Abstract: The death penalty is so deeply rooted in the history of humanity that it will not be possible to abolish it any time soon, together with its ancestral models, such as lynching, stoning and torture. There is little use in appealing to absolute ethical values or to juridical principles held to be universal. A realistic approach suggests a careful consideration of the function the death penalty performed – and still performs – in the structures of political power and in the hierarchical and repressive logic of religions, be they transcendent or nontranscendent. The struggle against the death penalty cannot but coincide with a wide-ranging political and cultural battle against the philosophies and ideologies that venerate “temporal idols” and demand an absolute faith tirelessly decreeing absolute punishments. The supreme punishment has always been a “religious penalty.” The supreme and definitive punishment is founded on a supreme and definitive certainty. The dogmatic certainty of the supreme judge knows no compassion – knows not the feeling of humanity’s common suffering and unhappiness; such certainty makes no provision for the misery, fragility and vulnerability of the human condition. Capital judgment upsets the only indisputable human solidarity – our solidarity against death.

In fact, the supreme punishment has always been, throughout the ages, a religious penalty. [...] Whoever thinks he has omniscience imagines he has omnipotence. Temporal idols demanding an absolute faith tirelessly decree absolute punishments. And religions devoid of transcendence kill great numbers of condemned men devoid of hope. (Albert Camus, Reflections on the Guillotine, 222, 228).

1. The Gallows and War

In a world ravaged by increasingly bloody and devastating wars of aggression and in which, day after day, innocents are slaughtered by international terrorists, the Western debate on the death penalty risks being taken for a futile philosophical pastime. Human life is ferociously violated both by weapons of mass destruction and by the bloodthirsty logic of terrorism, particularly in its
suicide forms, which are highly efficient and increasingly widespread.¹ The killing of innocent people – think of the cynicism of military “side effects” – appears to have been accepted and normalized. This is so in fact, and is even more so in the legitimization the great powers grant it in explicit terms.

In a context in which the death industry is flourishing as never before, capital sentencing can appear to be an archaic ritual that concludes with an unimportant and entirely obvious sanction. The production and trafficking of weapons of war, including nuclear weapons and weapons in space, is outside the control of the so-called “international community” and of its institutions. And the use of such weapons depends on the “decision to kill” made by state and non-state players based on strategic advantage that is political and economic. Sentences to collective death are pronounced outside any judicial, or legal, procedure against (hundreds or thousands of) persons not responsible for any penal offense or moral wrong-doing. Death, bodily mutilation, torture, terror, are ingredients of a lethal ceremony that in the West no longer seems to stir any emotion. The global gallows offer a daily spectacle so repetitive and ordinary that the mass television audience is getting bored. At the same time, killing in the name of public power has, once again, become a noble and prestigious task within states. From the standpoint of remuneration, social status and public recognition, executioners and mercenaries are worthy of respectful consideration.

And yet, despite this cruel and disarming scenario, the question of death as a penalty is now at the center of a heated debate, especially, but not only, within the Western world. Strange as it may seem, these days it is difficult to find anyone in the West who does not feel engaged in the death penalty issue. The theme carries a raft of symbolic meanings and is connected with wide-ranging philosophical questions: what value do we give to life? what is the meaning of human justice and its rituals? what is the purpose of penalties and penitentiaries? what kind of power are we inclined to attribute to political authorities? do those who govern us have the right to kill and, in particular, to kill us?

These are crucial issues, and no less delicate philosophically than the question of the “justice” of war. Indeed, it can be said that in Western culture the theme of the justification of capital punishment and that of the justification of war have developed along parallel, and sometimes intersecting, paths. Suffice it to think of the two maximum Catholic thinkers, Augustine of Thagaste and Thomas Aquinas. In both cases, setting aside the Gospel virtue of mildness, the killing of brothers on the scaffold or in war found parallel justifications that have become the rule for an entire theological tradition.² In the

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¹ On this theme see R. Pape, Dying to Win: The Strategic Logic of Suicide Terrorism, New York: Random House, 2005.
The Death Penalty Divides the West

name of the “common good” – that is, of the political order of the Empire – the Gospel imperative “let he who is without sin cast the first stone” was filed away together with the maxim “blessed are the peacemakers for they will be called sons of God.” Thomas Aquinas went so far as to say that

if a man be dangerous and infectious to the community, on the account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good [...] Hence, although it be evil in itself to kill a man so long as he preserve his dignity, yet it may be good to kill a man who has sinned, even as it is to kill a beast. For a bad man is worse than a beast, and is more harmful [...]³.

Following this line of thought, proper to a Christianity that had become the Imperial religion, stoning, torture, the gallows – exactly like war – will end up being considered “just,” or even “holy,” as the Holy Inquisition with its refined rituals will show. And let us recall that Cesare Beccaria’s Dei delitti e delle pene [Of crimes and of penalties], published in 1764, was placed on the Index in 1766 by the Holy Office on account of its “impiety”; that is, essentially, for its critical reflection on the death penalty. For that matter, the official Catechism of the Catholic church reaffirmed in 1992 (Paragraph 2266) “the right and the duty of the legitimate public authorities to impose penalties proportionate to the seriousness of the crime, without ruling out, in cases of extreme seriousness, the death penalty.”⁴

Today, in the West, those who oppose the legitimation of capital punishment normally do so in the name of human rights, not in the name of the “right to life.” And those who take an abolitionist stand cannot but also oppose – or ought to do so for reasons of ethico-political coherence – the use of weapons of mass destruction, the killing of innocent civilians in war, the torture of prisoners. Gallows and war are strictly connected at the ethical, philosophical and anthropological level, even if abolitionists and pacifists do not necessarily base their stands on the same values and, often, ignore each other entirely. The rejection of the killing of men and of women – be they considered innocent or guilty – on the gallows or in war ought, rather, to bring together all those who attempt to resist the anthropological pessimism that the inexorable spilling of human blood entails. Contemporary ethologi-

Universale Rizzoli, 2007, pp. 43-48; I. Mereu, La morte come pena. Saggio sulla violenza legale, Rome: Donzelli, 2007, pp. 7-37. Mereu emphasizes that for Thomas Aquinas also an unjust death sentence had to be accepted by the condemned person in order to avoid a possible scandal and thus a disturbance of the peace (Ibid., pp. 34-35).
³ Thomas Aquinas, Summa Theologica, Ila IIae, quaestio 64, art. 2, r.
⁴ Only in the Encyclical Evangelium Vitae, of 1995, and in the catechism of 1997, was the death penalty condemned for the first time by the Catholic teachings.
cal research has shown that considering the members of the human species to be “moral persons” is, in fact, not very realistic. It is far more realistic to view them as bloodthirsty primates. The mechanisms that spontaneously inhibit aggressiveness and the peacemaking rituals that keep higher animals from shedding the blood of fellow-members of their species have – in *homo sapiens* – been paralyzed by a series of cultural imperatives that permit and, at times, demand the killing of “deviant” citizens or of external enemies. These are imperatives that take hold and become public rituals in the shadow of the structures of political, economic and religious power and that, to this day, morally justify lynching, stoning, the electric chair, lethal injection, Hiroshima and Nagasaki.

2. The Death Penalty in the World

The death penalty divides the world. There are now about fifty countries that still maintain this institution fully, while the others make no provision for it, or do so only for military crimes, or have not applied it for many years, even though they keep it on the books. The countries in the front line in using death as a judicial penalty are China, Iran, Saudi Arabia and the United States of America. China, alone, takes the life of over five thousand prisoners each year, accounting for about 90 percent of the executions reported worldwide. The Islamic countries are among the states with the highest number of executions, with the exception of those of the Maghreb, which are de facto abolitionist. On the juridical and theoretico-political plane, some Asiatic countries, led by Singapore, are the most inclined to emphasize the merits of capital punishment, along with a certain number of Islamic countries, led by Iran, where public hangings have become frequent, also to punish “hostility towards God” (*moharebeh*) according to a millenary tradition. In many countries the death penalty has been introduced and re-introduced to punish

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6 We do note, however, that in China in January 2007 a new death penalty law came into force that gives the People’s Supreme Court alone the power to approve capital sentences in the last instance. As far as the global figures are concerned, note that many countries do not provide official statistics because the question of the death penalty is considered a state secret; see the online data bank *Hands off Cain*, in the site <http://www.handsofcain.org>.
crimes connected with narcotraffic: Malaysia and Singapore apply the death penalty for possession of 15 grams of heroin.

The methods of execution are quite diverse. Hanging, the firing squad, and a pistol shot in the nape of the neck are the most common. But five states officially practice decapitation and seven Islamic countries prescribe stoning, according to a religious tradition that goes back to Biblical times: according to the Old Testament whoever breaks the commandment to “keep the sabbath” and “he that blasphemeth the name of the Lord” shall be put to death by stoning. In Iraq, in the early 1980s, at least a thousand prisoners were executed by being bled to death. In Iran, years ago, some persons sentenced to decapitation petitioned, successfully, to be thrown off a cliff instead. The universe of homicidal fantasy – judicial or extra-judicial – appears boundless.

The death penalty divides not only the world, but also the West. While the entire continent of Europe, with the sole exception of Belarus, has freed itself of capital punishment, the United States of America is the only Western democracy that practices the death penalty. Lethal injection, the electric chair and the gas chamber are the procedural specialties preferred by the 38 states (out of 50) in which capital punishment is still in force. Such procedures are preferred because they are deemed “humanitarian.” In recent decades, advocates of US political culture have fought with particular energy in defense of the moral and juridical justifications for capital punishment against the abolitionist criticisms increasingly aimed at the American superpower. For those who fight for death penalty abolition on the world scale, the United States – the planet’s greatest power and its dominant political and cultural model – is the crux of the polemic. This is true in particular for those who in Europe disagree with the penal philosophy and penitentiary policies that have taken hold in the US over the past twenty years, generating a full-blown prison boom and a surge in the denizens of death row. The United States prison population has more than tripled since 1980, with over 2,300,000 people incarcerated in 2006 – a world record from any point of view.

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7 *Exodus* 31, 12-17; *Leviticus* 24, 16.  
9 In 2005 there were about 3400 prisoners on death row, while the waiting time before execution was ten years on average. This phenomenon helps explain the high percentage – around 10% – of “voluntary” executions, requested by the condemned persons themselves, renouncing appeal, to avoid prolonging their agony; see A. Marchesi, *La pena di morte. Una questione di principio*, Rome and Bari: Laterza, 2004, p. 110. On the theme of the prison population explosion in the United States see L. Wacquant, *Le prisons de la misère*, Paris: Editions Raisons d’Agir, 1999; L. Re, *Carcere e globalizzazione. Il boom penitenziario negli Stati Uniti e in Europa*, Rome and Bari: Laterza, 2005.
Numerous European states – even if just in the last few decades and with no great efficacy thus far – have broached innovative crime and prison policies. In particular, in 1987 the Council of Europe established the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).\(^\text{10}\) The Council also passed the important *European Prison Rules*, which were designed to alleviate the living conditions of European prison inmates, even if they did not call life imprisonment into question. Very often these conditions were – and still are – not far from unadulterated torture, as is shown by the high, and rising, prison suicide rate, which, indeed, has been termed an “extra-judicial death penalty.”\(^\text{11}\)

The *Prison Rules* were implicitly opposed to capital punishment, which, by contrast, had been recognized as lawful by the 1950 *European Convention on the Rights of Man*. As we know, while the *Universal Declaration of the Rights of Man*, of 1948, did not even mention the death penalty at all, deeming it inviolable, Article 2 of the *European Convention on the Rights of Man* explicitly denied that the recognition of European citizens’ “right to life” shall entail the illegality of capital punishment. Only later on, as we shall see, did Europe begin to move in a direction that has led to the stipulation of abolitionist agreements between numerous European states and, moreover, has favored an evolutive interpretation of Article 3 of the *Convention*, which prohibits torture and inhuman and degrading treatment. The death sentence has been assimilated to a form of both moral and physical torture, inflicted upon defenseless and, in some cases, completely innocent persons. Camus wrote in his essay *Réflexions sur la guillotine*:

> The devastating, degrading fear that is imposed on the condemned for months or years is a punishment more terrible than death, and one that was not imposed on the victim. Even in the fright caused by the mortal violence being done to him, most of the time the victim is hastened to his death without knowing what is happening to him. The period of horror is counted out with his life, and hope of

\(^{10}\) Committee inspectors have the power to visit prisons situated in Europe and to send confidential reports to the governments concerned. In many cases the reports have been made public by the governments themselves, which, however, have normally ignored the recommendations contained in them. For Italy see, among others, the *Rapporto degli ispettori europei sullo stato delle carceri in Italia*, edited by A. Sofri, Palermo: Sellerio, 1995.

\(^{11}\) Italian prisons in particular are notorious for the high frequency of suicides. In the past ten years prison suicides have ranged from a minimum of 42 to a maximum of 72 per year. These are high numbers, especially if compared with the suicide rate for the nonprison population. In 2002 the suicide rate for prisoners was 15.5 times higher than that of the Italian population as a whole; see L. Manconi and A. Boraschi, “‘Quando hanno aperto la cella era già tardi perché…’ Suicidio e autolesionismo in carcere (2002-2004),” *Rassegna italiana di sociologia*, 1 (2006), p. 126; for 2005 and 2006 the figures can be obtained from the dossiers collected by the editors of *Ristretti orizzonti* and published in the site <http://www.ristretti.it>.
escaping the madness that has swept down upon his life probably never leaves him. On the other hand, the horror is parceled out to the man who is condemned to death. Torture through hope alternates with the pangs of animal despair.12

3. The Death Penalty in the West

Today the death penalty divides the Western world, but this was far from true in the past. The abolitionism of the Europeans now pits itself against the firm will of the United States to preserve an institution that it deems necessary and not in violation of the fundamental right to life. This abolitionism is a recent phenomenon, which appeared only in the last few decades and is the index of a growing philosophico-political clash between the two sides of the Atlantic, whose genesis, reasons, and possible developments thus merit analysis.

The political and juridical culture of the United States has deep roots in Europe: think, for instance, of the great North American tradition of the rule of law, which originates in British common law and the British constitutional experience, and which also presents important normative and institutional affinities with Continental constitutionalism, including the German Rechtsstaat.13 And think of the close interaction between the birth of the “penitentiary system” in the United States in the late seventeenth century and its affirmation in Europe, following Alexis de Tocqueville and Gustave de Beaumont’s famous voyage to America in 1831.14 Until about thirty years ago the theories of punishment and the penal institutions on the two sides of the north Atlantic were engaged in a single process of evolution that can be called “penal modernity”: a modernity influenced by Enlightenment philosophy and inclined to a secular and humanitarian reform of criminal law and penal institutions.15

Let it be perfectly clear: apart from a few important but precarious exceptions,16 the death penalty, with its mournful potestative rituals, was preserved

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15 See Mereu, La morte come pena, pp. 53–61, 97–119; Cantarella, Il ritorno della vendetta, pp. 49–55.

16 I refer to Leopold the Grand Duke of Tuscany, to whom we owe the world’s first (albeit ephemeral) abolition of the death penalty, and to Catherine II of Russia; see N. Bobbio, Contro la pena di morte, edited by Amnesty International, Bologna:Tipostampa bolognese, 1981, now also in Bobbio, L’età dei diritti, Turin: Einaudi, 1992, p. 185.
both in Enlightenment Europe and in the United States. Joseph Tuault de la Bouverie, representative of the people and champion of public executions, declared in 1791 to the French National Assembly: “To keep the people at bay a terrifying spectacle is needed.” This, for that matter, was recommended, with a wealth of arguments, by the major European philosophers of the day. In his Contrat social [Social Contract], published in 1762, Rousseau refutes in advance the contractualist argument that will be one of the mainstays of Beccaria’s Dei delitti e delle pene. It is not true, Rousseau maintains, that the individual, in coming to an agreement with other individuals to constitute the state, reserves the right to life in all cases. It is to avoid being a murder victim that the citizen submits to being executed in case he himself should become a murderer. Therefore, granting the state the right to one’s own life serves not to destroy it but to secure it against possible attacks by others.17

Similar arguments are used by Gaetano Filangieri in La Scienza della legislazione [The Science of Legislation], the greatest Italian work of political philosophy of the second half of the eighteenth century.18

But it is above all the two greatest philosophers of the day, Kant and Hegel, who in adopting a rigorous retributory-vindictive theory of punishment come to the conclusion that the death sentence is right and proper. For Kant the function of penalty is not to prevent crimes but to do justice; that is, to make the punishment and the crime rigorously correspond. Hence the state has a moral duty to apply the death penalty, obeying a full and proper “categorical imperative,” namely whoever has killed must die, and there is no surrogate, no commutation of the penalty that can satisfy justice.19 Not killing a murderer in the name of a preventive conception of punishment would be equivalent to using him simply as a means, thus violating the categorical imperative that demands persons always be treated as ends and never as means. Hegel goes even farther: criticizing Beccaria, he maintains that the murderer has not only the duty but the right to be put to death, since the death penalty is the only punishment that redeems him: through its ritual he is recognized as a rational being and is honored as such.20 For that matter, Plato already taught that the death penalty is a necessary moral remedy, which the good citizen must embrace with willingness and firmness: “Let each be the first accuser of himself and of his loved ones.”21

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17 Ibid., p. 186.
18 Ibid., pp. 186-187.
19 Ibid., p. 187.
20 The reference to Beccaria is in § 100 of the Grundlinien der Philosophie des Rechts; see N. Bobbio, Contro la pena di morte, p. 188.
21 “The pain does not matter: if someone has committed an offense that deserves lashes, he must let himself be whipped; if he deserves prison, he shall go; if he must be fined, he shall pay the fine;
On top of all this, we note that Cesare Beccaria himself, in his lavishly celebrated Dei delitti e delle pene, does not declare himself against the death penalty in principle, even if he does show its limits. In fact he deems capital punishment legitimate and opportune when it is truly useful for state power; when, that is, it is needed to ensure the political stability of a nation and to avoid anarchy. And he deems it legitimate also when the public killing of a criminal is “the true and only restraint to deter others from committing crimes.”22 What is more, contradicting his general opting for the “mildness of the penalty,” Beccaria suggests that, whenever possible, a life sentence is preferable to capital punishment, because he deems it more afflictive and, above all, more effective in terms of prevention. In his opinion the strongest deterrent against crime is not the momentary spectacle of a poor wretch’s death “but rather the long and labored example of a man without freedom who, having become a beast of burden, recompenses the society he has offended with his labors.”23

In fact, what penal modernization accomplished beginning in the second half of the eighteenth century, as Norberto Bobbio observed, was the limitation of the death penalty to a few particularly serious, specifically determined crimes. Indeed, in the early nineteenth century, in an advanced country such as England, there were still over two hundred crimes punishable with death, including some that just a few decades later came to be sanctioned with just a few years in prison. In particular there was a phasing out of the spectacle of ostentatious public tortures, intended for the “religious” glorification of the absolute power of the sovereign, who personally witnessed the ceremony of the prisoner’s moral degradation, torment, and physical annihilation.24 The judicial ritual fully accomplished its mission when the victim, before dying, confessed his crime and begged both God and the Sovereign for forgiveness.

That which modernity in essence abolishes, as Michel Foucault illustrated masterfully in Surveiller et punir, is the “splendor of torture,” that is, the blood-curdling exhibition of capital punishment preceded by long and brutal torment.25 Supplizio (the Italian word for death-torture) was the ancient and medieval art of maintaining life in pain, prolonging the agony by subdividing the ritual into successive phases and obtaining the most refined, excruciating suffering, in a sort of sadistic multiplication and intensification of the torment. Medieval torture — infamous and outrageous — included drawing and quarter-

if he deserves exile, he shall go into exile; if he must be punished with death, he shall be put to death. Let each be the first accuser of himself and of his loved ones.” (Plato, Gorgias, 480 c-d).

22 See Cantarella, Il ritorno della vendetta, p. 141.

23 Ibid., p. 142.

24 See Bobbio, Contro la pena di morte, pp. 189-193.

ing, burning at the stake, impalement, slow and progressive crushing, boiling in oil, stripping the flesh or tearing out the heart with red-hot pincers, burying or walling-up alive with the head downwards, and countless other cruelties, such as the notorious “wheel.” During the Enlightenment, by contrast, the killing was done with a secularized and humanitarian attitude, which rendered the homicide instantaneous and, thus, painless and less cruel. Today the electric chair, lethal injection, the gas chamber, or a pistol shot in the nape of the neck are homicidal stratagems that are inspired by this secular and humanitarian rationalism: a “religion devoid of transcendence,” which prefers aseptic rituals to the “religious” magnificence of torture. As Camus wrote, “From the humanitarian idylls of the eighteenth century to the blood-stained gallows the way leads directly, and the executioners of today, as everyone knows, are humanists. Hence we cannot be too wary of the humanitarian ideology in dealing with a problem such as the death penalty.” Even today, Camus adds, it can happen that hundreds of people volunteer to act as executioners, for free: behind the peaceable and familiar faces sleeps the instinct of torture and murder, just as under the cloak of words lurks the obscenity of things.

4. European Abolitionism

In Europe an effective abolitionist movement did not assert itself until the last decades of the twentieth century. The distant inspirers of the abolitionist philosophy are, in addition to Beccaria, prestigious French Enlightenment figures such as Voltaire and literary figures such as Victor Hugo, who devoted his life to combating the death penalty with the power of his eloquent style. Italy, toward the end of the eighteenth and in the course of the nineteenth century, boasted jurists of great merit such as Giuseppe Compagnoni, Pietro Ellero, Francesco Carrara, and Carlo Cattaneo. In the twentieth century the abolitionist theses gained purchase among those who were professionally occupied with the issue and among militants in human rights associations: think of Human Rights

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26 See Mereu, *La morte come pena*, p. 44. “In [the supplizio of] the wheel, rightly considered the greatest of torments, the condemned man’s limbs were broken and then, with his arms and legs spread-eagled, he was bound to a wheel set at the top of a pole and left there so miserably to die,” Ibid., quoted from A. Pertile, *Storia del diritto italiano dalla caduta dell’Impero romano alla codificazione*, Turin: Utet, 1892-1902, vol. 5, p. 263.


29 Pietro Ellero and Francesco Carrara established the important *Giornale per l’abolizione della pena di morte* in 1861; see Mereu, *La morte come pena*, pp. 110-46.
Watch and, in particular, Amnesty International and, in Italy, “Nessuno tocchi Caino” [Hands off Cain]. Judging from the polls however, “popular opinion” continued to endorse a retributive and exemplary conception of justice, sympathetic – at times furiously so – to life imprisonment and, above all, to the ritual of capital punishment. In France, among the eloquent expressions of abolitionism, Albert Camus’ brilliantly lucid reflection stood out, while in Italy the wise and authoritative voice of Norberto Bobbio was heard.30

European abolitionism has progressively asserted itself in various countries also at the institutional level. France, while lagging far behind many other states in the world, in 1981 became the first totally abolitionist country in Europe, canceling the institution of the death penalty in peacetime, in wartime and in every other possible circumstance (the thirty-seventh state to take this step). Italy followed: in October 1994 the Italian Parliament approved a bill for the abolition of the death penalty prescribed by the wartime military penal code, while Article 27 of the Constitution of the Republic had already ruled out capital punishment in all other cases. France and Italy were soon followed by Spain, Belgium and Great Britain, which abolished the death penalty in 1995, 1996 and 1998 respectively. Today all 27 states of the European Union are wholly abolitionist, even if Catholic Poland seems tempted to bring back capital punishment, or so it seems from the statements of its current Prime Minister, Jaroslaw Kaczynski, who sees it as a deterrent against the growing spiral of crime – here, again, testifying to his Atlanticist faith.

In principle the philosophico-political motivation of contemporary European abolitionism is bound up with the ethico-political doctrine of human rights and with the conviction that this doctrine is universal: the “right to life” is held to be a fundamental right of all persons, with no exception of any sort, without distinction between different cultures, civilizations or religious traditions. A recent thesis maintains that capital punishment, even in its sophisticated humanitarian versions, violates the subjective right not to be subjected to torture or to inhuman or degrading treatment or punishment. From the standpoint of the institution’s effectiveness – setting aside the archaic retributory conception of punishment, typical of the Catholic and Protestant tradition and of Kantian moralism – the thesis of the death penalty’s dissuasive efficacy is held to be without foundation.31 Indeed, it is held that capital pun-

30 In addition to the essay cited above, Bobbio also gave us the article “Il dibattito attuale sulla pena di morte,” in the anthology La pena di morte nel mondo, Casale Monferrato: Marietti, 1983, now also in Bobbio, L’età dei diritti, pp. 205–233.

ishment as a public performance of “state murder” – legalized, cold-blooded, premeditated, and carried out by persons authorized to kill – exercises on the public symbolic stimulation of a mimetic type that induces fresh shedding of blood. And in any case, as Roger Hood maintained, the murders described as particularly hateful, atrocious and cruel – and usually punished by death, in countries with capital punishment – are mostly committed by psychopaths or by persons who have lost control of their normal inhibitions. Murderers, in most cases, feel they are innocent when they kill. The ritual ostentation of the supreme punishment has no dissuasive effect on these persons.32

It can be said that, while for the anti-abolitionists the decisive argument is that “the death penalty is just,” even without taking its preventive efficacy into account, for the abolitionists what is decisive is that the death penalty not only is useless, but violates ethically grounded subjective rights that, moreover, are sanctioned by international treaties and conventions. In this vein Norberto Bobbio insisted that even if the death penalty were – hypothetically – a deterrent capable of saving human lives, it should nonetheless be abolished on the basis of the moral imperative “thou shalt not kill” – an imperative that must apply also to states and their functionaries. This commandment, and not the utilitarian argument of the ineffectiveness of capital punishment as a deterrent, is for Bobbio the sole, universal foundation of the abolitionist cause, an absolutely indisputable, full and proper ethical postulate.33

It is on the basis of this widespread ethico-political conviction that the battle against the death penalty has become a “matter of principle” in Europe in recent years, taking on unprecedented importance in transatlantic relations. This battle has given rise to a long series of initiatives not only nationally, but also and above all regionally and internationally, to the point where the rejection of capital punishment has become an essential feature of European identity. Important steps forward have been taken, at least at the regulative level, with the approval of the supplementary Sixth Protocol of the European Convention on the Rights of Man, and especially with the subsequent approval of the Thirteenth Protocol. The Sixth Protocol, which came into force in 1985, was the first international agreement to make explicit provision for the abolition of the death penalty, albeit with the exclusion of crimes committed in times of war or imminent danger of war. The Thirteenth Protocol stemmed from a Swedish proposal, transmitted in 2002 to the Committee of Ministers of the Council of Europe, which called for the abolition of the death penalty in all circumstances, including times of war or threat of war. Thirty-seven mem-

33 See Bobbio, Contro la pena di morte, pp. 200-203.
ber states of the Council ratified the Protocol, which came into force in July of 2003. Article 1 states clearly that “The death penalty has been abolished. No one will be sentenced to this penalty or subjected to capital punishment.”

Riding the wave of this success, in June of 2006 the Parliamentary Assembly of the Council of Europe called upon the Committee of Ministers to impose sanctions on the United States and Japan for their death penalty practice. Both these states enjoy Observer status at the Council of Europe. Having seen no change in the penal policy of the two countries, the Assembly subsequently suggested to the Committee of Ministers that it would be opportune to suspend their Observer status. In all these abolitionist initiatives the Council of Europe has acted on the basis of the fundamental theoretico-political assumption that capital punishment violates one of the most important and universal human rights, the right to life.

These regional initiatives by the European countries were followed by a series of further actions, designed to engage international institutions in the abolitionist cause. In 1994 Italy endeavored to play a leading role, presenting a plan to the United Nations General Assembly for a general moratorium on capital punishment, as the prelude to a total abolition of the death penalty by all the member states by the end of the year 2000. The Italian initiative, not shared by the United States and by other great powers, was easily blocked by Singapore and by some Arab countries that invoked – not without suggestive arguments – the theme of a different conception of life and death in the different cultures and religious traditions of the planet.

The easily foreseeable failure of the Italian initiative made more prudent strategies advisable, which, in 1997, led to the approval – albeit purely platonic – of a projected moratorium by the United Nations Commission on the Rights of Man. Beginning in 1999, thanks to Great Britain’s conversion to the abolitionist cause, the European Union as such assumed the leadership of the abolitionist initiative, but did not achieve any concrete result. In January 2007, after the hanging of Saddam Hussein in Baghdad – willed, financed and organized by the US administration – Italy, as a new, nonpermanent member of the UN Security Council, reproposed its plan for a general moratorium on capital punishment. On February 1st the European Parliament, by a large majority, passed a resolution in favor of an “immediate, universal and unconditional” moratorium on executions and called for a reopening of the debate on the death penalty in the UN General Assembly, as Italy had requested. It is easy to foresee that these two international initiatives as well – one by the

Italian government, one by the European parliament – will be unsuccessful, since they will come up against the firm opposition of the United States, of China, and of the majority of the Arab-Islamic states.

In the meantime, the moral pressure of the nongovernmental organizations aligned on the abolitionist front in the name of the universality of human rights has not relented. What is more, since the 1980s in Europe there has been opposition to the death penalty on the grounds that it violates the right not to be subjected to torture, a right recognized by Article 3 of the European Convention for the Rights of Man. To this abolitionist end also the International Convention Against Torture of 1984 is evoked; the arguments are weak, however, due the Convention’s definition of “torture.” This definition, also by the will of the United States, prescribes that no physical pain or suffering inflicted on a person by a lawful penal sanction can be assimilated to torture. For that matter, in ratifying the document the United States had already imposed a specific, precise reservation that excluded from the regulations of the Convention any suffering caused by capital punishment, while awaiting or in the course of execution.  

5. The Death Penalty in the United States

It was the English who brought capital punishment to America, and to this day the United States Constitution makes explicit reference to the death penalty in the Fifth and Fourteenth Amendments. The New England colonies prescribed it for murder, but also for such offences as sodomy, adultery, witchcraft, and many other more or less directly “religious” crimes. The execution usually took place in public and by hanging. But in the course of the nineteenth century the “humanitarian” reform of the death penalty the Enlightenment had introduced in the principal European countries began to be echoed in the United States.  

35 The United Nations Convention against torture and other cruel, inhuman or degrading punishment or treatment was passed in December 1984 and has been in force since June 1987: see the text in the site <http://www.studiperlapace.it/view_news_html?news_id=torturaconvenzionenu>; on the theme see A. Marchesi, La pena di morte, pp. 105-108.  
the days of the Convention in Philadelphia there had been an abolitionist movement, led by Benjamin Rush. Also Benjamin Franklin and Thomas Jefferson shared the abolitionist views, in the wake of Beccaria’s *Dei delitti e delle pene*, which they had read.

In the 1840s and 1850s the states of Michigan, Wisconsin and Rhode Island decided to abolish capital punishment, well in advance of the nations of Europe. And in the states that retained it the number of executions began to fall, to the point that in the course of the first half of the twentieth century they averaged no more than a few dozen per year. In 1967 a general moratorium on executions was decided and in 1972 the Supreme Court, in the case of *Furman versus Georgia*, ruled that the death penalty, in the way it was applied, was to be considered a “cruel and unusual punishment” and was therefore unconstitutional, because in violation of the Eighth Amendment, which prohibits precisely such punishment. At the same time, the Court also ruled that capital punishment violates the juridical equality between the country’s racial components, since statistical surveys showed that some categories of persons – the Afro-Americans in particular – were far more exposed to the risk of the death penalty than others.

But the abolitionist parenthesis lasted only four years: in its judgment on the case of *Gregg versus Georgia* in July of 1976 the Court, whose composition had changed in the meantime, took the opposite position, ruling that the death penalty was perfectly constitutional. Since then executions have resumed in the vast majority of states, and in far higher numbers, particularly in Texas, Virginia and Florida. And with the resumption of executions we find, again, the discrimination between blacks and whites, which on “death row” is particularly accentuated. Amnesty International reports that, from 1977 to the first months of 2003, 290 Afro-Americans were executed, representing more than one third of the total (843), while blacks make up only 12% of the total population. In 2003 the blacks awaiting execution were fully 40% of the total. What is more, in the period from 1977 to 2003 nearly the same number of whites and blacks were victims of murder, but 80% of the executions punished the killing of a white person.

Then, there is the aggravating circumstance that the vast majority of the persons condemned to death belong to the weaker and more vulnerable strata of the population. Defendants who are indigent – as are a great number of the Afro-Americans currently on death row – are not in a position to hire a lawyer of their choice, and are thus defended by court-appointed lawyers who, in the main, are young, inexperienced, and not highly motivated. This is one
of the reasons for the high percentage of judicial errors made by the courts in pronouncing death sentences, as was shown in 2000 by the sensational findings of the commission appointed by George Ryan, the Republican governor of Illinois, who became famous for his decision to release 164 prisoners from death row the day before leaving office.\textsuperscript{38} Antonio Marchesi maintains that the death penalty functions in the United States far more as an instrument of “social cleansing” than as an instrument of criminal justice.\textsuperscript{39}

According to figures up-dated to April 2003, from 1977 in the United States there were 677 executions by lethal injection, 150 on the electric chair, 11 in gas chambers, 3 by hanging and 2 by firing squad.\textsuperscript{40} Between 2004 and 2005 there were about 160 more executions, bringing the total from 1977 to over one thousand. The electric chair was introduced in 1889 in place of the gallows: powerful discharges in rapid succession through copper electrodes cause cardiac arrest and respiratory paralysis. With the gas chamber, introduced in the late 1930s, the prisoner is closed in an airtight steel container into which cyanide is released, causing death by asphyxiation. With lethal injection, introduced in 1977, a lethal dose of poison (normally potassium chloride) is administered by intravenous injection together with a curare bromide-based paralyzing chemical substance. Paralysis of the diaphragm inhibits its pulmonary activity and leads to cardiac arrest.

Substantial abolitionist literature insists that none of these three “humanitarian” methods renders the execution painless, even without considering the moral suffering produced by the ritual of the execution. The procedure is composed of emotionally merciless practices, no less cruel than the physical atrocity of medieval torture [supplizio]: transfer before the execution to a special cell in total isolation, the last meal in the dead of night, the fitting of the clothes to be used for burial, the death certificate prepared and signed in advance, and so forth. The prisoner’s sense of impotence and solitude, in chains before the public that witnesses the rite and wishes him dead, is probably a punishment more atrocious than death itself. Indeed, we know of many executions prolonged and rendered macabre by unexpected technical complications, by errors of the executioners or delirious efforts by the prisoner to oppose his execution and, more often, by his enduring, desperate lucidity. In fact, it would appear that curare bromide lethal injection leaves its victim conscious, imprisoned in his paralyzed body at the door of death.


\textsuperscript{39} See Marchesi, \textit{La pena di morte}, p. 71.

\textsuperscript{40} Ibid., p. 109.
6. American Exceptionalism?

How are we to explain on the sociological, ethical and political plane the – unquestionably “exceptional” – fact that the United States is the only Western democracy in which we find a marked propensity of the political class to maintain the death penalty, together with a widespread consensus of public opinion in its favor? And how are we to explain the fact that this phenomenon has been heightened since the late 1970s, giving rise in particular to a sharp divarication between the two sides of the north Atlantic, which until then had been convergent?

The answer is by no means simple, and it is not fortuitous that in the United States a heated theoretical and political debate is raging. The thesis that seems to have gained greatest purchase is that of “American exceptionalism,”41 which has been applied to the death penalty by two authors in particular, Janer Q. Whitman and Franklin Zimring.42 Whitman maintains that the expansion of capital punishment in the United States is connected with the “typically American” cultural propensity to degrade subjects who fail to conform to dominant social standards. While – Whitman claims – the European countries show considerable respect for the condemned person’s dignity, the prevailing tendency in the United States is to reduce the convict to a state of inferiority. For the Europeans such respect indicates an attempt to cancel social differences of the past, while in the United States the lack of an aristocratic tradition means that a concern with canceling social discriminations has never existed.43

Franklin Zimring’s thesis is quite different and highly sophisticated. He maintains that in the United States, since 1977, the death penalty has been successfully presented by its proponents not as a hateful manifestation of punitive state power but rather as an act of justice that is performed, in the sphere of civil society, in the interest of the victims and of the entire community.44 In essence, the renewed advocacy in recent decades of the death penalty in the United States – while Europe has increasingly distanced itself – could be connected with an element that Zimring deems characteristic of US culture, especially in the southern states, namely the so-called “vigilante tradition.” This, basically, is the tendency to take justice into one’s own hands, which has found expression


43 See Whitman, Harsh Justice, p. 11.

in the movement for victims’ rights and has permitted the “victims” (and their relatives) to play a very important role in the penal process.45

Proof, for Zimring, of this tradition’s deep-rootedness in US culture is the circumstance that in the southern states, in which the death penalty has been applied more frequently over the past thirty years, in past centuries lynching was widely practiced and tolerated. This suggestive version gains purchase if we recall that lynching, as an extreme modality of “people’s” justice that is expressed in an irregular form, has always been widespread in the United States. For example, it has been calculated that from 1882 to 1968 there were about 5,000 reported lynchings. In this ninety-year time span about 3,500 black men and women were lynched, as were a certain number of Jews and Italians. Moreover, it has been ascertained that the states holding the murderous and racist record for the highest number of lynchings are Mississippi (540 blacks and 140 whites lynched), Georgia (490 blacks and 40 whites), Texas (350 blacks and 140 whites), Louisiana (335 blacks and 55 whites), and Alabama (300 blacks and 50 whites).46

A series of important objections have nonetheless been raised and can be raised against Whitman’s and against Zimring’s theses. First of all, it needs to be explained why there has been such a dramatic surge in the number of executions in the United States just in the past thirty years, while in previous centuries not only did this not occur but in some periods the number fell and there were even times in which executions were suspended, albeit provisionally. And it would be necessary to show that in this same period the European countries undertook a general reform of their criminal and penitentiary policies that truly respected the dignity and fundamental rights of prisoners and was not humanitarian and “legalitarian” only in form.47 Secondly, even without ignoring the longstanding US tradition of penal populism, one may still wonder whether the particular diffusion of lynching – and of the death penalty – in the southern states of the US may not in fact be due to their demographic composition and the widespread racism of the white population, and not to a specific vocation for “taking justice into one’s own hands” characteristic of the United States as such. Let us not forget that over the past

46 The figures are approximate, and are probably too low. The source is the website <http://www.english.uiuc.edu/maps/poets/g_l/lynching/lynching.htm>. According to Robert Bohm, Deathquest, p. 2, from 1608 to December 1998 there were approximately 30,000 executions in North America, of which 20,000 were legal executions and 10,000 were lynchings.
thirty years the death penalty has been adopted by the vast majority of the fifty states, northern and western states included. Finally – and this may be the decisive objection – there is the fact that lynching has always been an important form of collective murder common throughout the world, ancient and modern Europe included, often in the sacrificial form of the “scapegoat.” Indeed, the death penalty itself, also in its most secularized and “humanitarian” expressions, can be interpreted as a ritual form of legalized lynching.

Hence David Garland is not wrong when he affirms that to grasp the reasons for the expansion of the death penalty in the United States the analysis needs to be concentrated on the country’s recent history, rather than by reexamining its entire course of events as advocates of American exceptionalism tend to do. It is, moreover, also true that the phenomenon needs to be interpreted in the context of the processes of global integration that have invested the planet in recent decades and that see the American superpower play a role of growing political, cultural and military hegemony throughout the world that many describe as neo-imperial.

7. Universality and Effectivity of the “Right to Life”? 

Before attempting to answer the central question of this essay – why, today, is the United States in favor of the death penalty while Europe is abolitionist? – it may be useful to offer a brief philosophical reflection on the anthropological and political meaning of the death penalty, and on the foundation of its opponents’ reasoning.

Norberto Bobbio had good reason for heralding the insufficiency of Enlightenment-utilitarian criticism of the death penalty. If the end pursued is its total and definitive abolition throughout the world, other paths must be sought. And this end was most certainly Bobbio’s aspiration, just as today it is the objective of the militants of the abolitionist organizations that combat the death penalty in the name of the universality of the rights of man. And it is also the – more or less unrealistic – objective of nations, such as Italy, that seek to promote immediate, universal and unconditional moratoriums on capital punishment at the international level. It is clear, as Beccaria himself believed, that if political leaders are accorded the power to make use of capital punish-

ment in order to keep the public peace, then the abolitionist position becomes very fragile, and the battle of its militants completely ineffective. For Bobbio, as we have indicated, the alternative to the utilitarian position is the recourse to a strictly moral argument: it is the assumption, typical of a deontological and universalistic ethics, that all members of the human species have the duty to respect, without reservation or exception, the imperative “Thou shalt not kill.” What is more, Bobbio declared himself certain that sooner or later the death penalty will be abolished throughout the world and that its abolition will herald the indisputable moral progress of humanity.50

Bobbio’s position, despite its peremptory vigor and moral austerity, is no less fragile than the utilitarian one. Indeed, one cannot help but wonder whether the imperative “Thou shalt not kill” is meant to refer, in keeping with the Gospel virtue of meekness, also to the soldiers of an aggressor state and, in general, to those who threaten our integrity and our life. Radical pacifism coherently prohibits the recourse to violence in all possible cases and also condemns killing one’s enemy. Gandhian nonviolence, then? The rejection of war and not just abolition of the death penalty? But Bobbio was always a severe critic of religious pacifism and proposed, alternatively, an “institutional pacifism” that morally and juridically legitimizes the killing of enemies in war, on the sole condition that it be a matter of a state’s armed response to an aggressor state, as prescribed by the United Nations Charter.51

In 1991 Bobbio went so far as to describe the imposing military expedition mounted by the United States against Iraq (which had not attacked the United States) as a “just war” – an expedition that caused tens of thousands of innocent victims.52 Therefore his appeal to the “right to life” as an absolute ethical principle is vitiated by aporias that make it a poor moral antidote to capital punishment. If a war that makes use of weapons of mass destruction and slaughters thousands of innocent people can be “just,” why cannot the hanging of a murderer be equally so?53

50 See Bobbio, Contro la pena di morte, pp. 200–203.
53 Allow me to quote here a passage from a conversation I had with Norberto Bobbio, from July 1997, in which Bobbio responds to my objection regarding the ethical universalism of his opposition to the death penalty: “You are right to say that in the end I claim purely and simply the right to life and the prohibition for anyone, including the state, to take a person’s life, whatever crime he or she may have committed. And perhaps you are not wrong to suspect that here there is in me, unconsciously, some form of “Kantianism,” that is, of attachment to the idea that some values, such as respect for human life, must be affirmed in all cases. However I wish to remind you that I have always considered the thesis of the universality of moral laws to be highly problematic and, indeed, I have vigorously insisted that there is no norm or moral rule or value that, however fundamental it may be, is not historically subject to exceptions”; see N.
An analogous objection can be raised against the abolitionist positions held by the militants of nongovernmental organizations such as Amnesty International or the Italian “Nessuno tocchi Caino.” Both appeal to the “right to life” as to a universal ethico-juridical principle that all persons and all governments are duty-bound to respect, independently of ethnic, national, cultural or religious affiliation. And the same holds for the national governments that polemicize against the governments of other states for their death penalty practices. A typical example was the note the former Italian Minister of Foreign Affairs Massimo D’Alema, addressed to the Iranian ambassador in August of 2007 deprecating the death sentences that had been pronounced by the Iranian magistracy, and requesting their suspension. The Iranian government legitimately replied by rejecting the interference of Italy, which, moreover, it could well have reproached for its complicity with the United States in the bloody military occupation of Afghanistan, which has lasted over eight years now.

These interventions, typical of “juridical globalism,” do not center on the right of all citizens to claim respect for their own lives and to fight for the abolition of the death penalty within the juridical and political orders of which they are members. Here, rather, it is deemed useful and necessary to internationalize and globalize this cause, going beyond political borders, ignoring the diversity of cultures and civilizations, and ending up by exalting the universalism of a particular ethical and juridical viewpoint. In fact, the “right to life” and its universality remain, as also Bobbio’s language makes clear, a highly noble moral aspiration that positive international law has not yet converted into univocal prescriptions, to say nothing of bringing into force. The Universal Declaration of the Rights of Man of 1948, which in Article 3 proclaims the “right to life” of every individual, along with the right to liberty and to security, is notoriously devoid of international juridical cogency. And it is certainly not fortuitous that the European Convention on the Rights of Man, of 1950, explicitly denied, as we have seen, that recognition of the right to life entail abolition of the death penalty. The Pact on Civil and Political Rights of 1966 – binding, to be sure, for all the states that ratified it – limits itself in the first sub-section of Article 6 to ambiguous and evasive formulations: “The right to life is inherent to the human person. This right must be protected by law. no one can be arbitrarily deprived of life”; in the successive sub-sections it does dedicate ample space to prescriptions that tend to limit the death penalty, but absolutely without prohibiting it.54


54 See the text of the Pact in the site <http://www.volint.it/scuolevis/dirittiumani/patto_dir_civ.htm>. 
What is more, there is no European document that, in rejecting the death penalty as a violation of the right to life, has ever included in the notion of “right to life” also the right not to be killed in war or the duty not to kill innocent civilians and soldiers in the course of a war of aggression – a description that indisputably fits the Anglo-American war against Iraq of 2003, along with many others over the past twenty years. And let us also recall that the principal European states participated in 1999 in the NATO war of aggression against the Federal Republic of Yugoslavia – decided by the Clinton administration in clear violation of the United Nations Charter – without the theme of the “right to life” being raised by any institution, not even by the militants of Amnesty International and, in particular, of “Nessuno tocchi Caino,” an organization that does not profess itself pacifist.

So, the ethical and juridical postulates of the universal illegitimacy of the death penalty seem fragile, and this unquestionably facilitates the task of the great powers – the United States in primis – that have no intention of bending to any demand for its abolition and that refuse, with formal arguments, to internationalize the question of capital punishment or any other institution of internal penal law. In fact it seems wise to think – as is implicit in Bobbio’s own position\(^{55}\) – that, *rebus sic stantibus*, the “right to life” and its underlying ethical values lack juridical universality both normatively and in terms of their regulative effectivity. They are rooted in the political, cultural and religious history of certain countries and are the particular result of often long and violent political struggles between social forces representing opposed and nonnegotiable interests. And, here again, let us not forget that the very notion of “life” is far from uncontested: in the West there is no lack of thinkers such as John Finnis,\(^{56}\) for example, who consider voluntary abortion as murder to be punished as such, while they are in favor of capital punishment.

8. The Death Penalty as Humanitarian Torture

The death penalty is an anthropological and philosophical question that is so serious – and so deeply wedged in the history of humanity – that it simply cannot be abolished any time soon, together with its still widespread ancestral models, such as lynching, stoning and torture [*supplizio*]. To think that abolition will come by appealing to absolute ethical values or to juridical principles deemed universal but that are devoid of effectivity or, worse still, by having

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\(^{55}\) See Bobbio, *L’età dei diritti*, pp. XIII-XIV.

recourse to the United Nations, is just not realistic. A realistic approach suggests careful consideration of how deeply rooted capital punishment was and still is in the structures of political power and in the hierarchical and repressive logic of religions, be they transcendent or not. The struggle against the death penalty cannot but coincide with a wide-ranging political and cultural battle against the philosophies and the ideologies that venerate “temporal idols” and demand “an absolute faith” tirelessly decreeing “absolute punishments.” In any case, the death penalty, like its no less pitiless humanitarian variant, life imprisonment, appears destined to accompany the development of human civilization, also in the West, for a long time to come – not unlike war, in its bloodthirsty and devastating forms. And it is not entirely certain that Europe itself, or at least some of its states, will not raise its gallows anew.

Elias Canetti taught us not to have too many illusions. From the origins of human societies until today, the distinguishing mark of power has always been the right of life and death: “the threat of death is the coin of power,” as he put it. Political power is a guarantee of the survival of persons and social groups, and the killing of another (or of others) is, at the same time, an expression of one’s own power and a guarantee of one’s own survival. Whoever cannot kill, or is unwilling to do so, cannot command and will not survive. Sentencing to death is the seal of the absolute power of sovereigns, kings or emperors, and their power remains absolute only as long as they can mete out death with general consent. Symmetrically, death is kept away from he who is powerful by instruments of violence and death: mors tua vita mea. The great religions, for their part – think in particular of Judeo-Christian monotheism – founded “punitive justice” (and persecutory violence) upon the idea of order and universal harmony. Penal sanction – capital punishment first and foremost – was conceived as a sort of cosmic compensation: punishing and expiating signifies repairing the equilibrium upset by immoral or illegal behavior, restoring the “natural order,” bringing the immanent rationality of creation back into force. And in the “primitive” contexts of mythico-ritual societies, as René Girard affirmed, the death penalty was often explicitly related to the idea of victim and sacrifice. In situations of crisis, of lacerating conflictuality and instability of the social group, the ritual lynching of a victim – the “scapegoat” – had the function of restoring peace and winning back the favor of the gods. Even in the highly civilized and “democratic” Athens, the lynching of a poor wretch had a reassuring effect: it was a sort of social

medicine, of *pharmakon*, that protected, healed, and consolidated collective bonds.\(^5^9\) Michel Foucault showed how for centuries in Europe – including modern Europe – the ritual of torture (*supplice*) was an essential instrument of legitimization and glorification of royal and imperial power. He claimed, moreover, that the modern penitentiary apparatus in its entirety, death penalty included, is nothing other than a humanitarian torture employed by a totalizing power to discipline souls and bodies.\(^6^0\)

As Albert Camus argued to such great effect, today the death penalty expresses the pitilessness of dogmatic, religious and secularized beliefs, in the forms of a particularly despotic repressive power. The scaffold is the epicenter of the harrowing violence and the Manichaeism of absolutistic or theocratico-imperial political ideologies, still widespread in the world.\(^6^1\) The supreme punishment, Camus wrote, has always been a “religious penalty,” both in the sense that it has been systematically utilized by the churches, and in the sense that it has been inflicted by authorities that have been invested with a supreme, absolute power, the expression of a total truth, be it worldly or supernatural. The supreme and definitive punishment is founded on a supreme and definitive certainty, which thus irreparably sanctions a guilt that is uncertain and relative, or in any case is not imputable to the exclusive responsibility of the individual sacrificed on the scaffold.\(^6^2\) The dogmatic certainty of the supreme judge, who arrogates to himself more-than-human power and knowledge, knows no compassion – knows not the feeling of humanity’s common suffering and unhappiness; such certainty makes no provision for the misery, fragility and vulnerability of the human condition. The supreme judge lays claim to an absolute innocence that authorizes him to charge the accused with absolute guilt, and so to snuff out his life, denying him any possibility of recovery and hope. This does not mean believing that all men and women are good and everyone merits forgiveness. It means, rather, that the death penalty has to be abolished for reasons of “reasoned pessimism, of logic and of realism”\(^6^3\) because, Camus tells us,

Capital judgment upsets the only indisputable human solidarity – our solidarity against death – and it can be legitimized only by a truth or a principle that is superior to man.\(^6^4\)


\(^{6^1}\) At least 43 of the 54 countries with capital punishment in force today are governed by authoritarian regimes.


\(^{6^3}\) Ibid., p. 230.

\(^{6^4}\) Ibid., p. 222.
For this reason, for this implicit reference to a divine justice that will be pronounced in an ultramundane world, the Catholic church has always admitted the necessity of the death penalty, demanding, in the past, that it be inflicted unsparingly and, until a few years ago, recognizing the right of states to apply it. Faith in the immortality of the soul permitted Catholicism to avoid posing the problem of capital punishment because it had never posed the problem of earthly life as such. But only he who has been liberated from the power of idols, be they transcendent or worldly, can love life completely and respect it in himself and in others as a most precious and ephemeral good. Only he who knows he does not know can completely be a lover of peace, an enemy of war, and an intransigent opponent of capital punishment.

9. The European Alternative

Allow me to hint at a possible conclusion. In the light of the above reflections it can be argued that the United states is today in favor of capital punishment because this institution is consistent with the repressive ideology and the practical needs of a power that has taken on neo-imperial forms and global hegemonic ambitions. After recovering from the trauma of the Vietnam war and contributing to the crisis of Communism, the United states relaunched the strategy of the “Monroe Doctrine,” expanding it beyond the American continent and, now, lending it a universalistic and globalistic dimension. That which we call “globalization” substantially coincides with the process of Americanization of the West and Westernization of the world.

Since the end of the Cold War and the break-up of the Soviet empire, the American superpower has succeeded in imposing on the entire planet the monopoly of its economy, of its military power, of its vision of the world, of its own language and conceptual vocabulary: Caesar dominus et supra grammaticam.65 The United states pits a “monotheistic” vision – in particular the ultraconservative vision of the neo-cons (or “theo-cons”) of the current Republican leadership – against the pluralism of values and cultural traditions, and against the increasing complexity and turbulence of the contemporary world. It is not fortuitous that the doctrine of the “just war,” of Christian and imperial origin, has recently been reproposed within US political cul-

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ture, and that President G. Bush jr. termed a “just war” the preventive war he unleashed against the “axis of evil,” i.e., against the so-called “rogue states” and global terrorism. This is a strategy sustained by the unshakable certainty that force – armed force in particular – can and must be placed at the service of good: the gallows and war are the instruments of a power that feels itself to be providentially at the center of the world and above the world.

It is in this global and “neo-imperial” context that the fervid conversion of the United States to the cause of the death penalty is justified, and all the more so in the context of the new penal ideology launched in the 1990s, termed “zero tolerance.” The aim of zero tolerance is to place the entire territory under rigorous control, with the slightest deviant behavior of marginal subjects who fail to adjust to the models of social conformism subjected to the inflexible repression of the “war on crime.” The penitentiary administration tends to occupy the spaces left free by the institutional demobilization of broad sectors of the political, social and economic life of the welfare state. All this represents a drastic transition from a “positive” conception of security – as collective prevention of risks and as social solidarity – to a “negative” conception of security, understood exclusively as police repression of crime. As Loïc Wacquant tells us, economic deregulation and penal hyper-regulation go hand in hand: social disinvestment presumes and provokes prison overinvestment; and prisons, as Zygmunt Bauman put it, have now become human garbage dumps that, not unlike the gallows, are designed to incapacitate and annihilate deviant subjects.66 The widespread justicialist and retributive fervor – think of the imposing phenomenon of the Victims’ Rights Movement – that today exalts the therapeutic virtues of prison and of the death penalty does not, however, correspond to a demand for the rationalization of repressive intervention. On the contrary, it fundamentally preludes fresh insecurity and fresh, pressing demands for protection, which are skillfully exploited by the political oligarchies. Along with vast processes of social marginalization, racial discrimination and collective impoverishment there emerge irrational fears in the face of an increasingly complex, turbulent and divided world: the world of Guantánamo, of Abu Ghraib, of Bagram, of Polj-Charki, of prison inflation, and of the death penalty.

Can Europe be thought of as an alternative to all this? According to the exponents of neo-con thinking – William Kristol, Richard Pearle, Paul Wolfowitz and, above all, Robert Kagan67 – “old Europe,” idealistically...

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devoted to legality and incapable of using force, must fall in line with the positions of the American superpower. Obviously, within European political culture there is no lack of currents of thought that take an Atlanticist stance also on the terrain of the philosophy of punishment and of penal institutions, and share the strategy of zero tolerance and of the unlimited expansion of prison sanctions. And, as we have seen, there is also no lack of political leaders who would like to reinstate the death penalty.

This does not alter the fact that today, within European political culture, a tradition of thought survives and prevails that is inspired by the values of the Enlightenment and of its secular, rationalist and individualist revolution. It is the tradition that conserves, as an untouchable nucleus of Western modernity, the institutions of the State of law founded on individual autonomy, religious tolerance, freedom of research, dialogue between different cultures and civilizations, and that rejects the potestative and violent mask of the extreme West. It rejects its imperial universalism, its delusion of omnipotence, its cult of force. It is a current of thought that professes an open and explorative conception of knowledge, of scientific research and of morals themselves, and that fights against all monotheistic fundamentalisms – judiciary fundamentalism included – in the name of the pluralism, differentiation and complexity of the world. For this tradition, as Bobbio wrote, the best fruits of the European intellectual tradition are “the restlessness of research, the goad of doubt, the will to dialogue, critical spirit, measure in judging, philological care, a sense of the complexity of things.”

Rejection of the death penalty belongs to the cultural heritage of Europe, to its inalienable juridical civilization, as one of its best fruits. But this is only a first step, since the decision to spare human lives by pulling down the gallows has little value if, at the same time, one is slaughtering innocent persons – be they civilians or soldiers – in war, with weapons of mass destruction. There will be no lasting peace, in civil life and in international relations, until the bloodthirsty idols that consecrate the gallows and bless the wars will have been pulled down. Our wait, inevitably, will be very long.

Postscript. Du’a Khalil Aswad was a 17-year-old girl of the yezidi religion, belonging to an ethnic group of Iraqi Kurdistan, still under US military occupation. She was in love with an Iraqi boy – Arab and Muslim; they used to meet secretly; but he refused to marry her. Humiliated and dishonored, she took refuge for a few days at a yezidi chief’s, who convinced her to return to...
her family, assuring her she would be forgiven. As soon as she got home her relatives, including her brother, uncle and cousin, stripped her naked, beat her black and blue, dragged her into the street, and then stoned her to death with large stones, in the presence of a crowd of spectators, including some armed guards. This occurred on April 7th, 2007, at Bashika, near the city of Mosul. This essay is dedicated to Du’a Khalil’s memory.

(Translated from the Italian by Giacomo Donis)