problems for their exchanges with their clients.

Everywhere, the comfort of the cells is rudimentary, imposing an almost complete asceticism on the death row population, which recalls the use of dungeons. In the state of Arizona, the cells have no windows and death row prisoners are also sentenced to live 24 hours per day with artificial light. On death row at Polunsky in Texas, they have as a view to the outside, a very narrow opening at the very top of the wall just below the ceiling, meaning that one has to stand on the bunk bed to catch a glimpse of the forbidden outside world. Some have the chance to contemplate a portion of the natural horizon, while others must be contented with a restricted perspective of the concrete wall of another pod. From death row at McAlester in Oklahoma, in theory the vista could be pretty and appeasing, except that death row is located almost underground. There is, as in many other states, the intent to suppress any horizon for the men and women for whom the criminal justice system wants to deprive of tomorrows. *“After fifteen years without seeing the sun, my skin was dying”*, confesses Curtis McCarty. Other will only see portions of sky, sometimes through narrow and translucent openings. The death row prisoners express an olfactory emptiness as the smells are even in this concrete and metal universe: *“There’s no smell here, it is death. It’s always the same thing. It doesn’t smell of anything, we don’t discover anything new”*¹³³. *“What I miss the most here is the smell of babies. I am a father and I didn’t see my last child grow up”*, adds Mumia Abu-Jamal, incarcerated in Pittsburgh. The green of nature is also something that is forgotten. At the time of the execution, when prisoners leave the concrete death row they have paced for years, or decades, to touch the green and neatly cut grass,

just a few steps from the execution chamber, in contrast with the hostile concrete of the units and the metal of the cages. This ultimate pleasure becomes for them the antechamber of death. Curtis McCarty remembers his release after his exoneration: *“I had forgotten the softness of grass, this slightly padded feeling when one walks on it. For twenty-two years, my feet had only stepped on concrete. (...) The first weeks, I couldn’t open a door. My parents began to question my sanity. But all my adult life, during those twenty-two years behind bars, I was conditioned. As soon as I found myself in front of a door, I had to stop and wait for a guard to open it for me. The reflex of having had my hands tied for so long, of not having ever been free to walk through a door, to open it myself, is engraved in my memory. I had to make a conscious effort to readapt myself. My mom used to tease me as I was stupidly waiting for her to open the door to enter a store, I didn’t dare do it on my own, instinctively like an animal that had been taught not to step beyond a limit.”*

Some cells have doors made of bars, allowing communication with others detained on death row. Others are plain doors. The overall design is a vicious circle. By dint of being oppressed, the condemned have no other resistance mechanisms but to use the slightest flaw in the system, when it exists. In this institution governed by excess, the response of this population, who is denied all form of humanity, during the rare occurrences when it can express itself, either individually or collectively during riots, has no other vector than excess and violence. Just enough to justify in the eyes of the public opinion that these individuals are monsters that it is urgent to further oppress.

A MINIMUM DIET TO SURVIVE

Unanimously, death row prisoners complain about the meals served on death row. More than a reproach aimed at food that does not suit the majority, two main elements appear, particularly compelling regarding the state of public budgets in the United-States; and regarding the underlying mentality considering death row prisoners without a future, individuals for whom the state does not invest anything. In terms of the quantities and the variety of the meals, even if there are disparities among the states that maintain capital punishment in 2011, the economical crisis brings the diet conditions in some states dangerously close to those observed in Burundi, where a similar investigation was done in 2007¹³⁴. *“We find all sorts of*

¹³² See: A brief history of prison riots, Randy James, Time Magazine, August 11, 2009.

¹³³ Kevin Cooper, 54 years old, incarcerated at San Quentin, California for twenty-four years.

¹³⁴ Arnaud Gaillard, “Death Penalty in Burundi”, in: *The Death Penalty in the Great Lakes Region*, Publisher ECPM, Paris, 2007.

things in the food. Razor blades, the food is shit. I only eat 10% of what they give me. Everything is dirty, including the tray. They allow us to cook what we can get from the commissary, but we have to tweak the kettle in order to cook”, says A. R.. The quantities have become insufficient, the quality is mediocre and the meals are repetitive. States encourage incarceration as a flourishing industry, but they have no more funds to feed the prisoners. Before reducing the number of school hours for children, which has already began in California, the financiers begin by reducing the food portion for prisoners. “It’s almost the same meal every day. Except sometimes on Thursdays, we get chicken. (...) In our plates we find everything, stones, insects. It seems inhumane, but I have no other choice but to eat to not starve¹³⁵.” Others admit that in other times they would not feed their dogs with such food as an ingredient for porridge! For several years now, for budget reasons, some states only serve two meals per day on death row and no warm meals at weekends. In Tennessee on the other hand, the food appears to be more respectable. With wit, A. R. adds: “I call it 747 meals. It is only a survival diet, but it is not sufficient.” For those who are lucky to receive some money from outside, there is, as everywhere else, the possibility to improve the diet with seasonings or fruits at \$3.

Time references between the world inside and the world outside are completely disrupted. Breakfast is often served around 6:00am. In Texas, to save money on the number of meals served, breakfast is served at 3:00am; lunch is served at 10:00am and dinner at 3:00pm. Unlike in standard confinement, death row prisoners eat alone in their cells, on food trays. Meals only represent a daily occurrence to allow the “survival” of individuals in cages, and one can note how this time shift between the life outside and the life inside that comes to underline the rupture between past lives beyond the walls and existences imposed upon death row. It is about bodies needing to be filled, organs to feed to allow this physiological entity to function until the day the justice system will decide to put him to death. Behind this feeding function, to fill up, almost in an industrial mode, there is no notion of pleasure. Again this is pure animality, echoing the social representation of death row prisoners in the United-States.

Sleep references are also upset. Under the pretense of security and to guarantee the tightness of death row, regularly, death row prisoners must show their presence and their survival. It is the counting process, which takes place night and day, as another aspect of the continuous surveillance. The goal is to ensure that nobody escapes, that everyone is in the right place,

¹³⁵ T. P. is 25 years old, Mississippi death row, interview conducted in July 2010.

but also that each one is alive in a universe where suicide is prohibited. Depending on the disciplinary level, which determines the living conditions between those who are granted privileges and those who are punished with further restrictions, each one is disturbed during the day of course, but also at night with the scheduled controls by the guards. On death row in Texas, famous for its harshness, every four hours, the guards knock on the cell doors of those on level I, look through the slit, ask to see the prisoner’s ID card and wait for the prisoner to say his name and his number. On level II, these controls are done every two and a half hours. On level III, every forty-five minutes, without reprieve day or night, the death row prisoners must comply with these controls, which interrupts sleep and mixes day and night. There is a determination from the unit management to establish a minute and obsessive control of each material, temporal, existential detail, in order to engrave in the minds of those detained, that except for the contents of their thoughts, absolutely everything is controlled by a correctional authority that interferes to the point of depriving individuals of their autonomy as human beings. The process is driven to excess during the death watch phase, when the incarceration in a specific area precedes the execution. Not only the sleep of the last nights is interrupted every 45 minutes, but the unit management uses cameras to film the activities 24 hours per day in the cells where the death row prisoner lives his last hours. With an affirmed indifference for the dignity of the men and women detained, the determination for an absolute institution relentlessly scrutinizes its preys with the goal to achieve total control of the individuals incarcerated. These are coercive practices that are engraved in the minds of death prisoners, the correctional institution’s determination to dominate. From this demand emerges the supremacy of the correctional authority, but also, for the death row population, the feeling of being plunged into a never-ending hell, an existence that liquefies itself in total, harrowing and hostile confusion.

THE PATHETIC INTEREST FOR THE HEALTH OF THOSE WHO WILL DIE

For the same reasons as in terms of diet, the state does not invest in the healthcare of those it plans to kill. No matter if the ongoing appeals could lead to a future release. A feeling of division appears in the death row prisoners’ minds: “We lose a little of our health every day¹³⁶.” Serious pathologies are hardly treated, tests are done only as a last resort, and each one on death row must

¹³⁶ T. P., 25 years old, death row, Parchman, Mississippi.

fight for his pathologies to be taken into account. A. R. complains that: “it’s never the same medications here. Nothing is adapted, so many prisoners die here.” Gloria Goodwin-Killian recalls: “Healthcare is so bad that the administration admitted that it frequently killed a few by mistake. People die for nothing in prison, simply because of poor diagnostics, bad treatment. One can die of asthma, a simple abscess gone wrong, and with the economical crisis it’s even worse.” Here again, depending on the states and the wardens, the situation can be better but also more unfavorable. As for women, they suffer the same treatment, motivated by the same circumstances. Curtis McCarty recalls the conditions in Oklahoma: “They do the minimum to keep us alive. But they don’t treat cancers or heart attacks, there are no medication for HIV. No compassion, they don’t treat, don’t try to communicate with the family. It’s even forbidden to donate one’s organs.” Mumia Abu-Jamal remembers one fellow prisoner: “The doctors didn’t tell him he had cancer, because they didn’t want to spend the money to treat him, knowing he was sentenced to death. The guy understood it on his own, and preferred to hang himself because he didn’t want to endure the suffering without any painkillers. He knew too well the atrocious pain caused by terminal cancer.” Sandrine Ageorges-Skinner remembers that her husband, on death row at the Polunsky unit in Texas, had to go to court to obtain a treatment for hepatitis C, contracted at the unit through the use of non-disinfected razors distributed at random by the guards. It took three years of procedure to finally get the cheapest treatment with the least chance of success and the toughest side effects. In the same manner in Texas for a death row prisoner to obtain anti-depressant medication, he must confess to the unit psychiatrist to either having suicidal thoughts or to being diagnosed psychopath. In both instances, there is a collorary risk that will have a lasting impact on post-conviction appeals. Healthcare or mental well-being are therefore the object of blackmail, in competition with the constitutional right to defend oneself. However, ironically, because the execution is a mission that must be accomplished, suicides are barred. They are considered a metaphorical escape, contradicting the authority of the legal decision. Death must happen through a process decided in court and implemented according to the law, following a protocol specific to each state. Still, suicidal ideas cross the minds of those on death row, who have no other horizon than the never ending wait of the appeals, or the hope placed in the project of a retrial. Cliff Johnson, attorney in Jackson, Mississippi, remembers his client: “After all these appeals, Bobby suffered from depression, he suffered from the daily life on death row, the smallness of his cell, the lack of air conditioning... He could no longer sleep because of the heat, when he came back wet from the shower, he prayed so he would sleep again.

He couldn’t take it anymore, I can understand it, everybody can understand, with his twenty-four years on death row and also looking back on his life that had been miserable since his childhood. I tried, with a lot of energy to convince him that he should live, but in fact it was difficult to find meaning in continuing to live. He dropped his last appeal and asked to be executed. The state agreed. This decision was irreversible: they call them ‘volunteers’. In fact, Bobby’s case became a true story, as to know whether the state should satisfy him, ie. to suicide him... (...) Anyway, when Bobby wanted to change his mind, to not die and to pick up his appeal, they turned him down. They executed him just when he was coming back to life... From now on, all my life I will think of him.”

The contradictory situation leading to forcing individuals to survive, sometimes against their will, in order to implement a legal decision, produces the most Ubuesque behaviors. Curtis McCarty explains that at McAlester in Oklahoma, a death row prisoner, R. McK., refusing to leave his life in the hands of the department of corrections, chose to kill himself on the morning of his execution. Found in a coma, the guards first refused to save him, believing it was a ruse to escape. For several hours they let him die, convinced of the cunning. When they realized that the coma was deep enough to be fatal, they transferred him to the hospital to revive him and then be in a position to execute him that very evening. He concludes: “It is the most unbelievable thing I’ve experienced in my life!”.

In the same manner, and because the non-sense of the death penalty displays multiple faces, because it is from then on forbidden to smoke in most American prisons, death row prisoners are deprived of this pleasure, until their execution, under the pretense that cigarettes being bad for health, it must be prohibited on the entire prison ground. A. R. tells: “We cannot smoke! Me, I have a heart condition, I know it’s not good, but I like it and they deny me this pleasure, although in any case, in the end, they want to kill me. It’s totally absurd!” Among the last wishes, the one to smoke one last cigarette now belongs to the legend and to history. The same is true of alcohol. The ascetism of pleasures is absolute and final, it bears a moral injunction that nothing will bend, not even death in the hour to come.

TO RESIST MEANS NOT DYING

More than any other form of incarceration, the sentence of death provokes a social death in the surroundings of the death row prisoners. So, to never have a visit when one is locked-up and waiting for death is the ordeal of many recluses. Thus on death row, there are two categories of prisoners.

Those in absolute darkness, the poorest, the most numerous, without family and without an attorney worthy of the title, are sometimes executed before their appeals are actually exhausted¹³⁷. They are considered by society as second-class citizens. Their fate will join the modesty of prison cemeteries, with a cross or a plaque with a last name, first name and the date of death, whether executed or death from “natural causes”, direct consequence of the wear of a life of incarceration without any horizon. In Texas, their number engraved on a cement cross will begin with 999¹³⁸.

There are also those, guilty or innocent, whose cases are sufficiently controversial to feed an outside mobilization. Among them, some are then represented by a more competent attorney than at trial, supported by a support group, visitors and penpals. For some, the support is moderately, even widely, covered by the media. All must endure their fate in the same living conditions, but some have the chance of staying alive, as long as a part of them is alive in the free world. In all cases, torture is a fact. It provokes social, physical and mental damages inversely proportional to the strength of character of each one. With an acuity similar to patients at the end of their lives, in the United-States, many death row prisoners must wake up daily animated with the acute consciousness of their finiteness. Belonging rather to the second group, the death row prisoners interviewed all appeared to be in control of their existence, showing an exponential imagination to activate their inner or outer leavers to generate compensations, such as those living with a permanent stay, resigned to the submission of a barbaric, useless and unfair system, from where they feed their anger, sometimes energizing, sometimes desperate. E. M. admits: *“I meditate on positive things, I try to think about the future”*, W. M. says: *“I just try to keep my sanity, to improve things. I don’t need much to be happy. I try not to think of certain things, and finally, I’m not afraid of anything... Except snakes!”*

Despite the necessary courage to keep standing up under these living conditions, despite the guilt of the guilty and the rage of the innocents, death row prisoners must find outlets to find a meaning to an empty, wringed out and controlled existence, shackled from all sides. Kevin Cooper, incarcerated at San Quentin in California, where the living conditions are somewhat nicer, always hope that his innocence will be proven one day. During this

137 Several death row prisoners in Texas were executed when their federal appeals were denied because their attorneys missed a deadline, or because the appeal filed did not meet the habeas corpus standards.

138 From 1924 (before the department of corrections did not handle executions, it was the role of the sheriff in the counties) until the 60’s, on the graves, there was a name and the date of death with an “X”, meaning “executed”. Then only prison numbers with the date of the execution marked with an “X”. Since 2000, the names, prison numbers and dates appear on the graves.

wait, he organizes basketball tournaments. And if things were to turn out badly for him, he says: *“Here, it’s a never ending hell. I find it hard to leave them the power to kill me. If they program my death, if they believe they have the power to kill me, then maybe I’d prefer to choose my own death and I’d be ahead of them.”*

Comme la plupart des possessions sont interdites dans les cellules, étroAs most possessions are prohibited in the cells, one must be very imaginative to replace what is missing. Let’s remember the case of Caryl Chessman, known internationally, who became a famous author behind bars. When the department of corrections attempted to bar him for having writing paper to stop him from writing, he used toiled paper and succeeded in publishing his second book having sent out pages he signed with his fingerprints, without the knowledge of the guards. In 1959, the United-States Supreme Court¹³⁹ reflects on the determination of the department of corrections to ban him from owing anything. The Justices finally ruled that these bans equated totalitarianism. And still today, death row prisoners must develop unequalled ingenuity to make material with papier-mâché, to make fire with batteries and metal blades from the inside of tetrapaks, to make paintbrushes with hair, to make music with one’s mouth. Everyone on death row has no right to possession, except for a few books duly listed and exclusively from the prison library or through authorized vendors, a transparent alarm clock to control that nothing has been hidden inside, a television if the state allows it¹⁴⁰, and sometimes a typewriter, paper and pens, the minimum hygiene items and underwear. These conditions vary according to each state and to the individual disciplinary status of the death row prisoners. E. M. describes his daily routine: *“I read fitness magazines, novels about love stories, books on psychology. We are not allowed to possess more than three books in our cells. Furthermore, it is impossible to see one’s own body, there are very few mirrors. And when we leave our cells, it is to enter another one, the recreation one, hardly larger where no more than three people can fit. For years we have been like lions in cages.”*

After a number of years, when the prisoners on death row have reached a certain level, justified by an exemplary behavior in the heart of death row, in some states, the department of corrections grants them a professional occupation, sometimes for a few cents per hour. In other states, work is compulsory, unpaid, and takes place under harsh conditions. It is the case

139 Chessman v Teets, 354 U. S. 156 (June 10, 1957)

140 Texas is the only state in the country that does not allow televisions on death row.

for example in the Southern states¹⁴¹, where death row prisoners must work outside under extreme heat that recalls the hard labor of ancient penal colonies. Symbolically, these granted assignments give a sense to this micro-society. Mumia Abu-Jamal, incarcerated for 29 years in Pittsburgh, Pennsylvania, is an extremely erudite man. Former journalist, writer, he continues to write and to publish with a very particular acuteness when he talks about his country, politics, society's ways on the national or worldwide level. In contrast with his intellectual capacities, he has become a deliveryman for sodas in the unit. As he explains in a factual manner, deprived of humility or pride, this activity is beneficial to him: *"I work as a 'sodaman' until September. Every two weeks, we can buy coca. It's a great job, it pleases people who haven't drunk coca for years, and it allows me to move around in the unit and to make new social contacts, to discover who I am with. Otherwise I shovel snow in the winter."*

All prisoners are dressed with an ample outfit, which color varies from one state to another, as convicts from the past. Even clothing singularization is made impossible in this absolute institution that has power over everything, levels and reduces existences. The distinction among people is denied, as Gloria Goodwin-Killian explains: *"They dress us with male prison uniforms, clothes that are too long. Jewelry is forbidden, except for a vague religious pendant. Perfume and make-up have also been prohibited for security reasons. One year after the other it became more severe. The mirrors were placed so high, at men's height, that for years I only saw the top of my hair in the mirror."* Whether about freedom, recognition, justice, emotions or perspective, death rows in the United-States organize a life of emptiness, elaborate a big nowhere under control, and only maintain in a basic existence those that justice impatiently awaits to kill. In a climate of maximum paranoia, because everything is prohibited, because the rules level all individuals to the most restrictive denominator, even death row prisoners who for 29 years have demonstrated their discipline and their submission to their confinement status, are denied access to music instruments. Mumia Abu-Jamal tells how his life changed since one of his visitors teaches him music during their visits, through the glass partition and without any accessories. It demonstrates survival in the most absolute form of ascetism: *"Instruments are forbidden, so I drew the keys on paper and the sounds in my head. It's one of the most incredible experiences of my life. On Tuesdays, I work with my teacher, and during the week I write a short opera. It transforms my life. I write in my head, another prisoner taught*

¹⁴¹ Although the death row plan in Texas includes a work program, it has not been implemented since 2000, when death row was transferred to a supermax prison.

me how to write music. In fact I've always been an artist, and they cannot stop me from being one!"

THE PAINFUL LEGACIES OF SECURITY ISSUES

For budget reasons, more and more human resources are being replaced by a bank of cameras, which permits disciplinary actions against the guards as well as those on death row. This also bars the small arrangements with the rules, such as exchanges between prisoners, which until now made life a little more bearable. Death rows and prisons in general, year after year, resemble total institutions, denying all aspects of the humanity of those behind bars. The American incarceration exceeds the panoptic concept, omitting all pedagogic vocation, with the determination to always add a little more coercion in the surveillance of those destined to die.

Following the same security goal and to not contradict the reputation of the supermax prisons, even recreation areas must bar gatherings and thus avoid the numerous riots that have punctuated the history of American incarceration. Mumia Abu-Jamal adds: *"There is a determination to limit gatherings to avoid riots. Before, there were seven cages in the yard, with five men inside at a time. Now, there are fifteen cages, smaller, holding a maximum of two people inside"*. The excessive isolation and the introduction of permanent control procedures are justified by the will to overpower the formation of groups or gangs, whether this degree of humanity generates extreme behaviors likely to evolve one day to new forms of rebellion. A. R. analyses the daily routine: *"It is necessary to keep everyone separated. In prison, all the little things can be blown out of proportion. It is a universe of wildness. Even a joke can, six months later, cause a terrible act of vengeance and get someone killed. Many here are mentally ill. Others have nothing to lose, they already are criminals sentenced to die, so..."* It is the overall ambiguity of the death penalty. The determination to force to submission individuals, who are seen as monsters and who are maintained in a life on hold, awaiting a legal decision that could affirm the execution, equates to raising wild animals. It requires an immense determination to maintain a feeling of dignity in these living conditions otherwise the department of corrections finds itself facing criminals that the criminal justice system has turned into wild animals, that it becomes hard, almost unrealistic, to tame. It is the circumstances of domination and the lack of hope that transform these human beings into untamable beings, that one must beware

of, or that enhance the mental pathologies, already powerful enough and omnipresent behind bars.

Sociability is very restricted, since the recreation areas generally cannot hold more than three to five prisoners at the same time, depending on the unit. The entirety of daily life is thus dictated to ensure that at any moment the prisoners be allowed to gather, to become a group that the guards would not be able to control. Here again, the security conditions prevail largely over the humanity of those incarcerated. Gloria Goodwin-Killian recalls: *"When the general alarm would sound, often for nothing, we all had to immediately sit down on the ground, to stop us from becoming violent. And we'd better obey, like animals. This procedure is sometimes adapted for the men, but us, women, we are not violent, nor dangerous for the prison administration."* This economy in the management of human beings is inherent to all constraints that oppose the number, in this instance the prisoners, to the constraint. A. R. describes the yard where he is allowed to recreate one hour per day to escape the loneliness of his cell: *"We can be up to four in the yard where we have nothing else to do but to walk! It's fenced like a cage."* Mumia Abu-Jamal adds that: *"often, for one reason or another, there is no recreation for seven days in a row. We stay in our cells twenty-four hours per day, without an explanation. In any case, we cannot protest".*

In Tennessee, here again, the living conditions are more enviable. A. R. explains: *"In the yard, there are three small cages with six people in each one. We can play cards, handball or basketball."* For W. M., *"the advantage of going to the yard one hour per day is to get fresh air, to be outside, despite the bars everywhere, to run a little, even if it's small and to see the sky and the sun. Sometimes we chat too."*

And because the cells are normally closed with doors made of bars, allowing a continuous surveillance on death row, the prisoners chat among themselves, without ever seeing each other, in an absolute cacophony where one must find the sentences addressed to him in order to have a semblance of conversation, in any case always collective. The rest of sociability unfolds with the guards who come to handcuff the hands to go to the shower or to the visitation room, who serve the meals through a slot in solid cell doors, or under the bars. Behind this lack of ordinary social interactions, A. R., incarcerated in Mississippi, formulates the lack of tenderness, an elementary tenderness, almost gregarious, deprived of emotion: *"The first time a guard touched me on death row, telling me 'like that, man?', it was delicious to finally be touched by a human being. It's impossible to compensate the lack of tenderness, we remained focused on ourselves and we survive."* The relationships

with the guards are described generally as mostly correct, without violence: *"They do their job, even if it's a dirty job"¹⁴²*, even if others have more painful recollections: *"They don't want to be implicated. Last year, a man was stabbed six times in the unit, the guards didn't do anything, they didn't dare moving."* Despite this violence intrinsic to punitive incarceration, E. M. concludes: *"I'm not afraid of others here, except for the court and the judges. They are the most dangerous ones for us here. I'm afraid of the legal system in general. They have the power to do what they want, it's more about power than about justice. They are the most powerful."*

WHEN THE OUTSIDE MEETS THE INSIDE

"I come here with funny stories, he needs to laugh", says this mother of a death row prisoner who moved to be closer to the last residence of her only son: *"And when I come by the unit, on my way back from shopping, I honk continuously on the road, with the hope he will know it's me and that I think of him. The guards must think I'm crazy, but I don't care, I'm driving therefore they cannot stop me."* So what is left to feed a relationship beyond the visits through a glass partition for years? Not satisfied to organize the torture of those behind bars, the death penalty is also a torture for their relatives. What can be said of this woman who only has a brother left on death row? What can be said of this mother who dedicated her life to helping her only son survive in the dungeons of the 21st century? What can be said of these children who will soon lose a mother or a father, without having ever been able to touch them again¹⁴³, except for the moments after the execution before the body cools down completely, when the skin is still lukewarm? M. G. wonders: *"Why is the state of Texas continuing to impose this torture? Other states allow contact visits, but in Texas it's still impossible. I'll never be allowed to touch my son again."* What is said over there is that even China does not dare using such a torture. This suffering remains unknown from the public. In a blind way, it is supposed to be a retribution for the crime committed, in a process that would cancel the suffering of the person close to the murdered one through a compensation. This illusion, in itself, carries a symbolic dimension that satisfies the rententionist consciences even the most educated ones.

¹⁴² T. P. has been on death row at Parchman, Mississippi for six years. He is 25 years old, not the youngest of the men on the state's death row.

¹⁴³ In numerous states, the management of the unit does not authorize the family of the death row prisoner to spend moments or hours without a separation device, free to move in a room, to touch, to talk, to hug. The loved ones can only approach the body they have not touched since the arrival on death row until after death. In Tennessee, as in Louisiana and Mississippi, a small room without a window allows for the family to gather around the death row prisoner, a few hours before the execution.

In the visitation areas of most prisons, death row prisoners are separated from the outside by a glass partition, through which no physical contact is possible, not even a caress. How to say goodbye other than in flouting the partition that one would want imaginary, in touching the glass on the same spot on either side of it? The incarceration of one against the freedom of the other. Death rows in the United-States are conceived to organize a radical separation between the outside and the inside. Only the voice, the eyes and the image of a torso surmounted by a head poke through. This dehumanizing principle, which has become almost common in the works of fiction in the United-States, remains a shocking situation because unusual when one is confronted to it. To be so close and unable to touch or to feel, there is something contrary to the natural order of things in this security measure, which poorly hides the sadism of its punitive value, according to the words of M. G. who has not been allowed to touch her son for fifteen years. Still, she says: *"If the worse were to happen, I will not attend the execution, I don't want to watch them kill my son. His father will go, he knows he won't be alone, me I'll be close by in town, but I couldn't watch that."*

In Texas, except for the communications with their attorneys, death row prisoners are only allowed one five-minute phone call every 90 days. This measure, left at the warden's discretion, is not implemented by the new warden at the Polunsky unit, whose managerial and security visions appear, according to some, to be clearly nourished by the desire to destroy the individuals he is in charge of. Everything is done to shackle those on death row, even in their capacity to assist their defense: even attorneys must apply twenty-four to forty-eight hours in advance to schedule a legal phone call. How can one rationally and technically analyze this situation in the United-States¹⁴⁴? In Mississippi, E. M. explains: *"We can make calls to those who are on our visitors list that can be changed every six months and that cannot have more than 10 names."* In all cases, the calls are monitored, the letters are read and sometimes even photocopied, and packages are mostly prohibited. As an actual souvenir, for a few dollars, a guard takes a picture of the death row prisoner and his visitors. These are the only images that leave this universe on the side, from behind the sharp steel and the hostile concrete.

¹⁴⁴ By contrast, on death row at San Quentin in California, that houses the largest number of death row prisoners, the prisoners have access to the telephone two hours per day in their cells to make collect calls to who they choose. Their visitors' list is unlimited and can be modified at will. The visits take place in a cubical without any physical separation. Those on death row can receive quarterly packages containing clothes, books and food. In their cell, each one has the prerogative to dress at will. The prison uniform is compulsory only outside the cells.

In spite of this repetitive aspect of an imposed formalism, visitation remains for women, mothers, wives and their children in general, a rendez-vous that one prepares for. Make-up, chosen clothes, perfume, it is necessary, for this moment when the infinite inside meets the so distant outside, to pass on an idealized image, to be conniving around esthetic and sensual pleasures. It is as much the gift that these generous and faithful women want to modestly entrust to those on death row, as a discreet determination to maintain the idea of the outside world, like a suspended memory, that one attempts to preserve its timelessness. These coquetties are at the same time about affection and resistance. Although, even through the glass partition in visitation rooms, scents cannot be shared, to use perfume is one of these residual symbolic acts in this existence of withdrawal imposed to the other one.

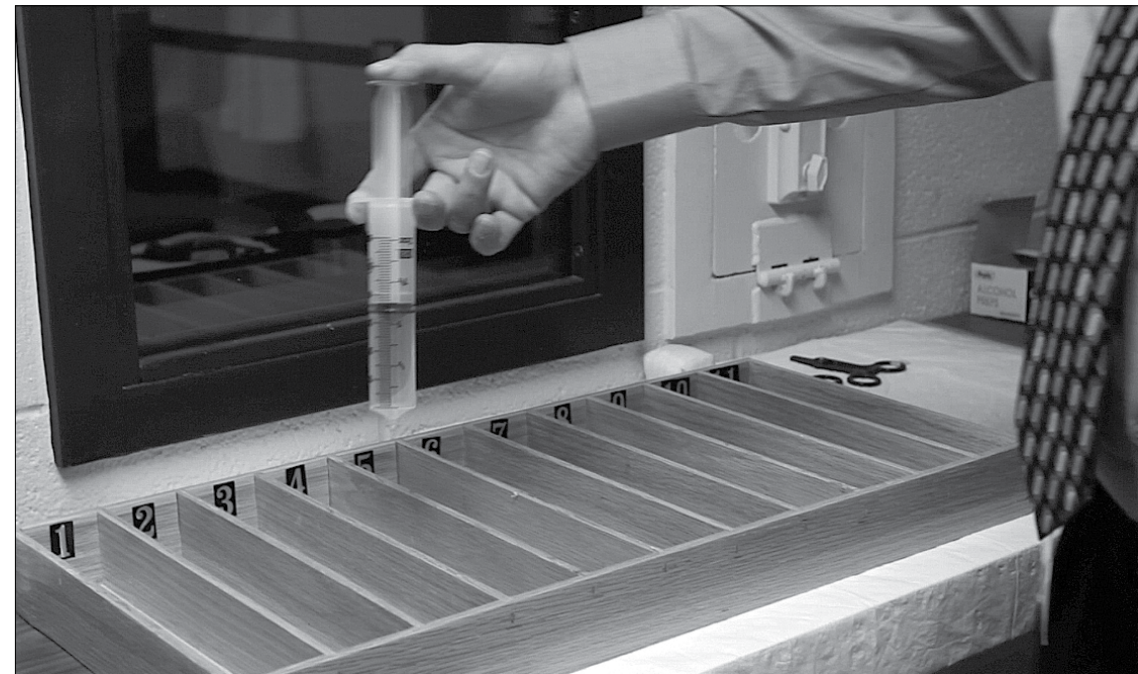
Paradoxically, even if the incarceration on death row constitutes a fatal and definitive rupture with the outside life, death row prisoners frequently mention their own wish not to receive any visits. T., incarcerated at Parchman in Mississippi explains: *"I prefer not to have any visits. Here we are considered like animals and I don't want to be seen like this. It's too humiliating. It's about dignity."* W., at Parchman, adds: *"I try not to have visits, I prefer for my family not to see me, it would leave them a bad image of me. I don't want them to see me shackled"*. Curtis McCarty, exonerated after twenty-two years on death row in Oklahoma, remembers, to the contrary, having survived because of his parents' support: *"My parents never missed a visit in twenty-two years, despite my mother's illness"*. His father recalls: *"We went every month, and each time we told ourselves 'are they going to kill our son next month?' My wife was increasingly ill, but she insisted on going. Over there we were considered like nobodies. Sometimes we even were humiliated. (...) The day he was released, it was the most beautiful day of our lives"*. It is the same stigma by contamination expressed by Erving Goffman¹⁴⁵, whom Jessica Mederson, pro-bono attorney for a death row prisoner, describes here, sharing her surprise when she was appointed for the case of Michael Perry executed when he was 28 years old in Huntsville, Texas: *"In civil cases, we have the same consideration for both sides, whatever side of a case we represent. But in criminal cases, we represent the guilty one, I was shocked to see how badly we were considered. All the more so because with criminal cases, it is not only about money, it is about a human life, so it's more serious."*

Justice wants to be authoritarian to the point where it does not grant any clemency in the details of its application. The one who must be killed

¹⁴⁵ Erving Goffman, *Stigma, the social uses of handicaps*, Publisher Editions de Minuit, Coll. The Common Sense, 1975.

has no rights, because he is denied the right to live. His family endures the same humiliation because it shares the blood of the murderer. When Jessica Mederson, attorney for Michael Perry, asks the judge to postpone the execution date because his mother is in mourning over the death of her husband, Michael's father, and that two deaths so close could be fatal to her, the decision of the judges is irrevocable: *"Why wait? The only legitimate death, is the one of those close to the victim of murder. The family of the condemned only endures a secondary death, the execution date will not be postponed."*

THE EXÉCUTION



History has already been the witness of the efficiency of professional pattern, allowing, at the heart of an institution, with written motivations, often legal, carried by an ideology in a position of strength, to oversee the accomplishment of tasks that elementary morals, common to our species, condemn at the very core of consciences. Whatever the past of the executed, the mission that is the responsibility of protean executioners, remains the act of putting of human being to death. There is a minute before and a minute after. There is life that goes, then the silence of an empty body, of frozen smile, a skin that gets cold, limbs that stiffen and a face that the poisons of the injection turns purple. There is the warm breeze and the ice-cold atmosphere. None of the wardens in charge of executions find a compassionate ear to release their emotions that they are both witnesses of and sometimes the involuntary actors of. These are part of a duty inherent to their position.

The act of killing is perceived in an ambivalent way. It is at the same time an act detached from the sentenced because the executioner is not the one who condemned. It is the tragic staging of the will of the judges, prosecutors, jurors, this society that demands vengeance and believes to be protected by the death of others. It is also about the minutes, ordinary in what they hold in terms of rules and techniques. About an execution day, Curtis McCarty says: *“We stand together with the one who is going to be killed and whom we got to know. So, just before the execution, we all hit the metal of our toilets with a shoe, to tell him that we are here, that we haven’t forgotten about him. It can last a long time and of course it’s noisy because it resonates in the whole unit. Then we stop to give him some peace, the possibility to die with dignity, in silence. It’s not so much a way to protest an execution, we don’t have that power, it’s just a way to say: we know you are here, we know what they are doing to you, we are not closing our eyes on the fact that you are killing one of us”*.

THE TORTURE OF THE WAIT

And as if it was about adding in terms of torture, sometimes just a few seconds from the fateful time, the authorities order a stay of execution, while the morbid staging has already begun. Will die? Will not die? One has to imagine the psychological consequences of this perverse game on the prisoner’s nerves, his family and his attorneys. One must attempt to evaluate what the following nights and days are like, after the trauma caused by a programmed and then deprogrammed death. This little respect, for what

the anxiety of dying represents, is the affirmation of a merciless power, incarnated in the all powerful legal mechanism, capable of killing or of granting clemency at will. It is here the prerogative of assassins. It takes an incredible mental structure to escape madness at this moment that repeats itself. Mumia Abu-Jamal was sent to the death chamber on two occasions, to then get a suspension of his execution. Kevin Cooper in California, Abu-Ali Abdu’Rahman in Tennessee and Hank Skinner in Texas saw their respective executions suspended a few hours from the fateful moment. Although an extension of life, this frequent practice is lived as an insult, a traumatic humiliation, issued by an administration, which organization obviously turns into sadism.

International authorities also consider the mechanism of torture constituted in the wait for death, very different from one state to another. Some states are faster than others. The average duration from the sentence to the execution is twelve years in the United-States. Since the enactment of the AEDPA¹⁴⁶ in 1996, this duration tends to shorten to five or six years for those sentenced after this date. International rules state that this wait is too long, that it, alone, constitutes torture. However, the United-States refuses to follow these remarks. The legal process, including the appeals and the inertia of the system before an execution, is particularly lengthy in California. The average stay on death row is between twenty to twenty-four years. Steven F. Shatz, criminology professor at the University of San Francisco, adds: *“On the international scale, to await death for so long is assimilated to torture, for human rights defenders and for the European Court of Human Rights”*. He quotes the case of Soering v United Kingdom¹⁴⁷ where the refusal to extradite to the United-States *“was not only a strict application of a crime prescribed by law (the death sentence ndlr), but rather its immersion in the death row phenomenon, where he would be incarcerated for an unknown period of time, while awaiting his execution. The European Court of Human Rights demanded that no extradition be granted while waiting for an answer to this question”*. However, the United-States Supreme Court refused to consider this parameter, it is therefore difficult to oppose this argument as much as to define the length that could be defined as torture.

¹⁴⁶ Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996 (Clinton Administration).

¹⁴⁷ Soering v United Kingdom 11 Eur. Ct. H. R. (ser. A)(1989) is a major jurisprudence issued by the European Court of Human Rights (CEDH). It establishes that the extradition of a young German national to the United-States, to be indicted for a capital crime, represented a violation of article 3 of the European Convention on Human Rights (CETS), which guarantees the right to be protected for degrading and cruel treatments.

MAKING DEATH MORE TECHNICAL TO KILL DECENTLY AND HUMANELY

The debate is very often centered on the method of execution that must obey the ambition to improve the “*techniques for a good death*”. The determination to control the act of putting someone to death imposes the use of a tool, instruments that distance the human hand directly representing the criminal justice system from the act of killing. It is about executing without giving the impression of killing. It is, before anything else, meant to ease the tasks of the executioners, who are named as such. Over the centuries, techniques have varied and have been made more technical. France calls on a doctor to invent the guillotine. A little later, the Americans invent the electric chair: give death through power, technique, control the electricity to accomplish a clean crime, without blood, with scientific seriousness that is not available with hanging or poisoning. Steven F. Shatz, criminology professor, describes his country: “*It has always been about seeking to kill people ‘nicely’, however each time, it hurts, the firing squads or the hangings, each time it is painful. But this country wants to be the leader of progress, so the instant it relies on a scientific functioning, technical, then it gives the impression of progress*”. Thus, following the hanging, the electrical chair, main methods of execution between 1924 and 1964, were part of the cultural landscape in the United-States. Often the population would use a nickname, underlining the emotional relationship tainted with irony. In Texas, people named it “Old Sparky¹⁴⁸”. Elsewhere, other terms were used such as: “Sizzlin’ Sally”, “Old Smokey”, “Yellow Mama”, “Gruesome Gertie”, etc. These names represent the personalization of an object that accomplishes the dreadful tasks in place of the executioners. With the electrocution it happens as if the technique erased the hand of men. There is a desire to externalize the execution while maintaining an embodied form, halfway between the thing and the being for this object identified as the criminal justice system of a state, on which hundreds of people burned in a sort of collective autodafé. Even today, even if the electric chair is not used so often and replaced by lethal injection, it belongs to a form of past that is visited, commented on, exhibited in prisons or museums for the benefit of the adult population or those in schools¹⁴⁹. It is not yet the relic of a bygone aberration, it is nonetheless and undoubtedly the fate that future generations

148 This nickname was also used in the following states: Florida, Georgia, Illinois, Kentucky, Louisiana, Ohio, Oklahoma, New York and Virginia.

149 At Riverbend in Nashville, Tennessee, students from schools can visit the death chamber as well as the whole execution area. Very regularly the warden receives classes who come to realize in a cold and explained manner the process of death. This information received is nonetheless not information that is criticized or open to criticism. It is a passive awareness.

will make of it in how they will regard it as an instrument of torture, the barbaric erring ways of a society, still contemporary. American society has, for a long time, noted the limitations of this electrical device, as Professor Shatz states when he says: “*People realized that the electrical chair is uncertain, some died directly, others burned on the spot. We then used gas chambers¹⁵⁰, because with gas, it’s progressive and therefore more humane*”.

So before we discovered the gas chambers in the Nazi extermination camps, the United-States began to execute in these airtight alcoves from 1924. Today five states¹⁵¹ still offer the gas chamber as an alternative method to lethal injection, the new and modern way to execute decently. The gas used then in some states, including Arizona, was the Zyklon B, the same one used in the industrialization of death organized by the 3rd Reich. Still, as stated by Professor Rick Halperin: “*No one wants to be assimilated to the Nazis. Everyone agrees to say that it was the worst regime that humanity has ever known*”. It is one of the reasons why, American gas chambers, often designed to execute, if required, two people at the same time, have been abandoned as the main method of execution, as Professor Shatz explains: “*It appeared like progress until we found out how it had been used and how many people had died this way during Hitler’s Reich. The reputation of the gas chambers was then sullied*”.

Since the resumption of executions in 1977¹⁵², the new method that triumphs in the United-States is lethal injection. It was meant to address the constitutional requirements that although accepting the possibility of killing in the name of justice, prohibit and render unnecessary suffering illegal. It is based on this point that lethal injection, and the written protocols that govern the process when they exist, is regularly challenged. Here again, the history of American executions meets the history of Nazi Germany, as Rick Halperin explains that lethal injection was invented by Karl Brandt, Hitler’s personal physician, to kill 10,000 mentally deficient children. He adds: “*This technique was first meant to make the death process easier for those in charge of it.*” Professor Shatz says: “*When one accepts the idea of the death penalty, one also admits that the state has a responsibility to ensure the one does not suffer as it would be unnecessary and unconstitutional. (...) But with lethal injection, we can see death row prisoners suffocating during 6, 8, 10 or 12 minutes, sometimes even longer. It then becomes an unbearable spectacle*”.

150 11 people were executed in gas chambers since the reinstatement of the death penalty in 1976. Walter LaGrand was the last person to be executed in a gas chamber in Arizona in 1999.

151 Arizona, California, Maryland, Missouri, Wyoming.

152 Gary Gilmore was executed by firing squad, at his request, in Utah after a moratorium on executions in this state that lasted 10 years from 1967 to 1977.

Recapitulative chart of the methods of execution¹⁵³

Method	Number of executions by the method	Number of states authorizing the method	Jurisdictions that authorize
Lethal Injection	1 085	34 states + U.S. Military and U.S. Gov't	Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington**, Wyoming, U.S. Military, U.S. Government
Electric Chair*	157	9 states	Alabama, Arkansas, Florida, Kentucky, Oklahoma, South Carolina, Tennessee, Virginia
Gas Chamber*	11	4 states	Arizona, California, Missouri, Wyoming
Hanging*	3	2 states	New Hampshire, Washington
Firing Squad	3	1 states	Oklahoma***, Utah***

* All have lethal injection as primary method.

** Ohio adopted a single-drug lethal injection protocol in November 2009. Washington state adopted a single-drug protocol on Mar. 2, 2010, though inmates may still choose the 3-drug protocol.

*** Utah no longer offers the firing squad as an option, but would allow it only for inmates who chose this method prior to its elimination. Oklahoma offers firing squad only if lethal injection and electrocution are found unconstitutional.

Most states offer two methods of execution. One is an old method (electrical chair, firing squad, gas chamber, hanging) and the other (lethal injection) democratized since its first use in Texas in 1982. Over the course of time, the American legislator has attempted to elaborate an execution mode to be only a neutral death process, without generating pain and minimizing the spectacle. As if death could not express anything, no scream, no muscular contraction, nor bloodshed. Even today there is a fantasy in

¹⁵³ Source: "Methods used", recapitulative chart, Death Penalty Information Center www.deathpenaltyinfo.org), updated 2011.

the speeches to find a "humane" way to kill the one who killed, to kill in the name of justice, in a decent manner, hygienic, scientific, almost medical, with a process valorized through technology and therefore undisputable and harmless in the eyes of the collective consciences. A process that, as it is more and more technical, would lose its analogy to the blood crimes, those punished by the law. So, in order to differentiate itself from non-democratic countries, nations considered wild, in the land of freedom, one would kill in a humane way. It is through the determination to erase the barbarity of the suffering, of the moans, of the muscular contractions that cannot be mistaken in the course of a modern execution in accordance to a developed society, that the second drug used in the lethal injection cocktail, is meant to paralyze the muscles of the condemned, so as to make imperceptible any sign of pain¹⁵⁴. Still, we have to admit the progressive limitation period of each method. In the United-States, a real discussion is now engaged on lethal injection. Today some states¹⁵⁵ recommend the use of a one-drug injection. What appeared to be a revolution allowing, at last, to kill with dignity, in the end has ran its course. The three products commonly used in most protocols, including one prohibited by veterinarian standards in some states, begins to reveal several flaws¹⁵⁶. ¹⁵⁷ Lethal injections appeared at times to be absolute butcheries, to the point of justifying moratorium, for example in California. Meant to cause death in seven minutes, the injections must incidentally be started over in case of wrong dosage; the injection through electrical syringes had to be abandoned after too many technical problems; the placement of catheters sometimes lasts up to 45 minutes, if the veins are hard to find or to pierce, notably when the death

¹⁵⁴ Eight states have never released the details of the lethal injection cocktail they use to execute.

¹⁵⁵ Notably Ohio and Washington.

¹⁵⁶ Sodium thiopental, an anesthetic supposed to act within 10 seconds, pancuronium bromide meant to paralyze the muscles, and potassium chloride to stop the heart.

¹⁵⁷ In 2010, the states found themselves without sodium thiopental. The American laboratory, Hospira, the sole manufacturer of sodium thiopental in the world, decided to stop manufacturing this drug, notably under the pressure of NGOs such as Reprieve UK, the World Coalition against the Death Penalty and ECPM, because of the injunction of the Italian government which refused that a substance used in executions be manufactured in their country. The irony is that "since the summer of 2010, several American states turned to Europe to compensate the national disruption in supplies of sodium thiopental, six American death row prisoners sued the FDA in Washington they accuse of having illegally authorized the importation of sodium thiopental, announced their attorneys. The lawsuit demands that the FDA be recognized as guilty of having violated the law when it allowed some states to import this anesthetic from Europe last fall". "The withdrawal of the production of sodium thiopental: a victory for ECPM and the Coalition", Journal de l'Abolition, Publisher ECPM, December 2010. Furthermore, Lundbeck, the Danish laboratory, has become the supplier of pentobarbital that several states purchased to replace sodium thiopental. For more than 6 months, this laboratory prevaricated before taking the necessary measures to control the distribution of pentobarbital to ensure that it will only be accessible to the medical profession. See: <http://thepentobarbitalexperiment.wordpress.com>

row prisoner is a former user of intravenous for his daily drug. Except for a regular practice, as it is the case in Texas in the Huntsville unit where the killings take place almost once a week, the lethal injection carried out by non-medical staff, it is like entrusting open-heart surgery to a plumber, no matter how experienced he may be.

THE DEMOCRATIC NECESSITY O TELL WITHOUT SHOWING TOO MUCH

The death penalty is undoubtedly less popular than it used to be. We are far from the spectacles of torture¹⁵⁸ in the although-recent time of public lynchings, it is in fact the sign of a notable evolution in the capacity to channel violence. In this process, the spectacle of the act of killing is reserved solely to those concerned: the relatives of the condemned, the relatives of the victims, the prison staff and the media. Still, in the United-States, there is no reluctance to talk about the death process, which is only the expression of what the law authorizes. The retentionists know themselves to be the majority. It is not so much about a will to make it a common place as a free demonstration of what could not be hidden. If the United-States suffers from a deficit of debate concerning the death penalty, associated to ignorance, almost absolute, of the realities that govern this sentence, one must admit a relatively democratic transparency as far as the process is concerned, the free access to the list of death row prisoners executed or to be executed in each state, their names and their check-in information sheet, etc. Execution dates are known to the public, timidly relayed by the media and, sometimes, even public press conferences are held after an execution to report the details of the freshly accomplished killing process.

Thus, in Utah, when Ronnie Lee Gardner was executed on June 15, 2010, a large press conference was held at 2:00am, in front of about twenty television networks, radio and press journalists and foreign media. Almost as if it was about the launch of a new commercial product, each one was handed a press file with color dividers, and a CD-rom on which one could find pictures of the death chamber and the chair where the condemned was going to be strapped before being shot. Because it was an exceptional execution by firing squad, as per the condemned choice, the Utah department of corrections opted for media coverage of the killing and to authorize eight journalists from national and local media, who held a press conference in front of their colleagues after the official speech. In any case, everything appeared

¹⁵⁸ *Discipline and Punish*, Michel Foucault, Publisher Vintage, 2nd Edition (April 25, 1995).

to be particularly transparent and straightforward for who was interested in this morbid situation. The details of the life to go, blood running, the least muscular contractions, everything was written down and shared publicly, without shame, openly. But the secret of the spectacle remained well kept. In 2010, it is still acceptable to “say”, but maybe less proper to “show”. It is the beginning of an announced end for capital punishment, the beginning of a political and collective awareness, leading to a softening of what society can justify in the name of good and that it can assume on the institutional level. It is always how torture disappears, surreptitiously, through the back door, first suppressing its ostentatious dimension and then its own reality.

TO CONTROL THE DETAILS OF DEATH TO MINIMIZE THE UNCERTAINTIES

Penalty in the United-States obeys the ambition of the most absolute control following the example of Michel Foucault¹⁵⁹ on the historical evolution of the right to punish. There is almost a development in the art of killing where nothing is left to chance, these are the death techniques. To kill in the name of justice, it means to generate pain, feelings, discomfort, regrets too with which each one must live with, whether executioners or jurors. This problem of conscience is notably expressed in the decision by the American Medical Association to ban any participation to the execution process. Even if the medical profession is more apt to place the catheters in the veins, to dose the product and to react to unpredictable event that could potentially jeopardize the protocol, it is recognized that to heal means not to kill, including in the name of justice. Because officially the medical profession¹⁶⁰ has refused to be involved in the killing process, to be an accomplice to the morbid acts of justice, injections will be implemented by prison staff, who receives minimal training for a few hours to enable them to access the veins. Sometimes Vietnam veterans, hardened and familiar with the use of needles, are recruited. Kevin Cooper, met on death row in San Quentin, California, remembers the days that preceded his execution, stayed only a few hours before the time in 2004: “*The administration took me aside to explain how they were going to proceed to inject the poisons. They*

¹⁵⁹ *Discipline and Punish*, Michel Foucault, Publisher Vintage, 2nd Edition (April 25, 1995).

¹⁶⁰ On this topic, see the Death Penalty Information Center: “The American Medical Association (AMA) and the National Association of Emergency Anesthesiologists (NAEMT) made public their statements reminding all their members of the ethical obligation to not participate in legal executions. The AMA President, William G. Plested III, underlined that the AMA forbids all healthcare professionals to participate in executions, notably because it destroys the public trust in the profession. The association NAEMT adds that to be an accomplice to executions is against the ethical precepts and the goals of the medical profession”.

checked my veins, because sometimes, it is the placement of the needles that goes wrong. At the same time, they were trying to reassure me. I think they wanted to be sure I was going to stand the wait before the date". A person close to him, who visits him every week to support him, explains: "He suffered a trauma after this episode, and that went on for weeks. He remained particularly excited and nervous. There is no psychological support on death row here in California. The budget is cut, so each one deals with it as best as he can".

In a majority of states, the execution protocols are written. Each step is timed, execution chambers are organized accordingly, inspired, one after the other, by the empiric recommendations according to the states. Each one, however, remains autonomous to organize the killing, without a federal chart. Recently in Utah, the execution of Ronnie Lee Gardner by firing squad forced the authorities to develop a specific execution protocol. A platform was built, with a sort of partition screen was placed to make the background of the set. On the platform, a large wooden chair was fixed, equipped with headrest and numerous leather straps to interlock the body of the condemned and the chair, with many contact areas. Sand bags were placed on either side of the chair, on the platform, to cushion the shots that would not reach the human target. The overall set up was painted in a uniform dark grey, almost black, in order to absorb the potential and too ostentatious blood splatters. Five shooters were recruited among an astonishing list of 200 volunteers. At random, four of them were given live bullets, while the fifth one was given a blank. They had to shoot from a side room through a horizontal arrow slit. The execution scheduled in the death chamber¹⁶¹ was programmed "*beginning at midnight*". This is how the press¹⁶² reported the event: "*When a prison official opened a curtain to reveal the death chamber to witnesses early Friday, convicted killer Ronnie Lee Gardner was already strapped to the execution chair. His eyes darted around the room at a prison in Draper, Utah, but he appeared calm, even at peace, witnesses said. This was a stark contrast from a troubled life marred by drugs, sexual abuse and indiscriminate violence. Asked by a prison official if he wanted to say anything, Gardner responded simply: "I do not, no." A black hood was slipped over his bald head; a small circular target attached over his heart. A barely audible countdown was interrupted by two loud bangs in quick succession. It was 12:15 a.m. After a quarter of a century on death row, Gardner, 49, became the first man to die by firing squad in Utah in 14 years. "He clenched*

his fist and then let go," radio talk show host Doug Fabrizio, one of a small group of witnesses, said. "And then he clenched it again." A medical examiner checked Gardner's pulse on both sides of his neck. When the black hood was lifted to check Gardner's pupils with a flashlight, his ashen face was briefly revealed. He was pronounced dead at 12:17 a.m."

As for all executions in the United-States, there are two specifically dedicated rooms: one for the authorities and the victims' families; this connivance underlines the assumed easiness during a killing elaborated to satisfy the victims. The other is dedicated to the witness of the condemned. When some look at their relative close to being murdered, others hope to find closure in the spectacle of the murder of the author of a crime that affected them personally. This is how justice is rendered in 34 states of the United-States in 2011.

According to the former warden of the Walls unit in Huntsville, Texas, who supervised 89 executions, the last wishes were mostly about "pardons" and messages to the families. However he states that in the past, the sentence was accepted, without any desire to rebel. There was, undoubtedly, a feeling of submission to a harsh and implacable sentence, against which nothing was worth protesting. These times are ones of fatalism that were identified in all societies, in the face of unavoidable events that it would have been stupid to want to fight. It is the same fatalism that one would find imposed by the too frequent deaths during wars, childbirths and epidemics. A death accepted as if one stomached the curbs of an unavoidable fate, with a relative resistance. At a time of dreamed immortality and of the fantasy of eternal youth in a society in search of continuous asepsis, it is probable that the killing is no longer surrounded by the same fatalism.

The last meal most frequently consists of a hamburger with French fries. The budget of this national dish varies according the units. Madam L., criminology student at the university of San Francisco, wonders: "*What's the meaning of satisfying the taste buds of the one we are going to kill, ie. whom we are going to deprive of the essential?*". From \$25 to \$40, it is the amount of money the departments of corrections are prepared to spend and allocate for this ultimate pleasure that knotted appetites do not always consummate. Jim Willett, former warden of the Walls unit in Huntsville, Texas, recalls: "*I organized 89 executions. Some ate a lot, it always surprised me*". He adds: "*Smoking was forbidden in 1996, but I always supplied them with cigarettes if they wanted, until 1998. Some almost smoked an entire packet in their afternoon*".

¹⁶¹ Used the last time for the execution of Joseph Mitchell Parsons by lethal injection in 1999.

¹⁶² "Ronnie Lee Gardner executed by firing squad in Utah", Ray Sanchez, ABC Good Morning America, June 18, 2010.

THE PERVERSE EFFECTS OF DEATH TO BE CARRIED OUT

In an instant, the execution brings an end to existences, as if it were about eliminating individuals, intrinsically dangerous, whose pathogenic behaviors would be repeated to infinity. It is what the citizens imagine when they argue about the usefulness of this irreversible sentence. It is the expression of an irrational fear that tends to figure representations offered by media, literary or cinematographic accounts, very much the vogue in the United-States, leading to believe that a serial killer hides behind each criminal. Here again, between the passions that govern and the absence of knowledge that feeds a reasoned functioning, the opinions err and constitute the dregs of security policies and paranoid behaviors. When looking at it more closely, the crimes mostly represent the satisfaction of novel instants, out of honor or exhilaration, that were only that because of a set of circumstances that no probability could anticipate again. These are instants of drift that justice punishes by this long incarceration with a fateful outcome. As long as the free world society will not view recidivism moderately, as long as citizens will not fight against this proclivity to cry wolf even before the danger appears, penal sentences in general, and the sentence of death in particular, will remain the irrational breeding ground of the worst indignities. Very often, the sentencing then the incarceration, prove to be largely sufficient to allow awareness as to avoid the repetition of criminal acts. Still, the death penalty as well as as life without parole, by the nature of the fact that they remove all prospects of life, drive death row prisoners to scupper their image, like individuals with nothing more to lose. From here emerge violent behaviors, including behind bars, justifying, in the eyes of the departments of corrections, draconian security measures. If one is going to die as a beast, why not kill again? It must be clearly understood that it is the death penalty itself that incarnates the dimension of “*nothing to lose*”, transforming men into masses of hatred and unrestrained violence. It is also the exemplarity of the indignities of the criminal justice system as a whole that compels rebellion and disobedience. What is left of the human being on death row, except for the perspectives of a betterment that some nourish in the thin hopes born from the incessant back and forth with the appellate courts, the states or the U.S. Supreme Court, or the factual or imaginary certitude to be, one day, free as an innocent man?

The execution revives the mourning of the victims and plunges them in an internal conflict between, on one hand, the resurgence of vengeful hate legitimized by the paroxysm of the emotions felt when the initial crime was

committed. And on the other hand, the conscience of being caught in a game that slips away, a legal procedure at the hands of the department of corrections, a dangerous and delicate game they become accomplices to in spite of themselves. However it is from this legal murder that families of victims await closure. There is in reality so many months and years between the original sentencing and the execution, an infinite time during which some live in freedom at a distance from those behind bars, that in the end when the execution appears as the closing point of a story, that each one could have mourned it had not been about waiting for the application of the verdict of death. When the emotion caused by the crime softens, victims explain that they could have been contented with a sentence of life in prison if the law had not allowed for the death penalty. Meaning that, in reality, even if it is often sought, capital punishment could easily be suppressed. Two days after the execution of her husband’s murderer, Veldean Kirk admits: “*I wanted the prosecutor to seek the death penalty, because it is in the law, and I found that fairer actually. Ronnie Lee Gardner had killed on several occasions, even in prison. But if the law had only allowed a life sentence, it wouldn’t have bothered me.*”

Each one feels subject to the law, whether it calls for a prison sentence or death row. The law symbolically imposes without being contradicted, it is a dubbed norm, and the respect for it certainly must be credited to American history, the history of a young country, homogenized by a Constitution that many consider to be inspired by the bible or by God himself. Although affecting a very small proportion of the population in the United-States, and so long as freeing oneself from the political pressure and the sometimes-perverse media game, the political courage necessary for the abolition should not constitute a major risk. This is what a poll from May 2006 reveals: The May 2006 Gallup Poll found that overall support for the death penalty was 65% (down from 80% in 1994). The same poll revealed that when respondents are given the choice of life without parole as an alternative sentencing option, more choose life without parole (48%) than the death penalty (47%)¹⁶³.

To others, the execution represents an event to which it is important to participate. Whether about the eight journalists invited to the firing squad of Ronnie Lee Gardner in Utah, regarded as a local, and even national, event; whether about this little girl who came to attend the execution of her grandfather’s murderer, although he survived ten years after the attack, and who admits having no other motivation than to be the witness of a real gore

¹⁶³ Result of a Gallup poll in May 2006.

scene that she hoped would meet the standard of cinematographic virtuality. The latter one, Jamie, 28 years old, explains: *"It is a unique occasion that will never represent itself in my life. To see someone being killed by a firing squad live! (...) It was a lot cleaner than what I expected. I thought blood would splatter everywhere, like in the movies. But it was fast, almost frustrating. But I'm happy I attended."* Whether about the shooters in the firing squad, chosen among 200 other candidates, not so lucky volunteers, the execution, unless it becomes a morbid routine, as it is the case in Texas, constitutes an event from which some draw an astonishing pride. For some, there is an honor in having killed. A double edge honor, that, when looking at it closely leaves a conflicting emotion, divided and bitter. Despite the certitude of having accomplished a legal and justified act on behalf of society, to have participated in it, to have been an active or passive accomplice, death is not always easy to apprehend. Between discomfort and indifference, the journalists accredited to witness the execution made varied comments: *"It was fast, clean, almost clinical (...) it wasn't like in the movies (...) all that we heard was a loud 'boom', then nothing (...) after the shots, he continued to move his left arm a little, we were wondering if he was actually dead (...) it wasn't violent contrary to what one would think"*. One of the eight journalists was the only one to state: *"I grew up with a Winchester and since childhood, I'm used to shoot with it, and despite that, I thought it was violent because it was about the death of a man"*.

It is not, in our contemporary history, an instant that is routine or common. Whether we want it or not, when a life is taken, there is the irrational and the outrageousness. And each one must admit a disturbing idea, although very real, to realize that some men are less easy to execute than others. The politically correct statement is valid for the victims of murder as much as for the victims of the execution. Because beyond the universality of the human being and the rights that accompany him, there is the singularity of individuals, upon which closure and acceptance will depend, the one upon which the legitimacy of the act will more or less rely, deep inside, in a personal and silent way.

EVOLUTION PERSPECTIVES



To the contrary of other countries where the death penalty is a very openly arbitrary penal tool, used sparingly or excessively, but never with the arguments that justify it being reviewed for the benefit of an obvious upholding that goes without saying in the United-States, the death penalty is a mechanism elaborated, written, protocolized, instrumentalized over the course of time, thus underlining numerous aspects of American society, of its trajectory and of the system that governs it. It is in fact here that resides all the curiosity of the researcher, all the passion of the activists, and all the optimism as to the urgency to abolish. In a paradoxical way, the death penalty in the United-States finds its roots in the culture of punishment, in the fear to appease, in the harshness that pays off, in the indulgence that weakens, and in the certitude that it is necessary to avenge to deter. Still, the edifice is cracking regularly, and things can move fast in this young society, which rebounds are never discouraged. The duration between the sentence and the execution increasing since the reinstatement of the death penalty is like the expression of abolitionist jumps that hide their true face; because discreetly, these delays empty the death penalty of its true meaning. Detached from the actual crime, the sentence becomes a penal object falling into abeyance, the words become empty and only incarnate a symbolic sentence, although still murderous and unfair, drives with it the little rational foundation that can still argue in its favor in a democratic society.

THE CRACKS OF AN ARCHAIC PENAL MECHANISM

In the context of an openly practiced discrimination, less than fifty years ago, public lynchings were still tolerated. The spectacle of a humiliating killing of the African-Americans, guilty or not, independently from any legal procedure, was still common in some areas. Since, the death penalty is only institutional, and the process of killing constantly challenged with the supposedly virtuous quest for a clean and humane execution, as an act of justice that a too ostentatious suffering would decisively dishonor. The ineptitude of the death penalty reveals its face day after day. The myth of deterrence is out of breath¹⁶⁴. The massive execution of thousands of death row prisoners rotting in the American death rows would resemble a collective massacre likely to be amended by many. The ruin of states does not adjust easily to the millions of dollars required for a death sentence in the current context of capital trials and appeals. The publicity around the discriminatory aspect in the application of the death penalty reaches a larger

¹⁶⁴ In a study by the Death Penalty Information Center, only 5% of criminologists find a deterrent effect in the death penalty, against 88%.

public. The execution of the factually innocents¹⁶⁵ renders justice immoral while underlining its fallibility. The population becomes more and more educated, providing everyone with critical arguments. In this moving landscape, the death penalty begins, step by step, to be perceived as an amendable institution. It is a sentence gangrened to such a point that even some of its defenders appear to be aware of its programmed finiteness. From all sides, the boat is sinking, which revives the fervor of retentionist activists, ready for all compromises, moral and intellectual, to maintain in the collective consciences the legitimacy of a killing, as much as it endorses the morbid attire of justice. Betty Wilkinson, assumed conservative and retired from the department of corrections in Texas, today works as a volunteer for the prison museum in Huntsville; she admits in a speech mixing contradictions and certitudes: *"I have always supported the death penalty, but today, I would be satisfied with life without parole. It is not because I'm against it, but I think the death penalty will be abolished eventually, and it could take several years. I realize since we have a 'real' life sentence, there are less death sentences. It's why I believe that it's no longer necessary, and that it can be abolished... I wait for the legislators to do it. I don't know when it will happen, but it will happen, even here in Texas"*.

From a legal stand point, the struggle also demonstrates that it has reached an advanced stage: in Mississippi, fifteen death row prisoners filed a lawsuit against the unconstitutionality of the death penalty. Despite this, a law student in Salt Lake City¹⁶⁶ admits: *"In a class of more than 30 people during law classes, only two students were against the death penalty"*. There is much to bet that in a majority of states in the United-States, as in numerous other countries, the death penalty will disappear surreptitiously through the back door. Here and there progresses take shape, leading to a progressive scarcity of death sentences and executions¹⁶⁷. From here, de

¹⁶⁵ Even if no execution of a factually innocent person has been officially recognized in the contemporary history of the death penalty in the United-States.

¹⁶⁶ Capital of Utah, Salt Lake City is a town with 50% Mormons, from the "Church of the Latter Day Saints". The Mormons are not opposed to capital punishment in principle. They have no official statement and not actual position.

¹⁶⁷ "According to the estimations of the Death Penalty Information Center, the number of death sentences in 2010 is 114, close to the historic low record of the previous year, and around 64% less than in 1996, when death sentences had reached the record number of 315. California leads the country with 29 death sentences, almost the same number as the previous year. Numerous retentionist states, such as Virginia, Georgia, Missouri and Indiana, did not sentence to death in 2010. (...) On December 2, 2010, the Bureau of Justice Statistics (BJS), (...) reached the same conclusion, that the number of death sentences in 2009 represents the lowest number since 1973. According to the BJS, 112 persons were sentenced to death in 2009, compared to 119 in 2008. (...) The BJS also underlines that the duration from the sentencing to the execution, for those executed in 2009, was 14 years, the longest period recorded since the reinstatement of capital punishment." "While the use of capital punishment continues to regress, the majority of Americans that support it is decreasing, the number of executions has regressed by 12%: death sentences have reached a historically low number", in The Death Penalty in 2010: End of Year Report, Death Penalty Information Center, December 2010.

facto abolitions can aptly prepare the voters for a political decision. This process is slow because it operates in stages, but it operates in a country where suddenly, everything can accelerate.

Even in Texas, public opinion is more and more critical. Paradoxically, in 2001 the state even decided to improve the financing for the court appointed attorneys system. This gradual and underlying swing is perceived by a majority of abolitionist actors. It is the common view of journalists, criminology professors and activists. Steve Hall, director of the StandDown Texas Project explains: *"In 2001, they set up the Texas Fair Defense Act for which the state gives funds for the indigents. What we saw, then, was the increase in public defenders offices. It's a huge change, we have attorneys that only work on this, they specialize in capital cases, in the representation for post-conviction appeals. And there is also an office specialized in the appeals. Many states have set up such offices"*. This decision is regarded as a slow and progressive evolution, which outcome is unknown, in favor of the number of capital cases. In its principle, capital punishment is not challenged. However, with moderate and non-militant people, whether republican or democrat, one can often note the expression of a desired down scale to supervise its use. Ideally it should be reserved for the culprits, with the certainty of guilt. It should not be applied to those who demonstrate in a credible way that they have changed sufficiently to no longer represent a danger¹⁶⁸. Finally, it should only be applied for the worse crimes, mostly concerning children, or any form of configuration showing implacable disparity between the dangerousness of the guilty on one hand and the fragility of the victim on the other.

Furthermore, it becomes quite frequent for retentionist activists to refuse to express themselves or to debate. As if their arguments today were not so audible, so credible and so legitimate. As if it is about to become politically incorrect to assume tomorrow having yesterday defended the death penalty. Kent Scheidegger, lawyer in an organization fighting for the rights of victims in favor of the death penalty in Sacramento, was hard to convince. He refused to meet us because he believed his arguments would be ridiculed. According to attorneys representing death row prisoners, Madame Debra Saunders, pro-death penalty journalist for the San Francisco Chronicle, writes regularly without ever showing an interest for the arguments developed by the defense¹⁶⁹. She adds: *"The problem with the abolitionists is that they*

are so against capital punishment that they never see the actual crime!" Even if she admits to not sharing her convictions with the retentionists in her entourage, she states that it is becoming impossible to confront abolitionist activists. Among the "knowers", some of whom are also decision makers, the power struggle has moved in favor of abolition. As a ball changes side, today it is more and more legitimate to allow the abolitionist arguments to penetrate the public opinion.

SOCIAL DEATH RATHER THAN PHYSICAL DEATH: THE CHOICE OF A LIFE SENTENCE¹⁷⁰

Betty Wilkinson, attendant at the prison museum in Huntsville, retired from her position in the unit where the executions take place, confesses: *"So we realize that now is the moment to stop killing. Life without parole is sufficient, even for the worst crimes"*. This frequent remark demonstrates that in spite of all highly contestable aspects of life incarceration without the possibility of parole, this sentence, that for a long time did not exist in the penal tools, justified in the minds of some the existence and the use of the death penalty, devised to protect society forever from the potential dangers of an individual to whom the possibility of changing is denied. With this new sentence that Texas was the last state to adopt in 2005, conjugated to the reinforcement of the tightness of its prisons, as since then, new units have become impregnable fortresses where escapes have virtually become impossible, the public opinion is now assured to never meet on the streets those responsible of the worst crimes committed. Collective fears thus begin to satisfy their appeasement with definitive incarceration.

In the United-States, as many retentionist countries, when a police officer is killed, one has a strong chance of being sentenced to death. There is a sanctification of the police force that forbids any criticism and discourages any rebellion. Robert R. Bryan, criminal defense attorney in San Francisco, explains: *"The authority of the police also comes from that, because of it they easily become untouchable, like the organs of another society, where there would be citizens and supermen whose lives would have a higher price"*. It is a comparable phenomenon that inspires the veneration for firemen and other fire fighters, or the one surrounding soldiers sent to defend the United-States values in Iraq or in Afghanistan. Patricia Lykos, district

¹⁶⁸ This indulgence probably never applies to death row prisoners who stigmatize through their cases and themselves an indelible ill, like serial killers, pedophiles and other sexual criminals.

¹⁶⁹ The Californian attorneys for Mumia Abu-Jamal, incarcerated in Pittsburgh and for Kevin Cooper, incarcerated at San Quentin in San Francisco, rise up against such articles by Madame Saunders against their clients, who never bothered to investigate the cases or to interview them.

¹⁷⁰ Life sentence without the possibility of parole: no circumstance will ever justify a release. This sentence also constitutes torture, suppressing all freedom and maintaining a human being locked up in a cell without any other perspective. Although the physiological life is maintained, the social death is real, and this sentence, which limitless authority suffers no indulgence or exception, reduces humanity to submission.

attorney for Harris County in Houston, Texas, justifies it in these words: “*The value of life is more important when one kills a police officer, because it is society that is attacked. No society can tolerate that the life of one who saves lives be attacked*”. Still, recently in Texas, the murderer of a police officer was spared the death penalty. In an unprecedented way, a life sentence was favored over the execution¹⁷¹. This event is one of the signs underlining a progressive slide from a death sentence to a life sentence, which application can however, in many cases, reveals itself as abusive too. Faith in the law and the institutions where justice is concerned induces a de facto and overall dubbing. The day the death penalty will no longer be legal, the day when this sentence will have disappeared from the law, then, despite those who will nostalgic and the reactionaries, the American people will be satisfied with the application of the law, when it will only recommend a life sentence. So, since the possibility of life without parole, the number of death sentences in Texas dropped notably, particularly in the too famous Harris County¹⁷².

On several occasions, it was mentioned, although timidly, that some retentionists fear the wind is turning. The slow march towards abolition is moving faster, there will be, for some, an identity issue to be perceived as an assassin or as barbaric. Thus some men refuse to endorse the role of the execution in fear of being one day sued for having killed. This young man met in Huntsville, Texas comments the situation for the executioners: “*People practice executions here, kill more than 30 people per year and they’ve never been in trouble. But one day it will change and some know it, it’s beginning to scare them*”. This latent awareness, which certainly contributes to the overall signals pointing here and there, piece by piece, the cracks in the cultural edifice on which the death penalty rests in the United-States. And because it is often reassuring to bring into perspective, Americans remember the struggle it was to abolish slavery, and, for the civil rights movement to reach its conclusion, from the secession war to Martin Luther King and his descendants. This struggle is long and tedious, each one knows it. In the same manner, it organizes itself unequally. A certainty remains, although tied to the abolitionist bodies, the aim to move forward the civilization process with the respect of human dignity. This interpretation is expressed by Rick Halperin when he summarizes: “*I know the death penalty will end in this country, the process has already begun. We are not talking about if, but about when. I think it’s going to be a long struggle, we are going to kill a lot of*

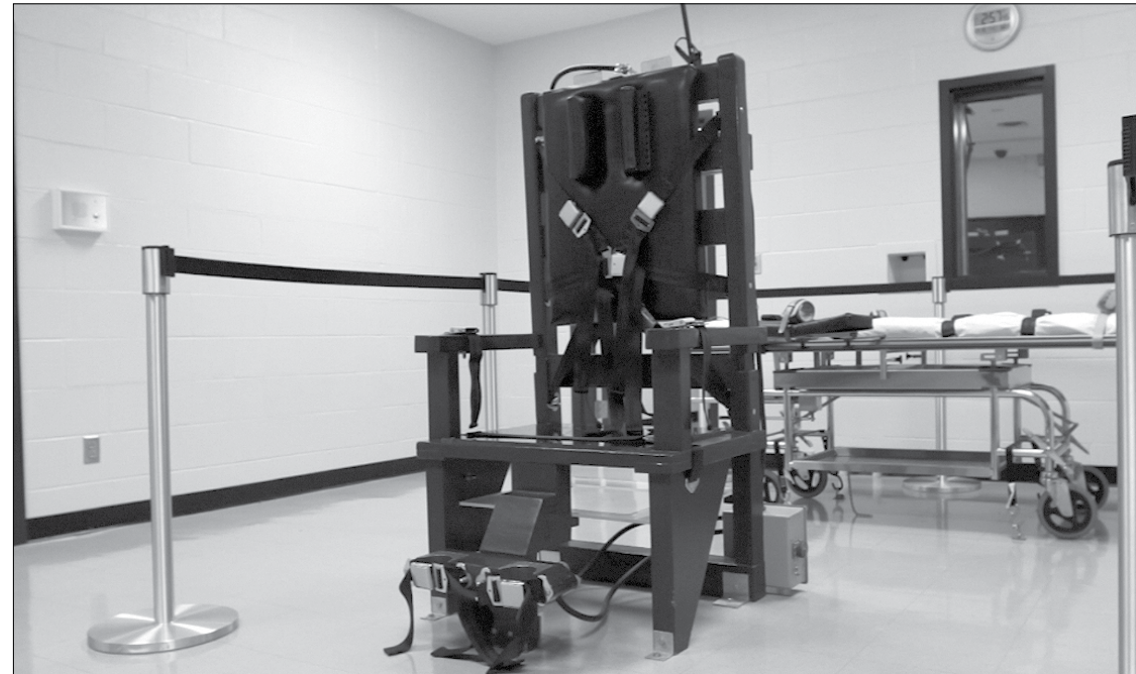
people before, but we are going to reach a point, where we will have to look at our past. We are sitting here in 2010 and contemplate America which practiced slavery and we are falling off our chairs. Had did this country maintain slavery for 246 years and believe it was fair? That’s what everyone thought. In those days, it was the norm, as the death penalty is for us. But societies evolve, they progress at a certain pace, as slow as it is frustrating. What will happen with the death penalty in this country, sooner or later, we’ll reach a point when people, as a whole, will accept the idea that killing people is not good for our country. But we are not there yet”.

This optimism is equally shared by David Atwood, founding member of the Texas Coalition, when he adds: “*Our goal is to have more and more citizens against the death penalty, to educate them. When we will have enough of them, the politicians will deal with this question. It’s a citizen movement that will change things. The movement for civil rights in the 60’s was quite similar in fact. It came mostly from the South. Before the abolition of slavery, it was also the citizens against slavery. It’s a tough struggle. The abolition of the death penalty is a new step toward civilization, toward humanity. And I think we will get there.*” In the meantime, Robert R. Bryan explains that: “*the death penalty is a political need (...) that demonstrates how much of a failure our society is. Such violence is very unfavorable to the young ones, the state gives a bad example. We should be able to do better, to have faith in human beings, to be more ambitious for our country, to wish for a better justice*”.

171 In Texas, the two murderers of police officers have been sentenced to 60 years in prison on Monday June 7, 2010. Friday, Andres Nava-Maldonado and Xiomara Mendez-Rosales were found guilty of murder and criminal activities for having killed a Houston police officer, Henry Canales.

172 The county for the city of Houston, famous for being the biggest provider of death row prisoners in Texas.

ABOLITION STRATEGIES



THE ARGUMENT ABOUT THE COST OF THE DEATH PENALTY

Politicians appear fallible as soon as they show indulgence. On the contrary, they must appear strong, symbols of the power and therefore promote an always more punitive system. Hence the necessity to find abolitionist arguments distant from any ideology, that would be incarnated specifically in a critical reflection on the cost of the death penalty. More and more articles in the newspapers denounce the cost of capital punishment in the United-States. In reality, because of the appellate process leading to a continuous back and forth between the different jurisdictions of the state and their equivalent on the federal level, added to the numerous investigations and expert witnesses to support the accusation or the defense, the cost of a death sentence, in some states, has become exorbitant. The California death penalty system costs taxpayers \$114 million per year beyond the costs of keeping convicts locked up for life. Taxpayers have paid more than \$250 million for each of the state's executions¹⁷³. In Texas, the average cost for a capital case was \$2,3 million in 1992, almost three times the cost of incarceration for one person in a single cell at the highest security level for 40 years¹⁷⁴. Norman Hile analyses the situation as follows: "*California is in a state of bankruptcy and we would save millions of dollars without the death penalty. It is an easy argument, but it doesn't work either. We saved money everywhere, on education, on roads, in spite of this, they don't want to save hundreds millions of dollars with the death penalty. Me, I'd rather see money go to schools or to the healthcare system*". Professor Shatz from the University of San Francisco, adds: "*Since 1976 California spent from 3 to 5 billion dollars more than if we'd had no death penalty, to simply execute 13 people in 32 years, while we have no money left, notably to improve public safety*". Based on this argument, and on several occasions, Ohio, Montana and Maryland recently attempted to introduce bills to abolish the death penalty with the main goal to stabilize public funds, currently in a very precarious equilibrium. Colorado and Connecticut are probably very close to an abolition process. However, to this day, these initiatives failed even if they attest of the political will, combined with the emergence of a public debate¹⁷⁵, although mostly nourished by financial motivations rather than

173 Tempest (Rone), "Death row often means a long life", *Los Angeles Times*, March 6, 2005.

174 Hoppe (C.), "Executions cost Texas millions", *The Dallas Morning News*, March 8, 1992.

175 "The costs to maintain a capital punishment system are enormous. In this time of tight budgets and painful cost cutting, Illinois has wisely moved to redirect its tax dollars to provide true support to the surviving families of homicide victims. (...) Maryland, like Illinois, has exhaustively studied its death penalty. We know the system can't escape human error, that it is racially discriminatory and applied unevenly around our state. It doesn't even deter murder but costs us about three times as much as locking murderers up for

by ideological ones, but nonetheless bearer of hope for the months and the years to come¹⁷⁶.

Meanwhile, the death penalty in most states resembles a life in prison that ignores itself. It is only a symbolic sentence, a totem raised by politicians, that legislators have difficulty to develop, and for two reasons. First of all, a very high crime rate does not bring a favorable context, and secondly, the political courage is lacking not only at the leaders' level, but also at the level of legal power since state judges are elected on the same campaign criteria: be tough on crime in all circumstances. David Atwood eventually admits that one of the obstacles to abolition in his country is that there is no "*national leader to carry the abolitionist project. Not even Barack Obama*". He adds: "*All the politicians fear for their career if they speak up*".

Western democracies no longer face this problem because abolition is acquired and legally locked on all levels of the hierarchy of legal norms: the national and supranational scale. In the United-States, utilitarian arguments must be developed, such as those that worked in New Mexico and that are now fully developed, notably in California, concerning the cost, according to the efficiency gage of the American say: money talks.<?>

The criticism of this approach, supposing it would be exclusive, is that it omits the founding of abolition incarnated in the prohibition to deny the right to life. However, in practice and to steer clear from any form of naïve optimism, American abolitionists must play the game of their own adversaries, specifically in developing a pragmatic vision, deprived of ideology and morals, leaning on the financial question. This point of view is criticized by those who fear that politicians set up a lighter penal process that would, in the long term, allow for the sentence and the execution without the shackles of numerous appeals, which some states are currently considering. Following the political drifts, passed and probably to come, this fear is probably not totally unfounded, and turns this argument, in the current economical context, into a risky angle that reminds us of a key question: can abolition afford to do without political courage?

life. If the General Assembly fails to debate and vote on death penalty repeal in 2011, another year of waste lies ahead. At least six capital prosecutions are now underway in Maryland. They will consume resources we desperately need to prevent crime, keep our prisons safe, and help victims. The time has come to just end it.", Stephanie Gibson (associate professor at the University of Baltimore), "Time to end death penalty is now", *The Baltimore Sun*, 20 mars 2011.

176 "For the second time in the past four years the bill to repeal the death penalty and replace it with life in prison made it through the Senate but didn't get by the Montana House judiciary committee, which voted Friday to table the bill.", Bill Graveland, *The Canadian Press*, March 9, 2011.

177 L'argent est roi.

From a strategic perspective, the economical principle of the financial argument in favor of abolition suffers from another intrinsic criticism. Because in basing abolition solely on circumstantial arguments, fluctuating with the course of time, abolition cannot develop solid bases, especially in a society perpetually renewing itself. As long as the idea will not translate into a non-derogable principle, the abolition acquired will remain precarious, tightly tied to a conjunction of events, and therefore to a potential instability. What justifies abolition one day, could justify the opposite the next. Which leads Rick Halperin to say: *"I am for abolition based on moral arguments rather than financial, so there is a culture of abolition. Because one day the economy will get better and one will be able to say: 'We have money, let's kill again!'"* Without dismissing this financial argument that speaks to the largest number, the necessity remains in a second act to access an irreversible cultural, legal and political lock.

With this wait, and given the retentionist strengths present, numerous American abolitionists promote a struggle without limitations or distinctions of weapons, with the goal to unite all those, for one reason or another, would be in a position to move the current lines. At the extreme, it can even be an association, that some might consider against nature, with the police force that retains, at the heart of American society, a very important symbolic representation. According to a recent study by the Death Penalty Information Center in 2009¹⁷⁸, police officers, still for practical reasons at the opposite of any ideological or moral grounds, appear more and more opposed to capital punishment that they regard as useless and dangerous. 57% believe that the death penalty does not act as a deterrent¹⁷⁹, and only 2% believe that problems with public safety are due to a too moderate use of the death penalty¹⁸⁰. And because police officers, whose aura is skillfully supported by the central power, only understand their own language, their complicity in the abolition process entails to allow them to make theirs a vision of public safety without capital punishment. It is therefore urgent to present abolitionist arguments as soon as they arise, before they become totally reframed within the routine of their professional existences.

178 The report «Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis», National Poll of Police Chiefs Puts Capital Punishment at Bottom of Law Enforcement Priorities, Death penalty information center, 2009.

179 The deterrence effect is also rejected by other corporations in the USA. According to a survey of the former and present presidents of the country's top academic criminological societies, 88% of these experts rejected the notion that the death penalty acts as a deterrent to murder. (Radelet & Lacy, 2009).

180 According to this poll, the elements disturbing public safety are tied to the lack of resources (20%), to the use of psychotropics (20%), to family problems (14%), to the lack of adequate programs for the mentally ill (12%), to the backlog in the courts (7%), to unsuccessful indictments (6%), to the generalized possession of weapons (5%), to the existence of gangs (3%), to an insufficient use of the death penalty (2%).

TO BETTER ASSOCIATE THE VICTIMS

The victims express their feelings toward death row prisoners without knowing what they live on a daily basis. To them, the murderer is just a name associated to a sentence. In abolitionist countries, the *deserved* suffering is materialized behind the word *prison*, and behind the expression *death penalty* in retentionist countries. In one case, ones await the subsequent release, in the other the execution. These are two opposing worlds that would benefit from meeting. Like restorative justice than one could find in some African countries before the colonization era, American society would also find a benefit in organizing meetings between the culprits and the victims' families. It would be about establishing on one side a possible narration beyond the legal speech, and on the other to exist beyond the actual crime. Some states have already set up mediation programs for the prisoners and their victims or the victims' families. In Texas, it is included in the code of criminal procedure. Still, even today, victims' families are denied by departments of corrections when they indicate their desire to meet with the condemned. Although more than elsewhere, and because the death penalty appears as a need in the arsenal of a vengeful justice, to favor contacts between the victims' families and the culprits, would appear a pacifying device to defuse the determination to kill and any other form of retributive violence. It is what this young woman, who came to witness the execution of Michael Perry, the young murderer who killed her mother and her brother, confronting in vain her own suffering to the one of the murderer's mother, states: *"In fact, I am sorry for Michael's mother. I imagine it must be very hard to watch her son executed this afternoon, with his arms strapped on the cross-shaped gurney. Like Jesus. But she never tried to contact me either. Did she ever imagine what we went through all these years? The losses caused by her son's actions?"*

Rather than having a criminal policy opposing, according to a locked Manichaeism, the good ones, those who suffered, and the bad ones, the ones who caused the pain, it would be effectively ambitious to think of a way to bring these two entities together. Given the Christianization in the United States, the monotheist religions could constitute one of the vectors of this reconciliation, like the precepts of the New Testament, of the forgiveness of Jesus, but also of the very symbolic reconciliation between John Paul II and the man who attempted to kill him, Mehmet Ali Agca. The sterility of the Manichean opposition, as much in its incapacity to appease consciences and feelings, to establish a shield against recidivism, as in its perversity to maintain a hateful opposition in the heart of society, certainly is more

costly on the social level than a real attitude in favor of restoration and reconciliation. When one associates the actual crime, the suffering of the death row prisoner and his relatives on one hand, and the suffering of the victims' families on the other, one realizes that the death penalty is a non-answer, a non-solution, a strange object about which one does not know whether it addresses the institutionalized vengeance of a form of violence that the law would be in charge of, or whether it addresses the illusion of an efficient sentence, a redeemer to which one attributes deterrent virtues.

In this manner, because the United-States displays itself as a Nation of pioneers, civil society should favor this idea of bringing together and promote it. After the executions, it is striking to note the correlation between the lack of remorse from the death row prisoner and the need to kill for the victims' families. Yet, as discussions develop, it appears that some and others would have benefited from the appeasement of progressive exchanges, where indispensable words of remorse and contrition must be laid out, expressed and heard. The widow of a police officer, deceased after an attack by an armed criminal in Utah, explains a few days after the execution: *"I forgave him a long time ago, and I think everybody else in the family did too, except maybe one of my daughters. (...) But I believe he owed me an apology. He could have written to me, or ask to speak to me on the phone. I would have wanted to meet him, to talk to him face to face, not on the phone, but looking into each other's eyes. The department of corrections never allowed me and never asked him. It's a shame, I'm sorry for him and for his family, but I feel at peace with that. It's over now."* After the years from the actual crime to the execution, the remorse expressed is in fact expected more than death itself. From these testimonies emerges the need to meet, an expression of hatred, but also a hidden desire for getting closer, to stop the misunderstandings that distance human beings from each other, while everything else would bring them together. It is the price for the appeasement of individual and collective passions in society. It is therefore the path of civilization. This other woman shares her paradoxical emotions after the execution of the murderer of her mother and brother: *"I wanted to witness it for my family, and also I wanted to hear his words of apologies for what he did 15 years ago. (...) At the same time I found it weird that someone so young should be killed."* She adds: *"It wasn't what I was expecting. In my nightmares, this guy was a monster. In fact, he was just a kid, crying for his mother. It scared me when I heard him speak just before the first injection. Before, I thought he should have received a life sentence, no death penalty. But today, the fact that he didn't apologize to the victims, for us it really turned him into a monster. So I told myself he got what he deserved".*

On the one hand, the suffering of the victims must be expressed to the one responsible for the crime. On the other, the anamnesis of the death row prisoner can help to never omit the human dimension of the one whose death is desired. Finally, no matter what we say, time acts. Enemy or friend, time softens the emotions, affects the perceptions and the temperaments. Death row prisoners define themselves as different after years on death row. The one executed is often not the same person as the one who was sentenced.

If it were to be organized by associations, assisted by the law and the institutions, this bringing together would be salutary on more than one account. It would offer the comfort to dwindle the regrets on both sides. It would give a meaning to intrinsically imperfect existences. It would orientate society toward a response to the instincts of violence. In all cases, this ambition constitutes a benefit and a wealth. And beyond the pragmatic implication of religions, of all educational or cultural processes, it is society globally, secular or religious, that should promote this philosophy, saving lives, psychological suffering and social violence.

Independently from the research on a criminal justice system founded on the mediation of opposed stakes, several American organizations¹⁸¹ promote abolition underlining the point of view of the victims. To bring an appeased speech, of which one commonly presupposes a vengeful purpose, appears to be very efficient when it is about contradicting the very purpose of the death penalty that is defended so much across the Atlantic: the satisfaction of the victims. These activists, often tied by the pain of the loss of a loved one to murder, display their conviction and demonstrate that the death penalty does not, in any way, represent a desirable outcome to their mourning. Their speech is all the more legitimate because it destroys the arguments of the pro-death penalty who regularly trade with the horror of the true victims of crimes, to argue in favor of a sentence mostly regarded as the imperative criminal remedy. The voices of victims, that cannot be substituted to any others, heard through a number of organizations, appears to be more and more efficient in terms of lobbying in the campaigns to raise awareness in favor of abolition. This allows us to lay down the basis of a reflection on forgiveness, the respect for life and the acceptance of the loss of a loved one that will never be compensated by the execution of another. This point of view also allows us to realize how much an implacable machinery the death penalty is, tirelessly creating more victims, particularly among the relatives

181 To name a few: Murder Victims Families for Reconciliation (www.mvfr.org), Journey of Hope... From Violence to Healing (www.journeyofhope.org) or Murder Victims Families for Human Rights (www.mvfrh.org).

of the person the state is about to execute. This is what Brandie Gardner attests when she states, on the day of her father's execution: "*Tonight the real victims, it's us!*" Through this perspective, it appears suddenly too paradoxical to sanction a crime by another crime, which summarizes the slogan of the abolitionists: "Why do we kill people to show that killing is wrong?"

CONCLUSION



To review the mechanisms that perpetuate the death penalty in the American democracy inevitably leads to identifying situations that reason does not emerge from without admitting that sometimes, according to the circumstances, individuals cannot be looked at under the prism of Manichaeism. Tammy Kirk, the day after the execution of her father's murderer, describes her perspective: *"I am sorry for the daughter of Ronnie Lee Gardner. It must be hard to lose one's father. But we have nothing in common with this family. Them, they are all criminals. Almost... I mean, in comparison to us, they have nothing to do with us"*. Admittedly, evil can be on the side of the criminals, whose passed ignominy remains devoid of regrets. These people, most often, carry with them a chaotic background, made of emotional voids and irreversible traumas, a combination of elements that, if it does not excuse, at least explains and sometimes incites a feeling of pity and compassion.

In a more aggressive way, evil appears to be more incarnated in the corrupted attitudes of these individuals, often privileged, who have the power to judge, to sentence and to execute, and who use this power in spite of the law, circumstances, popular reason, to instrumentalize executions for personal gain. These ones advance without morals at all in the police, legal or political system, drawing a benefit of notoriety, money and power from the killing of their peers, under the cover of fallacious and indefensible arguments. Steve Hall, director of the organization StandDown Texas Project¹⁸² explains: *"Judges or district attorneys are elected on the basis of their severity. So, many district attorneys refuse to grant DNA testing to bar the idea that the system could have been fallible and therefore dangerous for the innocents. Others accept, it is the case in Dallas County where a Conviction Integrity office has been set up to track the cases of wrongful conviction. So there are unbelievable disparities that nobody discloses. (...) I remember a prosecutor who had an affair with the district attorney. They agreed to handle the accusation and the sentencing. We only found out last year, but executions had already taken place. (...) It only makes a masquerade of justice"*.

The social positions of those elected render the accusation/defense relationship an inequitable and inextricable situation, abusing daily the ignorance of a population whose naivety is often skillfully perpetuated. Their official actions feed the lowest instincts found in the human species, generating fear and paranoia, while their officious actions are advantageously hidden by the power of influence and intimidation at their disposal. If they

were exceptions, mentioning them in this report would be outrageous. But one must admit that among the police officers, the elected ones in the political or legal field, corruption rules in the United-States, with multiple faces; and each time it is used, it attests and confirms what we cannot forget: the power to punish and, all the more so, the death penalty, constitute first and foremost a political power. The idea of justice being most often the make-up of dirty deeds, a wordless language that talks to the masses of the poorest and the less educated. This big illusion develops itself in the context of a violent society, made of precariousness and the fear of tomorrow. A society that hardly forgives, where everything is a matter of struggle or individual battle, prohibiting all that would come close or not to the idea of collective and state solidarity.

Indeed death rows are not full of innocents. Some of them have committed horrible crimes. Naivety does not serve the abolition cause. When one looks closer, it still is likely that the authors of the worst ills in American society are not necessarily the ones found on death row. With luck, sufficient funds and networks, the privileged have the means to escape the death penalty. It is something that the population can no longer ignore since the high profile case of O. J. Simpson, acquitted after having been charged for a double murder that would have normally lead a John Doe to the execution gurney. Here is the whole dimension, paradoxically unfair of the American criminal justice system; a morbid injustice from the instant the right to life is being challenged. And it is hard to see how society could fix these forms of inequities. This awareness should alone contribute to consider abolition as a mean of relief. In this pattern, except for those who are part of the most affluent and richest 20% in American society, to be in favor of the death penalty equates to acting against one's own interests. In the United-States, as elsewhere, only the poor, the ignorant and the voiceless are executed. It is also true, as stated by Alexis de Tocqueville¹⁸³, that the United-States is undoubtedly more attached to liberty than to equality.

Up until recently, the rule of the civil state in the United-States required that the death certificate showed the mention "homicide" or "legal homicide". This irony recalls the very essence of the execution. Retentionists suffer from this denial of reality, those who refuse to assimilate the death penalty to the action of killing; although the words have their importance. Even if they are right to affirm that it is the execution of a sentence, it is also unquestionably a homicide: "a killing of one human being by another"¹⁸⁴, that one can

182 StandDown Texas Project: Identifying and Advocating Best Practices in the Criminal Justice System. A Texas-Centric Examination of Current Conditions, Reform Initiatives, and Emerging Issues.

183 Democracy in America, Alexis de Tocqueville, Publisher Signet Classics, September 5, 2001.

184 Merriam-Webster Dictionary, 2010.

describe with the verb to murder: “to kill (a human being) unlawfully and with premeditated malice¹⁸⁵”. These words are scary and appear devoid in the eyes of the pro-death penalty who see here the intrinsic expression of the abolitionist activism. A woman, met by coincidence in a restaurant on July 4th, explains: “You are not allowed to say ‘murder’ to name what the law calls ‘to execute’. It is a legal decision to be implemented”. These words are not however erroneous. They transcribe a reality that the retentionists do not want to admit publicly, while behind the scenes of the execution chambers, the department of corrections, in some states, will write the mention: “state-sanctioned murder” on its logs.

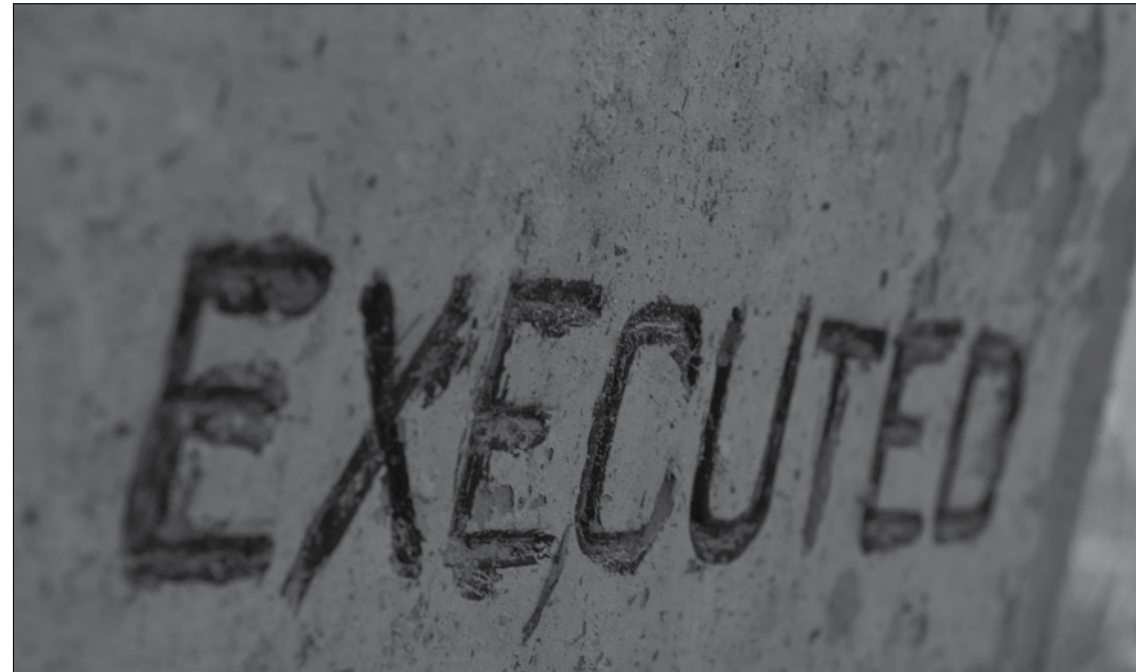
To conclude this curiosity with a pessimist vision would be meaningless. The closer the obvious victory of the abolitionist movement on national legislations, to see that even developing countries are successfully improving their criminal justice systems, it is probable that the United-States will no longer continue to isolate itself from the rest of the world while refusing a major evolution of civilization. A global reputation depends on it, undoubtedly more perceptible by the people, but that the elected ones, in the legal or political field at the federal level, will reasonably not persist in ignoring without taking the measure of the consequences on the diplomatic and international level.

There is also the United-States of strengths, enthusiasms and energies, able to move mountains. The American abolitionist movement is not so representative by its numbers but is nonetheless vigorous. On one hand NGOs do remarkable work. Their somewhat recent activity has already enjoyed some successes. They must, however, remain vigilant about the fact that the struggle can only be won on the condition to remain united behind an invisible cause, no matter what the cases at stake. Because, in contrast, with a criminal justice system open to criticisms, it is also around the integrity of the abolitionist actors that the American population can consider the encounter. On the other hand, teachers, researchers and a host of underpaid attorneys, often the last interlocutor of the forgotten ones on death row, work against a quest for profit, although instituted as an official religion. All make their professional paths a crusade to change their country, so that justice be worthy of the name and that humanity triumphs over barbarity, as a young student from Professor Shatz at the university of San Francisco attests: “*The death penalty is arbitrary, and touches specific categories of citizens, that’s why I want to be an attorney for a public defender office*”. Each one keeping in mind that justice and the right

to punish require a philosophical approach, a culture and ethics. It is the unique way to distinguish this institution of torture and arbitrary killings still present in authoritarian regimes that the United-States is the first to denounce throughout the world. But one must admit here or elsewhere, to be the lawman is one’s own country is not always the easiest ambition.

¹⁸⁵ Merriam-Webster Dictionary, 2010.

APPENDIX



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Death row questionnaire for semi-directive

Detail of the questionnaire:

Date:

Location:

In capacity of:

Name:

Typology

1. Sex:
2. Race:
3. Age:
4. Religion:
5. Marital Status:
6. Children:
7. Date & Location of sentence:
8. Current state of appeals:
9. Do you agree with the charges?:
10. Offense:
11. Did you know that these charges could lead you to death row?
12. How long have you been incarcerated?
13. How long were you in prison before your trial?
14. How long have you been on death row?
15. Had you been sentenced prior?
16. Studies:
17. Employment before your arrest:
18. Do you have relatives in prison?

Living Conditions on Death Row:

19. Can you describe a normal day?
 - a. Waking-up:
 - b. Meals:
 - c. Sport:
 - d. Visits:
 - e. Indoors or outdoors:

20. What are the difference with regular incarceration?
21. Do you meet other death row prisoners?
22. Can you practice a hobby? Can you study?
23. Can you describe your cell?
 - a. Size?
 - b. Your possessions?
 - c. Toilets/Shower?
 - d. Overall amenities?
 - e. What do you miss the most?
24. What are you allowed to do?
25. Can you possess and use money?
26. How do you evaluate the living conditions on death row?
 - a. What is the worst aspect?
 - b. What do you miss the most?
 - c. How do you define those needs?

Health

27. Do you think you are in good health?
28. Do you think the department of corrections cares about your health?
29. Do doctors prescribe you psychotropic medication?

Violence in prison

30. Have you suffered from violence in prison or on death row?
 - a. From other death row prisoners?
 - b. From prison staff?

Visits – Relationship with the outside world

31. Do you have visits?
 - a. Your family?
 - b. Your attorney?
 - c. How often and for how long?
 - d. Do you suffer from not having any contacts with your wife or with a woman?
32. How do you compensate the lack of tenderness?
33. Do you have access to the telephone?
34. Can you receive mail?
35. Do you receive money, clothes, books?
36. Do you have access to the media: TV, radio, newspapers?

Access to justice

37. Did you choose your attorney?
38. What do you think of his work?
39. Did you pay him? If so, was it expensive?
40. Did you confess?
41. Do you have regrets regarding the charges against you?
42. Did you apply for a pardon?
43. Did you ask to prove your innocence?
44. What did you think of your trial?
 - a. How long did it last?
 - b. Were you able to subpoena the witnesses you wanted to testify?

Death Penalty

45. Do you often talk about executions?
 - a. Yours?
 - b. Others?
46. How do you think society considers death row prisoners?
47. Did you become friend with others on death row who have since been executed?
48. How would you describe your relationship with the prison staff?
49. How do you know about upcoming executions?
50. Do you often think about your execution?
 - a. How do you imagine the moment?
 - b. Who would you like to invite?
51. How much did you know about the death penalty before you were sentenced to death?
52. Were you for or against the death penalty before being sentenced to death?
53. What is your opinion today?
54. Do you think the United-States will abolish the death penalty?
55. Can the death penalty be replaced and how?
56. Do you about the existence of an international abolitionist movement?
57. What do you expect from your appeals?
58. Do you think you are going to be executed?

Are you sometimes impatient to be executed?

59. What do you fear?
60. Have you considered suicide?
61. Do you believe in God?
62. Can you meet with a priest?

Test

63. What do you imagine or feel when hearing the following words:

- a. Freedom
- b. Justice
- c. Desire
- d. Tenderness
- e. Prison
- f. Pleasure
- g. Tomorrow
- h. Emotion
- i. Woman
- j. Me
- k. Society
- l. Family

64. How was this interview?

- a. Did you have to lie?
- b. Would you like to add something?

The Bureau of Justice Statistics, Capital Punishment 2009, (December 2010) lists the following as capital crimes, by state:

Alabama - Intentional murder with 18 aggravating factors (Ala. Stat. Ann. 13A-5-40(a)(1)-(18)).

Arizona - First-degree murder accompanied by at least 1 of 14 aggravating factors (A.R.S. § 13-703(F)).

Arkansas - Capital murder (Ark. Code Ann. 5-10-101) with a finding of at least 1 of 10 aggravating circumstances; treason.

California - First-degree murder with special circumstances; sabotage; train wrecking causing death; treason; perjury causing execution of an innocent person; fatal assault by a prisoner serving a life sentence.

Colorado - First-degree murder with at least 1 of 17 aggravating factors; first-degree kidnapping resulting in death; treason.

Connecticut - Capital felony with 8 forms of aggravated homicide (C.G.S. § 53a-54b).

Delaware - First-degree murder with at least 1 statutory aggravating circumstance (11 Del. C. § 4209).

Florida - First-degree murder; felony murder; capital drug trafficking; capital sexual battery.

Georgia - Murder; kidnapping with bodily injury or ransom when the victim dies; aircraft hijacking; treason.

Idaho - First-degree murder with aggravating factors; first-degree kidnapping; perjury resulting in death.

Illinois - First-degree murder with 1 of 21 aggravating circumstances (720 Ill. Comp. Stat. 5/9-1). [Illinois abolished the death penalty in 2011]

Indiana - Murder with 16 aggravating circumstances (IC 35-50-2-9).

Kansas - Capital murder with 8 aggravating circumstances (KSA 21-3439, KSA 21-4625, KSA 21-4636).

Kentucky - Murder with aggravating factors; kidnapping with aggravating factors (KRS 532.025).

Louisiana - First-degree murder; treason (La. R.S. 14:30 and 14:113).

Maryland - First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied.

Mississippi - Capital murder (Miss. Code Ann. § 97-3-19(2)); aircraft piracy (Miss. Code Ann. § 97-25-55(1)).

Missouri - First-degree murder (565.020 RSMO 2000).

Montana - Capital murder with 1 of 9 aggravating circumstances (Mont. Code Ann. § 46-18-303); aggravated sexual intercourse without consent (Mont. Code Ann. § 45-5-503).

Nebraska - First-degree murder with a finding of at least 1 statutorily-defined aggravating circumstance.

Nevada - First-degree murder with at least 1 of 15 aggravating circumstances (NRS 200.030, 200.033, 200.035).

New Hampshire - Murder committed in the course of rape, kidnapping, or drug crimes; killing of a law enforcement officer; murder for hire; murder by an inmate while serving a sentence of life without parole (RSA 630:1, RSA 630:5).

New York* - First-degree murder with 1 of 13 aggravating factors (NY Penal Law §125.27). [New York abolished the death penalty in 2007]

North Carolina - First-degree murder (NCGS §14-17).

Ohio - Aggravated murder with at least 1 of 10 aggravating circumstances (O.R.C. secs. 2903.01, 2929.02, and 2929.04).

Oklahoma - First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances; sex crimes against a child under 14 years of age.

Oregon - Aggravated murder (ORS 163.095).

Pennsylvania - First-degree murder with 18 aggravating circumstances.

South Carolina - Murder with 1 of 12 aggravating circumstances (§ 16-3-20(C)(a))

South Dakota - First-degree murder with 1 of 10 aggravating circumstances.

Tennessee - First-degree murder with 1 of 15 aggravating circumstances (Tenn. Code Ann. § 39-13-204).

Texas - Criminal homicide with 1 of 9 aggravating circumstances (Tex. Penal Code § 19.03).

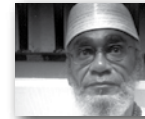
Utah - Aggravated murder (76-5-202, Utah Code Annotated).

Virginia - First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31).

Washington - Aggravated first-degree murder.

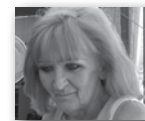
Wyoming - First-degree murder; murder during the commission of sexual assault, sexual abuse of a minor, arson, robbery, escape, resisting arrest, kidnapping, or abuse of a minor under 16.

List of persons quoted in the report



Abu Ali Abdur'Rahman is a 54-year old African-American, whose execution was scheduled in Tennessee on June 18, 2003. He was sentenced to death in 1987 for the murder of Patrick Daniels, murder committed on February 17, 1986. On June 6, 2003? Abu-Ali was granted a stay of execution by the 6th Circuit Court of Appeals, 36 hours before his scheduled death. He has spent 39 years of his life in prison. There is mitigating evidence as to the traumas he suffered during his childhood when he was diagnosed as suffering from behavioral problems and from post-traumatic stress.

A. R. is 63 ans. He has been on death row at Parchman in Mississippi for ten years. He was sentenced to death for a crime he claims he did not commit. He is asking for DNA testing to prove his innocence. He was a taxi drive in New Orleans. Today he suffers from heart related diseases. His wife died while he was on death row. He was not opposed to the death penalty prior to his arrest.



Barb Kirk is one of Veldean Kirk's daughters. She is a mother and lives in the suburbs of Salt Lake City. She accompanies her mother on the night of Ronnie Lee Gardner's execution, the murderer of her father Nick, but she does not witness his execution.



Brandie Gardner is Ronnie Lee Gardner's daughter. He was executed by firing squad in the state prison in Salt Lake City, Utah. She witnessed her father's execution.



Cliff Johnson is a court appointed attorney in Jackson, Mississippi. He graduated at the University of Columbia. He represented notably Bobby Glen Wilcher, executed on October 18, 2006.



Curtis McCarty is 49 years old. He was exonerated and released in 2007, after having spent 22 years in prison, including 19 on death row, in Oklahoma for a crime, in 1982, he did not commit. McCarty was tried three times and sentenced to death because of prosecutorial misconduct and the false testimony of a forensic expert, Joyce Gilchrist, whose analysis secured at least two wrongful convictions that were later reversed based on DNA testing. The prosecution theory was based on a lie fabricated by the police's forensic expert and the forgery of an official FBI report with the complicity of the district attorney and the judge. He was released in May 2007 and in order to avoid a scandal, the forensic expert, who committed perjury, was not charged. Curtis was exonerated in 2001 thanks to the Innocence Project, but has not been compensated for this corruption by the criminal justice system. Since then, he has been involved in the abolitionist movement, speaks at conferences and is a photographer.



Dave Atwood is a retired engineer from an oil company. He spent more than 15 years working for the abolition of the death penalty in Texas. He is one of the founding members of the Texas Coalition to Abolish the Death Penalty. Active catholic, he helps his spiritual community to promote abolition. He is the author of *Detour to Death Row*.



Debra Saunders is a journalist for the *San Francisco Chronicle*. Her column, published three times per week, is often reprinted throughout the country and posted on townhall.com. Perceived by some as a conservative republican, Saunders fights regularly against the abolition of the death penalty.



Delia Perez Meyer joined the abolitionist movement 9 years ago when her brother, Louis Castro Perez, was accused of murdering three of his best friends in September 1998. She got involved with Amnesty International, she is a board member of the Texas Moratorium Network and works with Campaign to End the Death Penalty, as well as the National Coalition against the Death Penalty and the Texas Coalition against the Death Penalty.



Dennis Longmire is a professor of criminology at the Sam Houston University in Huntsville, Texas. He is a long time adversary of the death penalty. Since the resumption of executions in Texas in 1982, he stands outside of the Walls Unit on each execution day to show his opposition to this state-sanctioned murder. He says: *"I have protested here with a candle more than 450 times, that also means more than 450 executions!"*.

E.M. is a 37 years old African-American. He has been on death row at Parchman, Mississippi for five years for a crime he has always claimed he did not commit. He was a truck driver. He has three children whom he "misses terribly". He was in favor of the death penalty prior to his arrest and realizes today the flaws of the American criminal justice system.



Gloria Goodwin-Killian was released from prison on August 8, 2002 after having spent seventeen and a half years of a 32-year sentence for a crime she did not commit. Initially, the death penalty had been sought. During her trial and her incarceration, she always claimed her innocence. Today she is the executive director of a non-profit she founded, the Action Committee for Women in Prison (ACWIP), to support women in prison.



Golda Medina is the mother of a death row prisoner, on Texas death row in Polunsky for the past 15 years. She fights to get her son a new trial. For the richness of her speech and the charisma that transpires from her simplicity, M. G. participates to artistic creations in favor of abolition. She was photographed by Caroline Planque and is one of the main character in the film *Honk*¹⁸⁶.



Hank Skinner has been on Texas death row since he was found guilty of a triple murder in 1995. He has always claimed his innocence, although the courts have always denied him the opportunity to prove his innocence. In March 2011, the United-States Supreme Court granted him the right to use a civil procedure to try to obtain DNA testing. He is married to and supported by Sandrine Ageorges-Skinner, a French activist who is very involved in the abolitionist movement.

186 *HONK*: film documentaire sur la peine de mort aux États-Unis, réalisé en 2010 par Arnaud Gaillard et Florent Vassault, produit par Andolfi et Centrale Electrique, avec le soutien de l'association Ensemble contre la peine de mort (ECPM):



James G. Rytting is an attorney based in Houston, Texas. His work focuses mainly on post-conviction appeals at the state and federal level. During the course of his work on habeas corpus proceedings, he won a number of capital cases. He represented Jonathan Marcus Green for whom he obtained a stay of execution in June 2010.



Jamie & Tammy Stewart are the Veldean Kirk's daughter and granddaughter. Their grandfather and father was stabbed by Ronnie Lee Gardner in 1985. He survived the attack, but his health remained fragile and he died ten years later. Jamie witnessed Ronnie's execution by firing squad in Salt Lake City on June 18, 2010.



Jay Gross is the pastor of the Southern Baptist Church in Conroe, Texas. He graduated from the University of Houston (1976) and became a Doctor of Ministry in 1986 with the Southwestern Baptist Theological Seminary.



Jeanne Woodford is the former warden of the San Quentin prison in California (the first woman appointed to this position), the former director of the department of corrections in California. Today she is the executive director of the abolitionist organization Death Penalty Focus. Mother of a large family, she has always been opposed to the death penalty, although her duty led her to oversee four executions. She works for alternatives and social measures to reduce the crime rates.



Jessica Mederson is a young attorney with the business law firm Vinson & Elkins LLP in Austin, Texas. For the first time in her career, she accepted to work on a criminal case as pro bono attorney to represent Michael Perry, a young death row prisoner and handle his last appeal. Michael was executed on July 1st, 2010 in Huntsville, Texas.



Jim Willett is the former warden of the Walls Unit in Huntsville, Texas. Jim oversaw ninety-nine executions before retiring. He began his career as correctional officer to conclude his career as senior warden of the famous Wall Unit in Huntsville, where a majority of American executions take place. He is now the director of the prison museum in Huntsville.



Jo McCarty is retired from the Navy and General Motors. He is the father of Curtis McCarty, exonerated after having spent 22 years behind bars, including 19 on death row in Oklahoma. Jo sees himself as a patriot, he lived the American dream, and spends his retirement in a nice lot where the American middle class lives. However, his son's legal experience opened his eyes on the numerous lies that govern the criminal justice system in his country and the corruption of the police.



Jordan Smith is a journalist for the weekly magazine the *Austin Chronicle*, she writes specifically about legal and political issues. She is an expert notably on the analysis of the flaws of the American criminal justice system.



Kent Scheidegger is the legal director of the Criminal Justice Foundation in Sacramento since 1986. He wrote more than 100 briefs against death row prisoners whose cases were reviewed by the U.S. Supreme Court. He fights actively for the application of the death penalty that he defends as the necessary solution in the face of crime in his country.



Kevin Cooper is a 54-year old African-American, incarcerated on death row at San Quentin in California for the past 24 years. Previously he was incarcerated in other prisons that he escaped from. He is accused of a triple murder that he always denied. His guilt has raised numerous controversies.



Lindy Lou Wells is a mother from the middle class in Mississippi. Her republican and conservative views destined her to be in favor of the death penalty, until her participation in the trial of Bobby Glen Wilcher. Influenced by other jury members to vote in favor of a death sentence, she began to exchange correspondence with the condemned and became his only friend. She realized the dangerousness of the death penalty and the flaws in the criminal justice system, she then became an abolitionist.



Mumia Abu Jamal is a journalist and an African-American activist. He notably belonged to the Black Panther movement. He was sentenced to death in 1982 for the murder of Daniel Faulkner, a police officer from Philadelphia. Innocent for some, having acted in self-defense for others, his conviction scandalizes international opinion. A worldwide mobilization works for his release and/or for a new trial. For many abolitionists, he became a symbol. He has been incarcerated on death row in Pittsburgh for 29 years, where he continues to write about politics and the American society.



Norman C. Hile, partner in the Sacramento office of Orrick, is a business attorney. As pro bono, he became the attorney for Kevin Cooper's post-conviction appeals.



Patricia Lykos is the former chief judge of the Harris County Criminal District Courts, where she oversaw more than 2000 trials during 14 years. She was a law professor at the South Texas College and taught at the National Judicial College. In 2002, she was appointed by Governor Rick Perry to serve on the Governor's Council on Sex Offender Treatment. Today she is the elected district attorney for Harris County in Houston, Texas. It is the county that, before her election, secured the largest number of death sentences in Texas. She remains in favor of the death penalty but encourages a more moderate use of it.



Rick Halperin is the director of the human rights education program at the Southern Methodist University in Dallas. He has been board member of several organizations, including the National Coalition to Abolish the Death Penalty (NCADP), Human Rights Initiative, Capital Punishment Investigation and Education Services, etc. Since 1972, he is very active with the efforts and the struggle to abolish the death penalty in the United-States. He works with numerous abolitionist organizations, lawyers, leaders of several faiths, editorial board members, groups working for victims' rights, etc. He was president of the Texas Coalition to Aboish the Death Penalty (TCADP). He was elected to preside the executive board of Amnesty International from 1992 to 1993. Today he is a board member of the Journey of Hope... From Violence to Healing.



Robert R. Bryan criminal defense attorney San Francisco, has been lead counsel in a large number of criminal cases and specializes in capital cases. He is on the board of the United-States Supreme Court, he is a bar member in California, New York, Alabama as well as the federal jurisdiction. He is the former president of the National Coalition to Abolish the Death Penalty. In 2003, M. Bryan accepted to take on the case of Mumia Abu-Jamal. Their collaboration ended at the end of 2010. M. Bryan represents those accused of capital crimes in state and federal court, he defended numerous accused against whom the death penalty was sought.



Sandrine Ageorges-Skinner is a French activist who, for many years, has been fighting against the death penalty. She is a production manager in the film industry and co-wrote her first documentary about the death penalty in the United-States based on her personal and activist experience which ties her to Hank Skinner, sentenced to death, whom she began to write to in 1996 and later married. She is also very active in the American and international abolitionist movement, feeding a very precise expertise on the diversity of the legal mechanisms in each state. She is a board member of the organization Ensemble contre la Peine de Mort that she represents at the steering committee of the World Coalition against the Death Penalty.



Steve Hall is the director of the StandDown Texas Project which in founded, an organization dedicated to the identification and the promotion of good practices in the criminal justice system. He was the right arm of the attorney general in Texas from 1983 until 1991 and the administrator of the Texas Resource center from 1993 until 1995. He worked for the US Congress and elected in Texas, then worked as a consultant in public relations in the private sector, for non-profit organizations and politicians. He was also the communication director for two political campaigns in Texas. He is a former journalist, he received an award form the Associated press for his investigation work.

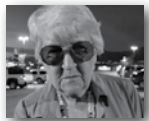
Steven Kreytak is a journalist for the *Austin American-Statesman*. He covers mostly legal issues.



Steven Shatz is a university professor and manages the project Keta Taylor Colby on capital punishment at the university of San Francisco, founded in 2001 in order to implicate law students in the interim reform and in the process of the abolition of the death penalty in the United-States. He supervises the internship program for the Southern states which, each summer, sends students to work with criminal defense attorneys in the South of the United-States. He was a lecturer at the University of Berkeley and visiting professor at the Institute of Oriental China to teach politics and law in Shanghai, as well as at the UC Hastings Law School. With Nina Rivkind, his wife, he wrote *"Cases and Materials on the Death Penalty"*.

T. M. is a 35-year old man incarcerated on death row in Texas for the past 16 years for a crime he claims he did not commit. Factually he believes that as a former gang leader in Houston, the police wanted to neutralize him. His trial appears to be a prime example of the flaws of the criminal justice system. The witnesses for the defense were never called to testify.

T. P. is a 25-year old African-American. Father to one child, he was a salesman and delivery man for construction wood. He has been on death row at Parchman in Mississippi for the past four years for his participation to a break-in that led to the death of a man. He made five different confessions, without ever admitting why he is currently on death row.



Veldean Kirk, is a 78-year woman, born in Hollywood, she followed her family in Utah when she was a teenager. She married Nick Kirk, with whom she has three children. Her husband died 10 years after having been shot by Ronnie Lee Gardner while on duty. She witnessed the execution of Ronnie Lee Gardner on June 17, 2010 in Salt Lake City.



William Redick is a criminal defense attorney in Nashville, Tennessee. He represents Abu-Ali Rahman who he befriended. For several years he tries to obtain a commutation of the death sentence to a life sentence.

W. M. is a 43-year old African-American, incarcerated on death row at Parchman in Mississippi for the past 17 years. He has claimed his innocence for a long time. He is accused of having participated in a break-in during which four people died. W.M. is poor and hardly educated. He spent his time in prison studying criminal law in the United-States and represented himself in court. He proved he could not have been at the crime scene at the time of the murders. The court accepted some of his claims. In March 2006, the court reversed its own ruling, but he remains on death row. The possibility of his execution is remains a reality, he now works on his last opportunity to prove his innocence.

