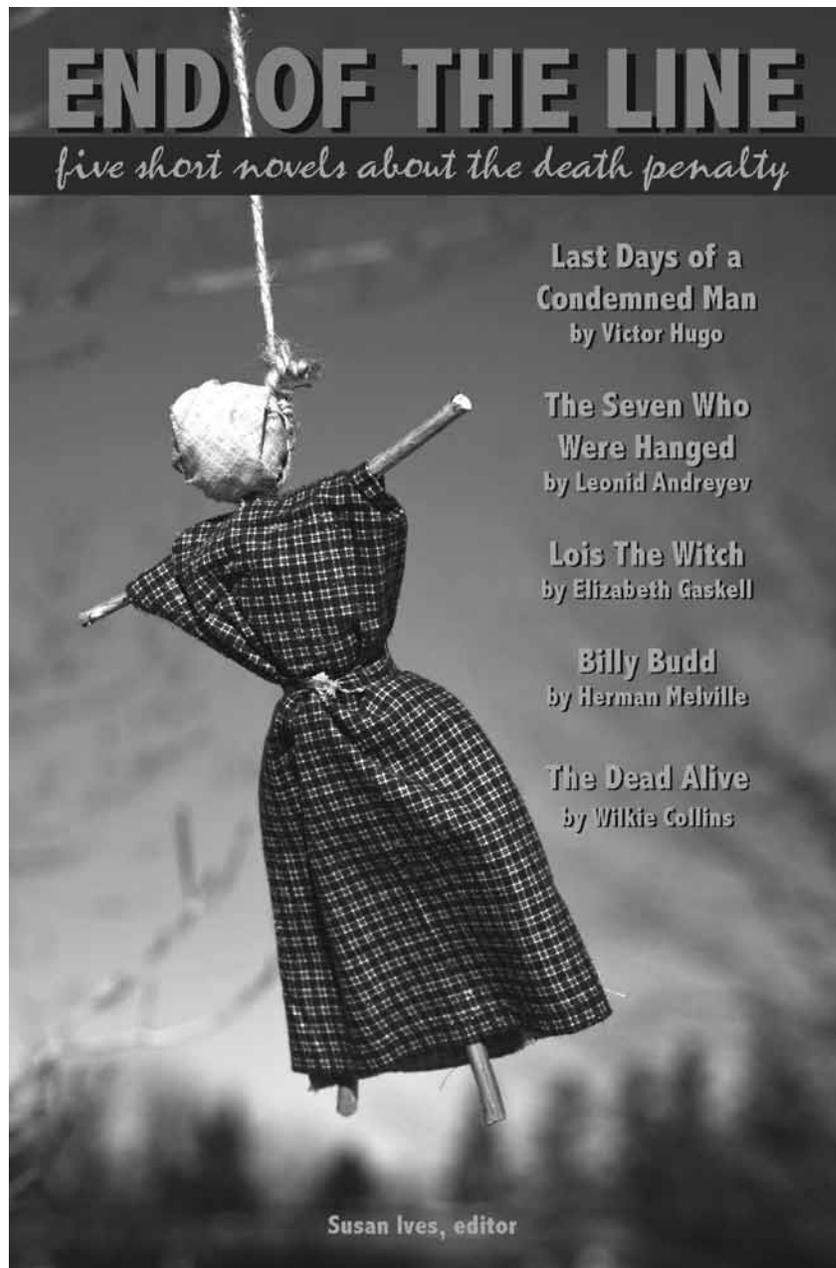


Essays to Accompany

End of the Line: *five short novels about the death penalty*



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Victor Hugo and the Death Penalty

by Susan Ives

Robert Badinter, the French minister of justice, wrote the legislation banning the death penalty and pushed it through the National Assembly and Senate. "I looked at the clock: It was 12:50, the 30th of September 1981," he wrote. "Victor Hugo's dream — 'the pure, simple, and definitive abolition of the death penalty'—had been realized. The victory was complete."

Victor Hugo (1802–1885) — poet, playwright, novelist, painter, activist, politician — was embroiled in many causes: universal suffrage, freedom of the press, free public education, European unification and opposition to Napoléon III's coup in 1851. Yet nothing enraged him like capital punishment. Hugo first encountered the bloody evidence of executions while crossing Spain with his mother as a 10-year-old boy. The heads of convicted robbers were hammered into roadside trees as warning; Hugo was forever haunted by the sight of a man who had been dismembered and reassembled in the shape of a crucifix.

Although only 27, he was already famous and controversial when the novella included in this anthology, **The Last Day of a Condemned Man**, was published in 1827. The normally brash Hugo published it anonymously, perhaps testing the waters to see how a newly politicized Hugo would sit with the public. The book was an international hit — soon translated into ten languages — and he quickly advertised his authorship.

His wife, Adele, writing in 1863, expanded upon the events leading up to the book as follows:

M. Victor Hugo had, in 1820, met Louvel on his way to the scaffold. The assassin of the Duke de Berry had nothing which awakened sympathy; he was coarse and stubby, had a gristly nose above thin lips, and eyes of a glassy blue. The author of the ode on The Death of the Duke de Berry hated him with all the ultra royalism of his childhood. And yet, at the sight of that man who was alive and well, and who was about to die, he could not suppress a feeling of compassion, and he felt his hate for the assassin change to pity for the sufferer. He had reflected, had, for the first time, looked the death penalty in the face, was astonished to discover that society did to the guilty in cold blood and without danger, precisely the same thing which it was punishing, and had conceived the idea of writing a book against the guillotine.

At the close of the summer of 1825 one afternoon, as he was going to the library of the Louvre, he met M. Jules Lefevre, who took him by the arm and drew him to the Quai de la Ferraille. The multitude filled the streets going towards the Place de Grève.

"What is the matter?" asked he.

"The matter is that they are going to cut off the head and hand of a man named Jean Martin who has killed his father. I have a poem on hand in which a parricide is executed; I am going to see this one executed, but I prefer not to be alone."

The horror which M. Victor Hugo experienced at the thought of seeing an execution, was a reason for compelling himself to go; the frightful spectacle would excite him to his projected war upon the death penalty.

At the Pont au Change, the throng was so dense that it became difficult to advance. M. Victor Hugo and Jules Lefevre succeeded, however, in gaining the Place. The houses were crowded with people. The occupants had invited their friends to the fete; they saw tables loaded with fruits and wines; the windows had been rented at a high price; young women were leaning upon the window sills, glass in hand, and loudly laughing or coquetting with young men. But soon the coquetry ceased for a more thrilling pleasure; the cart arrived.

The sufferer, with his back turned to the horse, executioner, and assistants, his head covered with a black rag tied about his neck, dressed in a pair of grey linen pantaloons and a white shirt, was shivering under a heavy rain. The chaplain of the prisons, the Abbé Montes, spoke to him and made him kiss a crucifix through his veil.

M. Victor Hugo saw the guillotine in profile. To him it seemed only a red post. A large space guarded by the troops isolated the scaffold. The cart entered it. Jean Martin descended, supported by the assistants, then, still supported by them, he mounted the stairs. The chaplain went up after him, then the clerk, who read the sentence aloud. Then the executioner lifted the black veil, exposed the affrighted and haggard countenance of a youth, took the right hand of the condemned and fastened it to the post with a chain, seized an axe and lifted in the air; but M. Victor Hugo could see no more, he turned away his head and became master of himself only when the Ha! of the multitude announced that the victim had ceased to suffer.

At another time he saw the cart of a highway robber named Delaporte. He was an old man, with his arms tied behind his back and his bald head glistening in the sun.

It seemed as though the death penalty would not allow him to forget it. He met another cart; this time the guillotine was doing double work; the two assassins, Malagutti and Ratta, of the banker Joseph, were executed. M. Victor Hugo was

struck with the different appearance of the two prisoners: Ratta, blond, pallid, terrified, was trembling and shivering; Malagutti, dark, robust, with head erect and careless look, went to die as he would have gone to dine.

M. Victor Hugo saw the guillotine again one day about two o'clock, when he was crossing the Place de l'Hotel de Ville. The executioner was rehearsing his evening representation; the knife did not go well; he oiled the grooves, and then he tried again. This time he was satisfied.

This man, who was learning to kill another, and was doing it in broad day, in public, chatting with curious bystanders, while a wretched man was beating his prison bars in desperation, mad with rage, or was allowing himself to be bound in the powerlessness and lethargy of terror, was to M. Victor Hugo a hideous sight, and the rehearsal of the thing seemed to him as hateful as the thing itself.

Next day he set about writing *Le Dernier Jour d'un Condamné*, and finished it in three weeks. [. . .] M. Victor Hugo did not confine himself to that protest against the death penalty. For thirty-three years, he has never met upon his path a scaffold or a gibbet without affirming the principle of the inviolability of human life.

In 1832 he added to *Le Dernier Jour d'un Condamné* a considerable preface which presented to the reader the question which the book had presented to the feelings; and which pleaded before the intellect, that which it had pleaded before the heart.

In the English-speaking world we know Hugo mainly for two novels: **The Hunchback of Notre Dame** and **Les Misérables**. Both books contain poignant execution scenes: that of Esmerelda in **Notre Dame du Paris** (1831) breaks my heart:

Then the sun was just rising, and a considerable number of people collected thus early in the Place were striving to make out what it was that the hangman was thus dragging along the pavement toward the gibbet; for it was Tristan's way to prevent the near approach of spectators at executions.

There was not a creature at the windows. There were only to be seen on the top of that tower of Notre Dame which overlooks the Grève, two men standing out in dark relief from the clear morning sky, who appeared to be looking on.

Henriet Cousin stopped with what he was dragging at the foot of the fatal ladder, and scarcely breathing, so deeply was he affected, he slipped the cord about the lovely neck of the girl. The unfortunate creature felt the horrid touch of the rope. She opened her eyes, and beheld the hideous arm of the stone gibbet extended over her head. Rousing herself she cried in a loud and heart-rending voice, "No! No, I will not." The mother, whose face was buried in her daughter's garments, uttered not a word; her whole body was seen to tremble, and she was heard to kiss her child with redoubled fervency. The hangman took advantage of this moment to wrench asunder her arms with which she had clung to the condemned girl. Either from exhaustion, or despair, she made no resistance. He then lifted the damsel on his shoulder, from which the charming creature hung gracefully on either side, and began to ascend the ladder.

At that moment, the mother, crouched on the pavement. Opened her eyes. Without uttering any cry, she sprang up with a terrific look; then, like a beast of prey, she seized the hand of the hangman and bit him. It was like lightning.

The executioner roared with pain. Some of the sergeants ran to him. With difficulty they extricated his bleeding hand from the teeth of the mother. She maintained profound silence. They thrust her back in a brutal manner, and it was remarked that her head fell heavily upon the pavement. They lifted her up, but again she sank to the ground. She was dead.

The hangman, who had not set down the girl, continued to mount the ladder.

[. . .] *He now perceived what the priest was looking at. The ladder was set up against the permanent gibbet. There were a few people in the Place and a great number of soldiers. A man was dragging along the pavement something white to which something black was clinging. This man stopped at the foot of the gibbet. What then took place he could not clearly discern: not that the sight of his only eye was at all impaired, but a party of soldiers prevented his distinguishing what was going forward. Besides, at that moment the sun burst forth and poured such a flood of light above the horizon, that every point of Paris, steeples, chimneys, gables, seemed to be set on fire at one and the same moment.*

Meanwhile the man began to mount the ladder. Quasimodo now saw distinctly again. He carried across his shoulder a female dressed in white; this young female had a rope about her neck. Quasimodo knew her. It was the Egyptian!

The man reached the top of the ladder. There he arranged the rope. The priest, in order to see the better, now knelt down upon the balustrade.

The man suddenly kicked away the ladder, and Quasimodo, who had not breathed for some moments, saw the unfortunate girl, with the man crouched upon her shoulders, dangling at the end of the rope within two or three yards of the pavement. The rope made several revolutions, and Quasimodo saw the body of the victim writhe in frightful convulsions. The priest, on his part, with out stretched neck and eyes staring from his head, contemplated the terrific group of the man and the young girls, the spider and the fly.

In the night following the execution of Esmeralda, the hangman's assistants took down her body from the gibbet and carried it, according to custom, to the great charnel vault of Montfaucon.

Les Misérables (1862) opens with the execution of a young con man, tended in his last moments by a beloved bishop filling in for the absent prison chaplain. In the thirty-one years between these two novels, Hugo evolved from pure descriptive emotion to emotion coupled with explicit political analysis:

As for the Bishop, it was a shock to him to have beheld the guillotine, and it was a long time before he recovered from it.

In fact, when the scaffold is there, all erected and prepared, it has something about it which produces hallucination. One may feel a certain indifference to the death penalty, one may refrain from pronouncing upon it, from saying yes or no, so long as one has not seen a guillotine with one's own eyes: but if one encounters one of them, the shock is violent; one is forced to decide, and to take part for or against. Some admire it, like de Maistre; others execrate it, like Beccaria. The guillotine is the concretion of the law; it is called vindicte; it is not neutral, and it does not permit you to remain neutral. He who sees it shivers with the most mysterious of shivers. All social problems erect their interrogation point around this chopping-knife. The scaffold is a vision. The scaffold is not a piece of carpentry; the scaffold is not a machine; the scaffold is not an inert bit of mechanism constructed of wood, iron and cords.

It seems as though it were a being, possessed of I know not what sombre initiative; one would say that this piece of carpenter's work saw, that this machine heard, that this mechanism understood, that this wood, this iron, and these cords were possessed of will. In the frightful meditation into which its presence casts the soul the scaffold appears in terrible guise, and as though taking part in what is going on. The scaffold is the accomplice of the executioner; it devours, it eats flesh, it drinks blood; the scaffold is a sort of monster fabricated by the judge and the carpenter, a spectre which seems to live with a horrible vitality composed of all the death which it has inflicted.

Therefore, the impression was terrible and profound; on the day following the execution, and on many succeeding days, the Bishop appeared to be crushed. The almost violent serenity of the funereal moment had disappeared; the phantom of social justice tormented him. He, who generally returned from all his deeds with a radiant satisfaction, seemed to be reproaching himself. At times he talked to himself, and stammered lugubrious monologues in a low voice. This is one which his sister overheard one evening and preserved: "I did not think that it was so monstrous. It is wrong to become absorbed in the divine law to such a degree as not to perceive human law. Death belongs to God alone. By what right do men touch that unknown thing?"

In course of time these impressions weakened and probably vanished. Nevertheless, it was observed that the Bishop thenceforth avoided passing the place of execution.

In this short excerpt Hugo cites de Maistre and Beccaria, showing that he wrote not only from the heart but also from the head. In 1764 the Italian Beccaria wrote **Of Crimes and Punishments**, a influential work that inspired Catherine the Great of Russia to oppose the death penalty. Thomas Jefferson kept a copy in his library. Beccaria wrote:

The death of a citizen cannot be necessary but in one case: when, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But, even in this case, it can only be necessary when a nation is on the verge of recovering or losing its liberty, or in times of absolute anarchy, when the disorders themselves hold the place of laws: but in a reign of tranquility, in a form of government approved by the united wishes of the nation, in a state well fortified from enemies without and supported by strength within, and opinion, perhaps more efficacious, where all power is lodged in the hands of a true sovereign, where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject.

De Maistre, on the other hand, was an apologist for the Inquisition (1478-1934). He wrote in 1822:

[...] that unceasingly repeated expression, calling the Inquisition "a bloody tribunal" is not merely groundless, but absurd. There does not, there cannot, exist, anywhere, a tribunal, but what, unhappily, is sometimes under the necessity of condemning the criminal to death; and which is irreproachable for doing so, provided it but executes the law upon the most positive, and clearest, evidence, and which even would be justly reproachable, if it did not execute the law, upon such testimony.

To backtrack a bit, in 1834 Hugo wrote the short story **Claude Gueux**, which we included in the peaceCENTER's anthology of short stories about capital punishment, **Death Sentences**. After telling the story of his doomed hero, Hugo shifts direction and baldly exposes the political implications of his tale:

We have given the history of Claude Gueux's life, more to solve a difficult problem than for aught else. [. . .] The man turned assassin under certain circumstances, if differently influenced would have served his country well. Then give the people all encouragement; improve the masses, enlighten them, guard their morals, make them useful, and to such heads as those you will not require to use cold steel.

In 1928, Hugo's novel the **Man Who Laughs** (1869) was made into a film starring Conrad Veidt; his performance is often cited as the prototype of the "Joker" character in the Batman stories. The action occurs in England in 1690, and in this scene a 10-year-old boy comes across a gibbet, an upright post with an arm on which the bodies of criminals were hung as a warning to others:

When he got close under the gibbet, he looked up and examined it.

The spectre was tarred; here and there it shone. The child distinguished the face. It was coated over with pitch; and this mask, which appeared viscous and sticky, varied its aspect with the night shadows. The child saw the mouth, which was a hole; the nose, which was a hole; the eyes, which were holes. The body was wrapped, and apparently corded up, in coarse canvas, soaked in naphtha. The canvas was moldy and torn. A knee protruded through it. A rent disclosed the ribs--partly corpse, partly skeleton. The face was the color of earth; slugs, wandering over it, had traced across it vague ribbons of silver. The canvas, glued to the bones, showed in reliefs like the robe of a statue. The skull, cracked and fractured, gaped like a rotten fruit. The teeth were still human, for they retained a laugh. The remains of a cry seemed to murmur in the open mouth. There were a few hairs of beard on the cheek. The inclined head had an air of attention.

Some repairs had recently been done; the face had been tarred afresh, as well as the ribs and the knee which protruded from the canvas. The feet hung out below.

Just underneath, in the grass, were two shoes, which snow and rain had rendered shapeless. These shoes had fallen from the dead man.

The barefooted child looked at the shoes.

The wind, which had become more and more restless, was now and then interrupted by those pauses which foretell the approach of a storm. For the last few minutes it had altogether ceased to blow. The corpse no longer stirred; the chain was as motionless as a plumb line.

Like all newcomers into life, and taking into account the peculiar influences of his fate, the child no doubt felt within him that awakening of ideas characteristic of early years, which endeavours to open the brain, and which resembles the pecking of the young bird in the egg. But all that there was in his little consciousness just then was resolved into stupor. Excess of sensation has the effect of too much oil, and ends by putting out thought. A man would have put himself questions; the child put himself none—he only looked.

The tar gave the face a wet appearance; drops of pitch, congealed in what had once been the eyes, produced the effect of tears. However, thanks to the pitch, the ravage of death, if not annulled, was visibly slackened and reduced to the least possible decay. That which was before the child was a thing of which care was taken: the man was evidently precious. They had not cared to keep him alive, but they cared to keep him dead.

The gibbet was old, worm-eaten, although strong, and had been in use many years.

It was an immemorial custom in England to tar smugglers. They were hanged on the seaboard, coated over with pitch and left swinging. Examples must be made in public, and tarred examples last longest. The tar was mercy: by renewing it they were spared making too many fresh examples. They placed gibbets from point to point along the coast, as nowadays they do beacons. The hanged man did duty as a lantern. After his fashion, he guided his comrades, the smugglers. The smugglers from far out at sea perceived the gibbets. There is one, first warning; another, second warning. It did not stop smuggling; but public order is made up of such things. The fashion lasted in England up to the beginning of this century. In 1822 three men were still to be seen hanging in front of Dover Castle. But, for that matter, the preserving process was employed not only with smugglers. England turned robbers, incendiaries, and murderers to the same account. Jack Painter, who set fire to the government storehouses at Portsmouth, was hanged and tarred in 1776. L'Abbé Coyer, who describes him as Jean le Peintre, saw him again in 1777. Jack Painter was hanging above the ruin he had made, and was re-tarred from time to time. His corpse lasted—I had almost said lived—nearly fourteen years. It was still doing good service in 1788; in 1790, however, they were obliged to replace it by another. The Egyptians used to value the mummy of the king; a plebeian mummy can also, it appears, be of service.

The wind, having great power on the hill, had swept it of all its snow. Herbage reappeared on it, interspersed here and there with a few thistles; the hill was covered by that close short grass which grows by the sea, and causes the tops of cliffs to resemble green cloth. Under the gibbet, on the very spot over which hung the feet of the executed criminal, was a long and thick tuft, uncommon on such poor soil. Corpses, crumbling there for centuries past, accounted for the beauty

of the grass. Earth feeds on man.

A dreary fascination held the child; he remained there open-mouthed. He only dropped his head a moment when a nettle, which felt like an insect, stung his leg; then he looked up again—he looked above him at the face which looked down on him. It appeared to regard him the more steadfastly because it had no eyes. It was a comprehensive glance, having an indescribable fixedness in which there were both light and darkness, and which emanated from the skull and teeth, as well as the empty arches of the brow. The whole head of a dead man seems to have vision, and this is awful. No eyeball, yet we feel that we are looked at. A horror of worms.

Victor Hugo was not just a literary opponent to capital punishment: he was an activist. He was a member of the National Assembly, and in 1848 delivered a speech opposing the death penalty:

I Regret, gentlemen, that this question of the abolition of capital punishment—the most important question, perhaps, of all before this body,—comes up at a time when we are little prepared for its discussion. For myself, I have but few words to say on the subject, but they will proceed from convictions profound and long entertained. You have established the inviolability of the domicile: we ask you to establish inviolability higher and more sacred—the inviolability of human life! Gentlemen, a constitution, and above all, a constitution made by France and for France, is necessarily an important step in civilization. If it is not that, it is nothing. Consider, then, this penalty of death. What is it but the special and eternal type of barbarism? Wherever the penalty of death is most in vogue, barbarism prevails. Wherever it is rare, civilization reigns. Gentlemen, these are in disputable facts. The modification of the penalty was a great forward step.

The eighteenth century, to its honor, abolished the torture. The nineteenth century will abolish the death penalty! You may not abolish it to-day. But, doubt not, you will abolish it to-morrow; or else your successors will abolish it. You have inscribed at the head of the preamble of your constitution the words, “IN PRESENCE OF GOD;” and would you begin by depriving that God of the right which to Him only belongs—the right of life and death? Gentlemen, there are three things which are God’s, not man’s: the irrevocable, the irreparable, the indissoluble. Woe to man if he introduces them into his laws! Sooner or later they will force society to give way under their weight; they derange the equilibrium essential to the security of laws and of morals; they take from human justice its proportions; and then it happens,—think of it, gentlemen!—it happens that the law revolts the conscience.

I have ascended this tribune to say but a word, a decisive word, and it is this: After the Revolution of February came a great thought to the French people! The day after they had burned the Throne, they sought to burn the Scaffold! But this sublime idea they were prevented from carrying into execution. In the first article of this constitution you have consecrated the people’s first thought; you have cast down the Throne! Now consecrate its second thought, and cast down the Scaffold! Vote for the entire abolition of the penalty of death.

When Napoleon III seized power in 1851, Hugo openly called him a traitor to France. He fled to the channel island of Guernsey, where he lived in exile until 1870. From Guernsey he intervened in individual death penalty cases throughout the world. He convinced the government of Queen Victoria to spare the lives of six Fenians by asking how the widowed Queen Victoria could bring herself to kill other women’s husbands. His influence was credited in the removal of the death penalty from the constitutions of Geneva, Portugal and Colombia. He plead with Benito Juarez to spare the life of the Emperor Maximilian, but failed.

In 1854 Hugo intervened on behalf of a murderer, Tapner, by writing to the British foreign secretary, Lord Palmerston:

Tapner, an assassin, an incendiary, and a robber, is condemned to death. At the present day, my lord and the facts I have just mentioned would suffice to prove what I say in every upright and healthy conscience the penalty of death is abolished. Tapner being condemned, a general outcry is heard, petitions multiply, and one, energetically asserting the inviolability of human life, is signed by 600 of the most enlightened inhabitants of the island. It is worthy of notice that not a single minister of any form of Christian worship has added his signature to these petitions. These men are probably ignorant that the cross was a gibbet. The people cry ‘Pardon!’ but the priest cries ‘Death! Let us pity the priests, and pass on. The petitions were duly forwarded to you, my lord, and you granted a respite. In such cases a respite signifies a commutation of the punishment. The island breathes: the gibbet will not be erected. Not so: the gibbet is erected. Tapner is hanged.

After reflection.

Why?

Why is that refused to Guernsey which has been so frequently granted to Jersey? Why the concession to one island and the refusal to the other? Why is mercy to be granted here and the executioner sent there? Why this difference where

the cases were parallel? What was the meaning of this respite, which is now only an aggravation? Is there any mystery connected with it? Of what use is reflection?

Things have been said, my lord, before which I turn away my head. No, what has been said cannot be.

At this point Hugo provides Palmerston with a eloquent, horrifying and very lengthy account of Tapner's botched execution (he took 18 minutes to die), then concludes:

Listen, my lord, it is horrible. We inhabit you and I the infinitely small. I am but an exile, and you are only a Minister. I am ashes, and you are dust. Being both atoms, we may speak together. From one nothingness to another, home truths may be told. Well, be it known to you, whatever be the actual splendors of your political position, my lord, this rope tied round a man's throat, that trap-door which opens under his feet, that hope one entertains that he will break his neck in falling, that face which turns blue under the lugubrious veil of the gibbet, those bloodshot eyes which start from their sockets, that tongue which is thrust out of his mouth, that groan of anguish which the noose stifles, that distracted soul which struggles in its prison-house, the skull, without being able to escape; those convulsed knees, seeking some place against which they may press; those hands bound, and mutely appealing for help; and that other man, that dark shadow, who throws himself on this shuddering and palpitating mass of humanity, who clings to the wretch's knees, and who hangs himself to the hanging man; all this, my lord, is frightful. You said, let justice take its course. You gave these orders as they are wont to be given, and these repetitions but little affect you. To hang a man is to you very much like drinking a glass of water. You did not recognize the enormity of the act. It is one of the occurrences of daily life to a great statesman nothing more. My lord, keep your thoughtless acts for the earth; do not offer them to eternity. Believe me, do not trifle with depths like these; do not throw anything of yourself into them. It is an act of imprudence. With regard to these depths, I am nearer them than you are. I see them. Take care, Exul sicut mortuus. I speak to you from within the tomb.

Bah! What matters it? A man hanged, and then a rope to be taken away, a scaffold to be unnailed, a corpse to be buried; what does it all amount to? We will fire a gun off; there will be a little smoke in the east, and nothing more will be said about it. Guernsey Tapner we must have a microscope to see little things like these. But that rope, that scaffold, that corpse, that wretched gibbet, hardly seen, that misery, these are immensity. It is a social question, much higher than any political question. It is yet more, it is something that no longer exists on earth. What is really of no importance is your firing of guns, your politics, your smoke. The assassin, who, between sunrise and sunset, has been assassinated, this is the frightful thing; a soul which takes its flight, holding a piece of the rope torn from the gibbet, this is really formidable. Statesmen, between the signing of two protocols, between two meals, between two smiles, you carelessly press with your white-gloved thumb the spring of the gallows, and the trap gives way under the feet of the hanging man.

Do you know what that trap is? It is eternity which is dawning, it is the unfathomable and the unknown; it is the great shadow which opens unexpectedly and terribly upon your littleness.

Go on. It is well. Let us see men of the old school at work. As the past will not pass away, let us look back at it. Let us see all its members in succession. At Tunis, we have impaling; under the Czar, the knout; under the Pope, garroting; in France, the guillotine; in England, the gibbet; in Asia and America, the slave-market. Ah! All this will fade away. We anarchists, we demagogues, we bloodthirsty men, we declare unto you, unto you, the Conservatives, that human liberty is august, human intelligence is holy, human life is sacred, and the human soul is Divine. After this, will you still hang?

Take care. Futurity draws near. You believe that which is dead to be living, and that which is living you believe to be dead. The old society still holds its position; but I tell you, that is dead. You have deceived yourselves. You have placed your hand on the spectre in the night, and you have made it your bride. You turn your backs on life, and presently it will rise from behind you. When we pronounce those words, Progress, Revolution, Liberty, Humanity, you smile, unhappy men! And you show us the night, in which we are, and in which you are. Truly, do you know what the night means? Learn its meaning, for ere long, ideas will emerge from it, vast and radiating. Yesterday democracy was France, to-morrow it will be Europe. The present eclipse masks the mysterious aggrandizement of the planet.

In 1859 Hugo, enraged by the death sentence imposed on John Brown for his raid on Harper's Ferry, wrote an open letter to the people of the United States:

[. . .] John Brown, on a stretcher, with six wounds, scarcely closed, one shot in his arm, one in his back, two in his chest, two in his head; hearing with difficulty; the blood dripping through his mattress; the shades of his two dead sons near him; his four fellow prisoners, wounded, dragging themselves along by his side, Stephens with four sabre cuts; 'justice' easier and hurrying on; an attorney Hunter who wishes to be quick; a Judge Parker who consents to this; the pleadings cut short, almost all delay refused; forced or mutilated documents produced; witnesses for the prisoner driven away; the defence trammelled; two guns loaded with canister in the yard of the tribunal; orders to the jailers to shoot the accused if there is an attempt to rescue them; forty minutes for deliberation; three men sentenced to death. I affirm upon

my honor that that did not come to pass in Turkey, but in America.

These things are not done with impunity in the face of the civilized world. The universal conscience is an open eye. Let the judges of Charlestown, let Hunter and Parker, let the slaveholding jury, let the whole people of Virginia remember it; they are seen. There is Some One.

The gaze of Europe is fastened at this moment upon America.

[. . .] As for me, who am but an atom, but who, like all men, have in me all the human conscience, I kneel with tears before the great starry flag of the new world, and I supplicate with clasped hands, and with profound and filial respect, that illustrious American Republic, sister of the French Republic, to think of the safety of the universal moral law, to save John Brown, to cast down the threatening scaffold of the 16th December, and not to permit that under its eyes, and I add with a shudder, almost by its fault, the first fratricide should be surpassed.

Yes, let America know it and look to it, there is something more frightful than Cain killing Abel; it is Washington killing Spartacus.

Hugo's last novel, **Quatrevingt Treize**, refers to 1793, a bloody year that began with the execution of Louis XIV and ending with the Reign of Terror, during which perhaps as many as 40,000 French men and women were guillotined. He did not write this book — his only one addressing this pivotal era — until he was an old man, in 1874. Hugo describes the hall where "*Many times freshly severed heads, borne aloft on the tops of pikes, sprinkled their blood-drops over this table*" and recounts the vote condemning Louis to death:

[. . .] Jean Bon Saint-Andre, who said — "No free people without a dead tyrant." Lavicomterie, who proclaimed this formula — "So long as the tyrant breathes, Liberty is suffocated! Death!" [. . .] While these sentences fell from those severe lips and dispersed themselves one after another into history, women in low-necked dresses and decorated with gems sat in the tribunes, list in hand, counting the voices and pricking each vote with a pin.

The novel ends with an execution, an anthropomorphized medieval tower confronting a guillotine looming in its ancient fields:

The sinister tree had germinated in the fatal ground. Out of the soil watered by so much of human sweat, so many tears, so much blood—out of the earth in which had been dug so many trenches, so many graves, so many caverns, so many ambuscades—out of this earth wherein had rolled the countless victims of countless tyrannies—out of this earth spread above so many abysses wherein had been buried so many crimes (terrible germs) had sprung in a destined day this unknown, this avenger, this ferocious sword-bearer, and '93 had said to the Old World, "Behold me!"

And the guillotine had the right to say to the donjon tower, "I am thy daughter."

And, at the same time, the tower—for those fatal objects possess a strange vitality—felt herself slain by this newly-risen force.

Before this formidable apparition La Tourgue seemed to shudder. One might have said that she was afraid. The monstrous mass of granite was majestic, but infamous; that plank with its black triangle was worse. The all-powerful fallen, trembled before the all-powerful risen. Criminal history was studying judicial history. The violence of bygone days was comparing itself with the violence of the present; the ancient fortress, the ancient prison, the ancient seigneurie where tortured victims had shrieked out their lives; that construction of war and murder, now useless, defenseless, violated, dismantled, uncrowned, a heap of stones with no more than a heap of ashes, hideous yet magnificent, dying, dizzy with the awful memories of all those by-gone centuries, watched the terrible living Present sweep up. Yesterday trembled before today; antique ferocity acknowledged and bowed its head before this fresh horror. The power which was sinking into nothingness opened eyes of fright upon this new-born terror. Expiring despotism stared at this spectral avenger.

There has never been a more persistent, informed and effective advocate for abolition of the death penalty than Victor Hugo. **The Last Day Of A Condemned Man** was the start. We have not yet seen the end of his influence.

For further reading:

Graham Robb's **Victor Hugo: a Biography** (W.W. Norton, 1999) is a delight — irreverent and thorough.

Adele Hugo's biography is available online at www.archive.org/details/victorhugo01unkngoog, as is Hugo's own memoir, compiled by Paul Maurice in 1899 from Hugo's writings, at www.archive.org/stream/thememoirsofvict02523gut/vhugo10.txt.

Abolition: One Man's Battle Against the Death Penalty by Robert Badinter (Northeastern, 2008) was quoted at the beginning of this section, and is a good introduction to the successful abolitionist movement in modern France.

If you have not yet read **Les Misérables**, do so. If you prefer a film adaptation, the 2000 version with Gérard Depardieu as Jean Valjean and John Malkovich as Javert is probably most faithful to the book or consider the 1998 film with Liam Neeson as Jean Valjean, Uma Thurman as Fantine and Clare Danes as Cosette.

Elizabeth Gaskell and the Death Penalty

by Susan Ives

Elizabeth Cleghorn Gaskell (1810–1865) was a Victorian novelist and short story writer. The daughter of a Unitarian minister, she married William Gaskell, the minister at Cross Street Unitarian Chapel in Manchester and an outspoken proponent of reform and the abolition of slavery. Gaskell wrote with compassion and radical frankness about controversial issues of the day, including the poverty of the working classes, the hardships of men working in mines and factories and women working in mills. *Blackwood's Magazine* printed her first story, "Sketches Among the Poor," in 1837.

Elizabeth's Unitarian heritage (which valued the education of girls as highly as that of boys) meant that her education went beyond music and art, which was the sum of schooling for many of her female contemporaries. She was encouraged to read widely and to think for herself. Her family was friends with prominent Unitarians, such as the Darwins and the Wedgwoods, and throughout her life she was well connected with influential Unitarian thinkers and doers.

Unitarianism is a religion of "deed, not creed." Nineteenth Century Unitarians were generally liberal, tolerant social reformers, at the forefront of social reform movements, including the abolition of slavery and capital punishment. Gaskell was not a theorist but rather a practical, hands-on worker. As a minister's wife she visited the poor, the sick and the imprisoned and led Sunday school classes, which involved the bold and controversial act of teaching workers (and women) to read.

She was roped into political causes—in her letters she writes of being dragged to an anti-slavery meeting and handing out pamphlets for the Christian Socialists—but her heart was in action, not in meetings. All the family wore themselves out in charitable work during the cotton famine caused by the American Civil War and she received first-hand reports about the Crimean War from her friend Florence Nightingale.

Her philosophy was intensely personal. She took what she observed, what she read, what she heard and what she studied and gave it a human face. Her husband would hand her long, technical, statistic-laden reports about sanitary conditions in the Manchester slums; she would write about a large family living in a small basement tossing their excrement into a steaming gutter. He would tell her that fifty-nine percent of the working class children in Manchester died before the age of five; she would write about a mother keening at the death of her baby.

Although she was well informed, in a letter she warned one of her four daughters (a 10-month-old son died of scarlet fever) about involvement in politics:

"Seriously, dear, you must not be a partizan in politics or in anything else,— you must have a "reason for the faith that is in you",— and not in three weeks suppose you can know enough to form an opinion about measures of state. That is one reason why so many people dislike that women should meddle with politics; they say it is a subject requiring long, patient study of many branches of science; and a logical training which few women have had,— that women are apt to take up a thing without being even able to state their reasons clearly, and yet on that insufficient knowledge they take a more violent and bigoted stand than thoughtful men dare to do. Have as many and as large and varied interests as you can; but do not again give a decided opinion on a subject on which you can at present know nothing. About yr bonnet get it large, and trimmed with white."

Mary Barton, Gaskell's first novel, was published anonymously in 1848. It immediately caused a sensation; when she was exposed as the author she suffered accusations of being overly harsh in her portrayals of mill owners and subversive of the established order. Mary Barton was followed by **Ruth** (1853), another controversial work exposing the hypocrisy of church and state in their treatment of an unmarried mother. Members of her husband's congregation were so outraged at the "immorality" of Ruth that they staged a public burning of the book.

Her husband was supportive. He acted as her editor, her proofreader and her agent. "My Lady Ludlow," a story included in her book **Round the Sofa**, included a portrait of a minister who, I suspect, was much like William Gaskell in matters of courage and integrity, if not in appearance:

"Mr. Gray drew himself up to his full height, with an unconscious feeling of dignity. Little as was his stature, and awkward and embarrassed as he had been only a few minutes before, I remember thinking he looked almost as grand as my lady when he spoke.

"Your ladyship must remember that it may be my duty to speak to my parishioners on many subjects on which they

do not agree with me. I am not at liberty to be silent, because they differ in opinion from me."

. . . "If I, madam, as the clergyman of this parish, am not to shrink from telling what I believe to be the truth to the poor and lowly, no more am I to hold my peace in the presence of the rich and titled."

" . . . He was near the hall door, and said something--half to himself, which we heard (being nearer to him), but my lady did not; although she saw that he spoke. "What did he say?" she asked in a somewhat hurried manner, as soon as the door was closed--"I did not hear." We looked at each other, and then I spoke:

"He said, my lady, that 'God help him! He was responsible for all the evil he did not strive to overcome.'"

She had a wide circle of acquaintances, among them Charlotte Brontë, whose biography she wrote. In all, she wrote six novels, nine novellas/collections of stories and many short stories.

Mary Barton, subtitled *A Tale of Manchester Life*, takes place during a time of rapid urbanization and industrialization, a growing gap between rich owners and desperately poor workers and food shortages, all which led to mass agitation for abolition of the tax on imported corn; Chartism (a working class movement for political and social reform) and the rise of trade unions. It is a novel about class struggle, so perhaps it is not coincidental that it was published just four years after Friedrich Engels' **The Condition of the Working Class in England in 1844**, which also describes working class conditions in Manchester. Mary's father, employed by the Carson family as a mill hand, is driven by desperation to join a militant Chartist group which orders him to assassinate the mill owner's son.

A friend, upon hearing the news, exclaims: *"I hope the murderer will be found out, that I do. Such a handsome young man to be killed as he was. I hope the wretch that did it may be hanged as high as Haman."*

Jem Wilson, a young working class man long in love with Mary, is arrested for the murder based on circumstantial evidence. A friend laments Jem's fate: *"I hope I may be wrong! But think, Mary, how much there is against him. The shot was fired with his gun; he it was as threatened Mr. Carson not many days before; he was absent from home at that very time, as we know, and, as I'm much afraid, some one will be called on to prove; and there's no one else to share suspicion with him."*

Mary is secretly handed proof that her own father killed Henry Carson and is subpoenaed to testify at the trial. When she asks for tips on how to conduct herself she is advised:

"Thou canst do nought better than tell the truth. Truth's best at all times, they say; and for sure it is when folk have to do with lawyers; for they're 'cute and cunning enough to get it out sooner or later, and it makes folk look like Tom Noddies, when truth follows falsehood, against their will."

Mary does not betray her father but goes to great lengths to track down Jem's alibi, a sailor who has since gone to sea.

At the top of every chapter, Gaskell places a snatch of poetry. Heading chapter 23, *"The Trial and Verdict—Not Guilty,"* is an explicitly anti-capital punishment excerpt from **Fazio** (1818), a verse play by Henry Hart Milman, who was to become the Dean of St. Paul's Cathedral: :

*Thou stand'st here arraign'd,
That with presumption impious and accurs'd,
Thou hast usurp'd God's high prerogative,
Making thy fellow mortal's life and death
Wait on thy moody and diseased passions;
That with a violent and untimely steel
Hath set abroach the blood that should have ebbed
In calm and natural current: to sum all
In one wild name--a name the pale air freezes at,
And every cheek of man sinks in with horror--
Thou art a cold and midnight murderer.*

At the trial, the prosecution lays out a strong circumstantial case against Jem, but the sailor's testimony raises doubts in the jury. The mill owner frets:

"Mr. Carson sank back on his seat in sickening despair. He knew enough of courts to be aware of the extreme unwillingness of juries to convict, even where the evidence is most clear, when the penalty of such conviction is death. At the period of the trial most condemnatory to the prisoner, he had repeated this fact to himself, in order to damp his too certain expectation for a conviction."

[. . .] *"The verdict they had come to was unsatisfactory to themselves at last; neither being convinced of his*

innocence, nor yet quite willing to believe him guilty in the teeth of the alibi. But the punishment that awaited him, if guilty, was so terrible, and so unnatural a sentence for man to pronounce on man, that the knowledge of it had weighed down the scale on the side of innocence, and "Not Guilty" was the verdict that thrilled through the breathless court."

This was one of the principal arguments against the death penalty at the time. In 1846—just two years before the publication of **Mary Barton**—Charles Dickens, her friend and sometimes publisher, wrote a series of letters about capital punishment to the *Daily News*. He addressed exactly this point:

[. . .] *I will not enter upon the question whether juries be justified or not justified in evading their oaths, rather than add to the list of such deeply degrading and demoralizing exhibitions, and sanction the infliction of a punishment which they conscientiously believe, and have so many reasons for believing, to be wrong. It is enough for me that juries do so; and I presume to think that the able writer of a powerful article on Johnstone's trial in The Daily News, does not sufficiently consider that this is no new course in juries, but the natural result and working of a law to which the general feeling is opposed. MR ABERCROMBIE, five-and-thirty years ago, stated it in the House of Commons to have become a common practice of juries, in cases of Forgery, to find verdicts 'contrary to the clearest and most indisputable evidence of facts'; and cited the case of a woman who was proved to have stolen a ten-pound note, which the jury, with the approbation of the judge, found to be worth only thirty-nine shillings. SIR SAMUEL ROMILLY, in the same debate, mentioned other cases of the same nature; and they were of frequent and constant occurrence at that time.*

Besides—that juries have, within our own time, in another class of cases, arrived at the general practice of returning a verdict tacitly agreed upon beforehand, and of making it applicable to a very different sets of facts, we know by the notable instance of Suicide. Within a few years, juries frequently found that a man dying by his own hand, was guilty of self-murder. But this verdict subjecting the body to a barbarous mode of burial, from which the better feeling of society revolted (as it is now revolting from the punishment of death), it was abrogated by common consent, and precisely the same evasion established, as is now, unfortunately, so often resorted to in cases of murder. That it is an evasion, and not a proceeding on a soundly-proved and established principle that he who destroys his own life must necessarily be mad—the very exceptions from this usual course in themselves demonstrate.

So it is in cases of Murder. Juries, like society, are not stricken foolish or motiveless. They have, for the most part, an objection to the punishment of death: and they will, for the most part, assert such verdicts. As jurymen, in the Forgery cases, would probably reconcile their verdict to their consciences, by calling to mind that the intrinsic value of a bank note was almost nothing, so jurymen in cases of Murder probably argue that grave doctors have said all men are more or less mad, and therefore they believe the prisoner mad. This is a great wrong to society; but it arises out of the punishment of death.

And the question will always suggest itself in jurors' minds—however earnestly the learned judge presiding, may discharge his duty—'which is the greater wrong to society? To give this man the benefit of the possibility of his being mad, or to have another public execution, with all its depraving and hardening influences?' Imagining myself a juror, in a case of life or death: and supposing that the evidence had forced me from every other ground of opposition to this punishment in the particular case, as a possibility of irremediable mistake, or otherwise: I would go over it again on this ground; and if I could, by any reasonable special pleading with myself, find him mad rather than hang him—I think I would.

Mary's father confesses his guilt to the mill owner and, in a great scene of reconciliation, he is forgiven and dies; the Mill owner is transformed and promises to treat his workers better. This is critical to the story and reflects Gaskell's Unitarianism: a vengeful execution would have precluded the necessary confession, repentance and reconciliation. She describes John Barton's transformation:

"The mourner before him was no longer the employer; a being of another race, eternally placed in antagonistic attitude; going through the world glittering like gold, with a stony heart within, which knew no sorrow but through the accidents of Trade; no longer the enemy, the oppressor, but a very poor and desolate old man.

The sympathy for suffering, formerly so prevalent a feeling with him, again filled John Barton's heart, and almost impelled him to speak (as best he could) some earnest, tender words to the stern man, shaking in his agony.

"But who was he, that he should utter sympathy or consolation? The cause of all this woe.

"Oh, blasting thought! Oh, miserable remembrance! He had forfeited all right to bind up his brother's wounds."

Gaskell sent advance copies of **Mary Barton** to Dickens and to Thomas Carlyle, whom she also admired. Dickens never responded, but Carlyle sent her a warm note: *"I gratefully accept it as a real contribution (about the first real one) towards developing a huge subject, which has lain dumb too long, and really ought to speak for itself, and tell us its meaning a little, if there be any voice at all."*

Though conservative, Carlyle opposed *laissez-faire* capitalism and supported government intervention in the political economy. Ralph Waldo Emerson (a Unitarian like Gaskell) summarized Carlyle's philosophy in an introduction to Carlyle's **Past and Present** (1843) as: "Let no man think himself absolved because he does a generous action and befriends the poor, but let him see whether he so holds his property that a benefit goes from it to all."

In 1850 Carlyle published a pamphlet, **Model Prisons**, which presented his view on capital punishment. He starts by condemning the *laissez-faire*, hands-off approach:

One large body of the intelligent and influential, busied mainly in personal affairs, accepts the social iniquities, or whatever you may call them, and the miseries consequent thereupon; accepts them, admits them to be extremely miserable, pronounces them entirely inevitable, incurable except by Heaven, and eats its pudding with as little thought of them as possible. Not a very noble class of citizens these; not a very hopeful or salutary method of dealing with social iniquities this of theirs, however it may answer in respect to themselves and their personal affairs!

He then moves onto equally virulent criticism of "do-gooders":

But now there is the select small minority, in whom some sentiment of public spirit and human pity still survives, among whom, or not anywhere, the Good Cause may expect to find soldiers and servants; their method of proceeding, in these times, is also very strange. They embark in the "philanthropic movement;" they calculate that the miseries of the world can be cured by bringing the philanthropic movement to bear on them. To universal public misery, and universal neglect of the clearest public duties, let private charity superadd itself: there will thus be some balance restored, and maintained again; thus, — or by what conceivable method? On these terms they, for their part, embark in the sacred cause; resolute to cure a world's woes by rose-water; desperately bent on trying to the uttermost that mild method. It seems not to have struck these good men that no world, or thing here below, ever fell into misery, without having first fallen into folly, into sin against the Supreme Ruler of it, by adopting as a law of conduct what was not a law, but the reverse of one; and that, till its folly, till its sin be cast out of it, there is not the smallest hope of its misery going, — that not for all the charity and rose-water in the world, will its misery try to go till then!

After lambasting model prisons (where the prisoners live in luxury, he claims, and have their evening cocoa brought to them by the warden) Carlyle counters:

What sort of reformers and workers are you that work only on the rotten material? That never think of meddling with the material while it continues sound; that stress it and strain it with new rates and assessments, till once it has given way and declared itself rotten; whereupon you snatch greedily at it, and say, Now let us try to do some good upon it! [. . .] On the whole, what a reflection is it that we cannot bestow on an unworthy man any particle of our benevolence, our patronage, or whatever resource is ours, — without withdrawing it, it and all that will grow of it, from one worthy, to whom it of right belongs

Carlyle then defends his support of capital punishment:

By punishment, capital or other, by treading and blind rigour, or by whitewashing and blind laxity, the extremely disagreeable offences of theft and murder must be kept down within limits. And so you take criminal caitiffs, murderers, and the like, and hang them on gibbets' for an example to deter others.' Whereupon arise friends of humanity, and object. With very great reason, as I consider, if your hypothesis be correct. What right have you to hang any poor creature for an example? He can turn round upon you and say, "Why make an 'example' of me, a merely ill-situated, pitiable man? Have you no more respect for misfortune? Misfortune, I have been told, is sacred. And yet you hang me, now I am fallen into your hands; choke the life out some, for an example! Again I ask, Why make an example of me, for your own convenience alone? — All 'revenge' being out of the question, it seems to me the caitiff is unanswerable; and he and the philanthropic platforms have the logic all on their side.

The one answer to him is: Caitiff, we hate thee; and discern for some six thousand years now, that we are called upon by the whole Universe to do it. Not with a diabolic but with a divine hatred. God himself, we have always understood, 'hates sin,' with a most authentic, celestial, and eternal hatred. A hatred, a hostility inexorable, unappeasable, which blasts the scoundrel, and all scoundrels ultimately, into black annihilation and disappearance from the sum of things. The path of it as the path of a flaming sword: he that has eyes may see it, walking inexorable, divinely beautiful and divinely terrible, through the chaotic gulf of Human History, and everywhere burning, as with unquenchable fire, the false and death-worthy from the true and life-worthy; making all Human History, and the Biography of every man, a God's Cosmos in place of a Devil's Chaos. So is it, in the end; even so, to every man who is a man, and not a mutinous beast, and has eyes to see. To thee, caitiff, these things were and are quite incredible; to us they are too awfully certain, — the Eternal Law of this Universe, whether thou and others will believe it or disbelieve. We, not to

be partakers in thy destructive adventure of defying God and all the Universe, dare not allow thee to continue longer among us. As a palpable deserter from the ranks where all men, at their eternal peril, are bound to be: palpable deserter, taken with the red hand fighting thus against the whole " Universe and its Laws, we — send thee back into the whole Universe, solemnly expel thee from our community; and will, in the name of God, not with joy and exultation, but with sorrow stern as thy own, hang thee on Wednesday next, and so end.

Carlyle is not hesitant to explain the origin of his philosophy: revenge. "My humane friends, I perceive this same sacred glow of divine wrath, or authentic monition at first-hand from God himself, to be the foundation for all Criminal Law." He holds up the ancient Germans as an example because they:

[. . .] had no scruple about public executions; on the contrary, they thought the just gods themselves might fitly preside over these; that these were a solemn and highest act of worship, if justly done. When a German man had done a crime deserving death, they, in solemn general assembly of the tribe, doomed him, and considered that Fate and all Nature had from the beginning doomed him, to die with ignominy. Certain crimes there were of a supreme nature; him that had perpetrated one of these, they believed to have declared himself a prince of scoundrels. Him once convicted they laid hold of, nothing doubting;—bore him, after judgment, to the deepest convenient Peatbog; plunged him in there, drove an oaken frame down over him, solemnly in the name of gods and men: There, prince of scoundrels, that is what we have had to think of thee, " on clear acquaintance; our grim good-night to thee is that! In the name of all the gods lie there, and be our partnership with thee dissolved henceforth.

Would Elizabeth Gaskell have agreed with the Carlyle of Model Prisons? I suspect not. She herself was a part of the philanthropic movement, a prison visitor, and a friend and supporter of Thomas Wright, the real-life prototype for the foundry owner in **Mary Barton** who spent his Sundays "visiting the prisoners and the afflicted at Manchester New Bailey."

In 1859 Gaskell published a collection of short stories, **Round the Sofa**. One of the stories, "The Doom of the Griffiths," purports to be a tale about Owen Glendower, a 14th Century Welsh ruler:

When Sir David Gam, "as black a traitor as if he had been born in Builth," sought to murder Owen at Machynlleth, there was one with him whose name Glendwr little dreamed of having associated with his enemies. Rhys ap Gryfydd, his "old familiar friend," his relation, his more than brother, had consented unto his blood. Sir David Gam might be forgiven, but one whom he had loved, and who had betrayed him, could never be forgiven. Glendwr was too deeply read in the human heart to kill him. No, he let him live on, the loathing and scorn of his compatriots, and the victim of bitter remorse. The mark of Cain was upon him.

But before he went forth--while he yet stood a prisoner, cowering beneath his conscience before Owain Glendwr—that chieftain passed a doom upon him and his race: "I doom thee to live, because I know thou wilt pray for death. Thou shalt live on beyond the natural term of the life of man, the scorn of all good men. The very children shall point to thee with hissing tongue, and say, 'There goes one who would have shed a brother's blood!' For I loved thee more than a brother, oh Rhys ap Gryfydd!

Glendower, who Gaskell views as a wise hero, perceives that living with shame and guilt, with loathing and scorn, is a far, far worse fate than a quick execution.

Gaskell recycled parts of the Mary Barton plot in **A Dark Night's Work** (1863.) Ellinor knows that her own father, now dead, committed the murder for which Abraham Dixon has been condemned to death.

"Dixon!" said she. It was all she could utter.

Mr. Johnson shook his head.

"Ah; that's a sad piece of business, and I'm afraid it has shortened your visit at Rome."

"Is he--?"

"Ay, I'm afraid there's no doubt of his guilt. At any rate, the jury found him guilty, and--"

"And!" she repeated, quickly, sitting down, the better to hear the words that she knew were coming--

"He is condemned to death."

"When?"

"The Saturday but one after the Judges left the town, I suppose--it's the usual time."

"Who tried him?"

"Judge Corbet; and, for a new judge, I must say I never knew one who got through his business so well. It was really as much as I could stand to hear him condemning the prisoner to death. Dixon was undoubtedly guilty, and he was as stubborn as could be--a sullen old fellow who would let no one help him through. . . . Good God, Miss Wilkins!

What's the matter? You're not fainting!"

"My poor, poor father did it. I am going up to London this afternoon; I am going to see the judge, and tell him all."

Ellinor meets with Old Dixon and learns that he would rather be hanged than be transported to Australia:

"I suppose it were for a sign of old acquaintance that he said he'd recommend me to mercy. But I'd sooner have death nor mercy, by long odds. Yon man out there says mercy means Botany Bay. It 'ud be like killing me by inches, that would. It would. I'd liefer go straight to Heaven, than live on among the black folk."

Dixon began to shake again: this idea of transportation, from its very mysteriousness, was more terrifying to him than death. He kept on saying plaintively, *"Missy, you'll never let 'em send me to Botany Bay; I couldn't stand that."* Ellinor does meet with the judge, tells her tale, and Dixon receives his pardon.

Also in 1863 Gaskell published *Sylvia's Lovers*, judged by many to be one of the best of her books. The action takes place in the 1790s and the focus is on press gangs, poor young men being rounded up to serve involuntarily on ships. Daniel Robson, Sylvia's father, participates in an attack on a local stronghold to free some of the sailors. It is a hanging offense. Phillip, a cousin in love with Sylvia, visits a lawyer:

"You could not tell me what is to be done with Daniel, could you, sir?"

"He'll be brought up before the magistrates to-morrow morning for final examination, along with the others, you know, before he's sent to York Castle to take his trial at the spring assizes."

"To York Castle, sir?"

Mr. Donkin nodded, as if words were too precious to waste.

"And when will he go?" asked poor Philip, in dismay.

"To-morrow: most probably as soon as the examination is over. The evidence is clear as to his being present, aiding and abetting,— indicted on the 4th section of 1 George I., statute 1, chapter 5. I'm afraid it's a bad look-out. Is he a friend of yours, Mr Hepburn?"

"Only an uncle, sir," said Philip, his heart getting full; more from Mr. Donkin's manner than from his words. "But what can they do to him, sir?"

"Do?" Mr. Donkin half smiled at the ignorance displayed. "Why, hang him, to be sure; if the judge is in a hanging mood. He's been either a principal in the offence, or a principal in the second degree, and, as such, liable to the full punishment. I drew up the warrant myself this morning, though I left the exact name to be filled up by my clerk."

"Oh, sir! can you do nothing for me?" asked Philip, with sharp beseeching in his voice. He had never imagined that it was a capital offence; and the thought of his aunt's and Sylvia's ignorance of the possible fate awaiting him whom they so much loved, was like a stab to his heart.

"No, my good fellow. I'm sorry; but, you see, it's my duty to do all I can to bring criminals to justice."

"My uncle thought he was doing such a fine deed."

"Demolishing and pulling down, destroying and burning dwelling-houses and outhouses," said Mr. Donkin. "He must have some peculiar notions."

"The people is so mad with the press-gang, and Daniel has been at sea hisself; and took it so to heart when he heard of mariners and seafaring folk being carried off, and just cheated into doing what was kind and helpful--leastways, what would have been kind and helpful, if there had been a fire. I'm against violence and riots myself, sir, I'm sure; but I cannot help thinking as Daniel had a deal to justify him on Saturday night, sir."

Phillip goes to York, where the trial will be held, and writes to Sylvia:

"I have been hearing the sermon to-day which is preached to the judges; and the clergyman said so much in it about mercy and forgiveness, I think they cannot fail to be lenient this assize. . . The sermon was grand. The text was Zechariah vii. 9, 'Execute true judgment and show mercy.' God grant it may have put mercy into the judge's heart as is to try my uncle."

Daniel is nevertheless hanged, and Sylvia vows never to forgive the friends who testified against him to save their own hides:

"Them as was friends o' father's I'll love for iver and iver; them as helped for t' hang him' (she shuddered from head to foot--a sharp irrepressible shudder!) 'I'll niver forgive--niver!"

"Niver's a long word," said Kester, musingly. "A could horsewhip him, or cast stones at him, or duck him mysel'; but, lass! niver's a long word!"

"Well! niver heed if it is--it's me as said it, and I'm turned savage late days."

In the class warfare that Gaskell describes, Robison sees Daniel's act as one of courage. The ruling classes — who make the law, understand the law, enforce the law and even own the law — see it as a dangerous mob that must be punished. Although the law may seem objective and inevitable — *4th section of 1 George I., statute 1, chapter 5* — it is, in fact, a skewed to support the established order.

This brings us to the novella presented in this collection, **Lois the Witch** (1861), a re-telling of the Salem witch trials of the late 17th Century. It covers the same themes that were to shock playgoers almost a century later in Arthur Miller's **The Crucible** (1953). Lois's crime is not witchcraft, but rather being different in a conformist society. The penalty for this is death, with the connivance of the established authorities of church and state, fueled by fear, hysteria, hatred, lust, madness and jealousy. Gaskell's sources for this story were two Unitarian texts: **Lectures on Witchcraft** (1831) by Charles Upham, the Unitarian minister in Salem and an article, **On Witchcraft** (1836) by Harriet Martineau.

Martineau clearly sees this as a story with contemporary relevance:

Though society has advanced too far, we trust, to be again liable to the visitations on Salem in 1692, the same inclinations may exist in certain ecclesiastics, the same weaknesses in certain of their followers, ready to exert their evil influences, in modes accordant with the spirit of the times. However extravagant in its horrors, therefore, this narrative may appear to us, it will ever remain as an admonition, while the key by which its machinery is disclosed is the same which unlocks the mysteries of our own hearts.

Martineau writes at length about coerced confessions:

This poor creature was wrought upon by threats, delusions, and (as she long afterwards protested) by the scourge, applied by Mr. Parris's own dignified hands, to confess she was in league with the devil. A confession, — indisputable evidence as it appeared, — was all that was wanted to decide the success of the experiment. Few doubted against such proof; and of those few, some concealed their skepticism, and kept as quiet as possible, and others, probably, secured their own safety by pretending to be bewitched, and thus aided the delusion. This sort of evidence abounded in proportion to the spread of the mischief; for the lives of those who confessed were spared. Fifty-five persons thus escaped death. In their case the motive to confession is clear; but it was long a mystery to us in instances where confession was the highway to the stake or the gibbet, as in England and Scotland. The effecting: anecdote told by Sir George Mackenzie, however, makes all plain. One of these confessors told him, "under secesie," that she had not confessed because she was guilty, but, being a poor creature who wrought for her meat, and being defamed for a witch, she knew she would starve; for no person thereafter would either give her meat or lodging, and that all men would beat her and hound dogs at her, and that therefore she desired to be out of the world. She had heard of a place where the wicked cease from troubling.

Martineau also describes the complicity of the authorities:

It was a physician who first pronounced the word "witchcraft" on this occasion; the judges and officers of the law threw their whole authority into the scale of superstition; but it was with the clergy that the affair began; they kept it up till the last moment, and in many instances attempted a revival the next season.

The true horror of **Lois the Witch** is that the entire process is logical and inevitable to the people of Salem in 1692. Three hundred years ago it made perfect sense to blame the ills of society on satanic possession and to hang women as witches based on hysterical, self-serving testimony and coerced confessions. Two hundred years ago it made sense to protect private property by hanging a 10-year-old child for pick-pocketing. A hundred years ago it made perfect sense to hang Sacco and Vanzetti for anarchist bombings that they could not have committed. Today it makes perfect sense . . .

At its root, **Lois the Witch** shows why a community decides that it must kill. It shows how a community decides who to kill. It shows how it justifies the process of killing. It shows what happens to the community as a result of killing. It shows how it can repent and recover.

For further reading:

Elizabeth Gaskell's sources for **Lois the Witch** are available online: **Salem Witchcraft: With an Account of Salem Village and A History of Opinions on Witchcraft and Kindred Subjects**. Charles W. Upham (1867) www.gutenberg.org/files/17845/17845-h/17845-h.htm (a later version than the one Mrs. Gaskell used) and **Miscellanies**, Vol. II, Harriet Martineau. "On Witchcraft" p. 387ff (1836) www.archive.org/details/miscellanies05martgoog

The most extensive biography is **Elizabeth Gaskell: A Habit of Stories**.

Jenny Uglow (Farrar Straus & Giroux, 1993) You may also be interested in **The Cambridge Companion to Elizabeth Gaskell**, Jill L. Matus (Editor) (Cambridge University Press, 2007)

Excellent BBC adaptations of **Wives and Daughters**, **Cranford** and **North and South** are available on DVD.

Wilkie Collins and the Death Penalty

by Susan Ives

William Wilkie Collins (1824–1889), a contemporary and good friend of Charles Dickens, wrote short stories and novels in the genre then known as “sensation fiction” but which today we see as the beginnings of detective fiction on one hand and of horror on the other. His best-known novels are **The Woman in White** (1860) and **The Moonstone** (1868). Dozens of films have been made of both novels; Andrew Lloyd Weber’s musical adaptation of **The Women in White** debuted on Broadway in 2005.

Collins was the son of the popular landscape painter William Collins. He wanted to be a writer but his stuffy father secured him a job as a clerk with a tea importer, which the bored Collins described as “a prison on the Strand.” He spent his time writing rather than clerking and was fired. At age 22 he became a student at London’s Lincoln’s Inn; he was called to the bar in 1851 but never practiced law. Instead, Collins wrote. Throughout the 1860s Collins enjoyed a literary celebrity almost equal to Dickens’s: the reading public appreciated then, as we do now, his realistic psychological portraits and ingenious, convoluted plotting. His novels were first published as serials in weekly magazines; most often Dickens’ *Household Words* and *All the Year Round*. He mastered the art of inserting a cliff-hanger at the end of every installment: “*Make ‘em cry, make ‘em laugh, make ‘em wait,*” he said.

In his later years Collins, whose health had always been fragile, became addicted to laudanum, an opium-based painkiller prescribed for everything from headaches to tuberculosis during the Victorian era. In Collins’ case, the malady was rheumatic gout, which caused excruciating pain in his eyes. The laudanum induced hallucinations: one biographer noted that “*when he was going to bed, he used to meet at the turn of the stair a green woman with tusk teeth and the displeasing habit of biting a piece out of his shoulder.*”

Collins’ legal training did not go to waste; he often incorporated legal themes in his writing. **The Woman in White** is, at its core, a story about women’s property rights. His next work, **No Name**, deals with the legal rights of illegitimate children; **Armada** focuses on societal views of prostitution and abortion, **Evil Genius** hinges on divorce and child custody law, **Man and Wife** about marriage laws and **Fallen Leaves** about the status of reformed prostitutes. These were personal as well as literary concerns for Collins. He never married but had, simultaneously, two mistresses and three children by one of them.

Not everyone was enamored of Collins’ exploration of controversial social issues. The poet and critic Algernon Charles Swinburne wrote the snide couplet:

*What brought good Wilkie’s genius nigh perdition?
Some demon whispered—Wilkie! Have a Mission.*

And in a clever but mean-spirited pun Swinburne complained that Collins had “*Sold his journalistic birthright for a pot of message.*”

A humorous essay about the art of conversation called **Talk-Stoppers**, published in Dickens’ *Household Words* magazine in 1856, hints that Collins had sat through many such a discussion himself. It bears repeating at length:

Let us suppose that delightful talker, and a few of his admirers (including, of course, the writer of his biography), and Colonel Hopkirk, to be all seated at the same table; and let us say that one of the admirers is anxious to get the mellifluous Glib to discourse on capital punishment for the benefit of the company. The admirer begins, of course, on the approved method of stating the objections to capital punishment, and starts the subject in this manner: “I was dining out, the other day, Mr. Glib, where capital punishment turned up as a topic of conversation—”

“Ah!” says Colonel Hopkirk, “a dreadful necessity—yes, yes, yes; I see—a dreadful necessity—Eh?”

“And the arguments for its abolition,” continues the admirer, without noticing the interruption, “were really handled with great dexterity by one of the gentlemen present, who started, of course, with the assertion that it is unlawful, under any circumstances, to take away life—”

“Ha! unlawful—just so,” cries the colonel. “Very true. Yes, yes—unlawful—to be sure—so it is—unlawful, as you say.”

“Unlawful, sir?” begins the Great Glib, severely. “Have I lived to this time of day, to hear that it is unlawful to protect the lives of the community by the only certain means—”

“No, no—O dear me, no!” says the precipitately-compliant colonel, with the most unblushing readiness. “Protect their lives, of course—as you say, protect their lives by the only certain means—yes, yes, I quite agree with you.”

“Allow me, colonel,” says another admirer, anxious to assist in starting the great talker, “allow me to remind our

friend, before he takes this question in hand, that it is an argument of the abolitionists that perpetual imprisonment would answer the purpose of protecting—”

The colonel is so delighted with this last argument that he bounds on his chair, and rubs his hands in triumph. “My dear sir!” he cries, before the last speaker can say another word, “you have hit it—you have, indeed! Perpetual imprisonment—that’s the thing—ah, yes, yes, yes, to be sure—perpetual imprisonment—the very thing, my dear sir—the very thing!”

“Excuse me,” says a third admirer, “but I think Mr. Glib was about to speak. You were saying, sir—?”

“The whole question of capital punishment,” begins the delightful talker, leaning back luxuriously in his chair, “lies in a nutshell.” (“Very true,” from the colonel.) “I murder one of you—say Hopkirk here.” (“Ha! ha! ha!” loudly from the colonel, who thinks himself bound to laugh at a joke when he is only wanted to listen to an illustration.) “I murder Hopkirk. What is the first object of all the rest of you, who represent the community at large?” (“To get you hanged,” from the colonel. “Ah, yes, to be sure! to get you hanged. Quite right! quite right!”) “Is it to make me a reformed character, to teach me a trade, to wash my bloodstains off me delicately, and set me up again in society, looking as clean as the best of you? No!” (“No!” from the compliant colonel.) “Your object is clearly to prevent me from murdering any more of you. And how are you to do that most completely and certainly? By perpetual imprisonment?” (“Ah! I thought we should all agree about it at last,” cries the colonel, cheerfully. “Yes, yes—nothing else for it but perpetual imprisonment, as you say.”) “By perpetual imprisonment? But men have broken out of prisons.” (“So they have,” from the colonel.) “Men have killed their gaolers; and there you have the commission of that very second murder that you wanted to prevent.” (“Quite right,” from the former quarter. “A second murder—dreadful! dreadful!”) “Imprisonment is not your certain protective remedy, then, evidently. What is?”

“Hanging!” cries the colonel, with another bound in his chair, and a voice that can no longer be talked down. “Hanging, to be sure! I quite agree with you. Just what I said from the first. You have hit it, my dear sir. Hanging, as you say—hanging, by all manner of means!”

The next year, *Household Words* published Collins’ historical narrative about Queen Christina of Sweden, **A Queens Revenge**. In 1687 Christina, having abdicated her throne, is betrayed by a lover, an Italian marquis who gave her intimate letters to an enemy. She condemns him to death. After the sentence is passed a priest remarks:

“I found the Queen alone in her room, without the slightest appearance of agitation in her face or her manner. Nothing that I could say had the slightest effect on her. I adjured her by all that religion holds most sacred, to remember that the noblest privilege of any sovereign is the privilege of granting mercy; that the first of Christian duties is the duty of forgiving.”

She is unmoved. Three increasingly frustrated executioners try to kill the marquis, eventually realizing that he is wearing armour under his clothing. They hack and slash impotently at the cringing nobleman until one finally delivers the coup d’grace by “stabbing him with a long, narrow sword in the throat, just above the edge of the shirt of mail.”

Collins comments:

“It is satisfactory to record, as some evidence of the progress of humanity, that the barbarous murder, committed under the sanction and authority of Queen Christina, which would have passed unnoticed in the feudal times, as an ordinary and legitimate exercise of a sovereign’s authority over a vassal, excited, in the middle of the seventeenth century, the utmost disgust and horror throughout Paris. The prime minister at that period, Cardinal Mazarin (by no means an over-scrupulous man, as all readers of French history know), wrote officially to Christina, informing her that “a crime so atrocious as that which had just been committed under her sanction, in the Palace of Fontainebleau, must be considered as a sufficient cause for banishing the Queen of Sweden from the court and dominions of his sovereign, who, in common with every honest man in the kingdom, felt horrified at the lawless outrage which had just been committed on the soil of France.”

Christina continued her travels for three years, until the cousin on whose behalf she had abdicated died. She returned to Sweden, expecting to reclaim her throne, but Collins reported, “The brave and honest people of Sweden refused to be governed by the woman who had ordered the murder of Monaldeschi.” She lived her remaining years in Rome.

Nine O’Clock (1852) is one of Collins’ earliest stories. On the surface, this is a supernatural tale about three men mysteriously prophesied to die at nine o’clock. The narrator, a deputy in an out-of-favour political party, awaits execution. He and his comrades speculate about the exact time of their execution—but our narrator

knows! The story begins:

"THE NIGHT OF the 30th of June, 1793, is memorable in the prison annals of Paris, as the last night in confinement of the leaders of the famous Girondin party in the first French revolution. On the morning of the 31st, the twenty-one deputies who represented the department of the Gironde, were guillotined to make way for Robespierre and the Reign of Terror. With these men fell the last revolutionists of that period, who shrank from founding a republic on massacre; who recoiled from substituting for a monarchy of corruption, a monarchy of bloodshed."

Of the execution itself Collins writes:

"Then the awful spectacle of the execution began. After the first seven deputies had suffered there was a pause; the horrible traces of the judicial massacre were being removed."

Collins also tackled the death penalty in his short story **The Cauldron of Oil** (1861) Three young men coerce a priest to name the man who has confessed to the murder of their father. After the killer is captured and executed, Collins describes the fate of the sons and the priest:

"The three brothers were found guilty of having forced the secret of a confession from a man in holy orders, and were sentenced to death by hanging. A far more terrible expiation of his offense awaited the unfortunate priest. He was condemned to have his limbs broken on the wheel, and to be afterwards, while still living, bound to the stake, and destroyed by fire.

". . . Barbarous as the punishments of that period were, accustomed as the population was to hear of their infliction, and even to witness it, the sentences pronounced in these two cases dismayed the public mind; and the authorities were surprised by receiving petitions for mercy from Toulouse, and from all the surrounding neighborhood. But the priest's doom had been sealed. All that could be obtained, by the intercession of persons of the highest distinction, was, that the executioner should grant him the mercy of death, before his body was committed to the flames. With this one modification, the sentence was executed, as the sentence had been pronounced, on the curate of Croix-Daurade.

. . . "More than this, the authorities were actually warned that the appearance of the prisoners on the scaffold would be the signal for an organized revolt and rescue. Under this serious pressure, the execution was deferred, and the prisoners were kept in confinement until the popular ferment had subsided. . . . Twenty days later, orders were received from the capital, to execute their sentence in effigy."

Collins wrote **A Rogue's Life** as a serial novel for Dickens' *Household Words* in 1856; it was published, slightly revised, as a book in 1879. The Rogue, a lovable scoundrel, makes his living as a con man, and is eventually roped into a "coining" scheme, counterfeiting money. It is a hanging offense. His charm saves him from the gallows:

"It is a bold thing to say, but nothing will ever persuade me that Society has not a sneaking kindness for a Rogue.

". . . We Rogues are the spoiled children of Society. We may not be openly acknowledged as Pets, but we all know, by pleasant experience, that we are treated like them.

"The trial was deeply affecting. My defence—or rather my barrister's—was the simplest truth. It was impossible to overthrow the facts against us; so we honestly owned that I got into the scrape through love for Alicia. My counsel turned this to the best possible sentimental account. He cried; the ladies cried; the jury cried; the judge cried; and Mr. Batterbury, who had desperately come to see the trial, and know the worst, sobbed with such prominent vehemence, that I believe him, to this day, to have greatly influenced the verdict. I was strongly recommended to mercy and got off with fourteen years' transportation. The unfortunate Mill, who was tried after me, with a mere dry-eyed barrister to defend him, was hanged."

Collins 1899 novel, **The Legacy of Cain**, is narrated by a prison warden, who describes the circumstances leading up to the hanging of a woman who murdered her husband:

"Without attempting to excuse him, he deserved, to my mind, some tribute of regret. It is not to be denied that he was profligate in his habits and violent in his temper. But it is equally true that he was affectionate in the domestic circle, and, when moved by wisely applied remonstrance, sincerely penitent for sins committed under temptation that overpowered him. If his wife had killed him in a fit of jealous rage—under provocation, be it remembered, which the witnesses proved—she might have been convicted of manslaughter, and might have received a light sentence. But the evidence so undeniably revealed deliberate and merciless premeditation that the only defence attempted by her counsel was madness, and the only alternative left to a righteous jury was a verdict which condemned the woman to death. Those mischievous members of the community, whose topsy-turvy sympathies feel for the living criminal and forget the dead victim, attempted to save her by means of high-flown petitions and contemptible correspondence in the

newspapers. But the Judge held firm; and the Home Secretary held firm. They were entirely right; and the public were scandalously wrong."

The governor is not Collins' alter-ego and I suspect his failure to acknowledge the desperation of a woman living with a "profligate and violent" man was intended as sarcasm by an author who deeply sympathized with ill-treated women. In the last hours of her life the woman laments the fate of her infant daughter:

"When I die to-morrow," she said, "I leave my child helpless and friendless—disgraced by her mother's shameful death. The workhouse may take her—or a charitable asylum may take her." She paused; a first tinge of color rose on her pale face; she broke into an outburst of rage. "Think of my daughter being brought up by charity! She may suffer poverty, she may be treated with contempt, she may be employed by brutal people in menial work. I can't endure it; it maddens me. If she is not saved from that wretched fate, I shall die despairing, I shall die cursing—"

The woman agrees to "come to Jesus" if the chaplain will adopt her daughter. The remainder of the book follows the fate of the daughter in an examination of the nature versus nurture debate: is criminality inherited or can upbringing overcome genetics? Without giving away the ending of this most suspenseful story, Collins opts for nurture. The potentially positive effect of the environment on character raises the possibility of reform and redemption, recurring themes in Collins' work. Death erases these possibilities.

The short novel in this collection, **The Dead Alive** (1873), is the work that most directly addresses Collins' personal attitude towards the death penalty. Without spoiling the suspense, there are three incidents that specifically tackle inherent flaws in capital punishment. A jailhouse snitch claims that one of the accused confessed the murder to him. There is a coerced confession, playing one of the accused off the other, the interrogators implying that a confession to manslaughter may help the accused avoid the death penalty. These techniques are as fresh as last night's cop show. The third situation is actual innocence: the men condemned to death did not commit a crime. Just since 1973, according to the Innocence Project, there have been 132 people exonerated from death rows in the United States because of actual innocence.

As Collins noted in a footnote, this story was based on an actual case in Vermont. He was given a pamphlet about the case when he was on a North American speaking tour. If anything, the real story was even more unbelievable than the tale Collins recounts, right down to the ghostly apparition of the murdered man.

It is dangerous to deduce an author's personal beliefs solely by analyzing the words he puts into the mouths of his fictional characters, so perhaps we can glean further insight to his probable attitude towards the death penalty by looking at the opinions and actions of his friends and colleagues.

Dickens, his best friend, went on the record as opposing the death penalty in a series of letters he wrote to the *Daily News* in 1846. The first letter addressed the issue of reform and redemption:

"... It may be urged that, in the preparation of a criminal for death, and in his devout reception of religious comfort, and in his full confession and late repentance, his reformation is achieved and worked out. Reverend ordinaries, at Newgate and elsewhere, have said so. Hosts of angels have been imagined, in enthusiastic sermons, waiting to conduct the murderer to Heaven; and strange parallels have even been suggested, in such discourses, between the Scaffold and the Cross. GOD forbid that I should presume to measure, or doubt, the mercy in store for the worst criminal ever executed! But I do distinctly challenge and dispute this kind of reformation. Besides that the reformation brought about by legal punishment, should be, to be satisfactory, a living, lasting, growing one: working on, in degradation and humility, from day to day; and striving, in its chains, and labour, and long-distant Hope, to make some atonement always;—besides this, I doubt the possibility of a great change being wrought in any man's heart and nature, in the flush and fever of that flying interval between the Warrant and the Noose."

He then addressed the possibility of mistakes:

"Will anyone deny that there is, here, the possibility of mistake? I entreat all who may chance to read this letter, to pause for an instant, and ask themselves whether they can remember any occasion, on which they have, in the broad day, and under circumstances the most favorable to recognition, mistaken one person for another: and believed that in a perfect stranger, they have seen, going away from them or coming towards them, a familiar friend."

His next objection was that because the public opposed capital punishment, and yet it was mandatory for many relatively minor crimes, juries were prone to find a criminal innocent rather than condemn him or her to death. He wrote, *"The last of the influences of this punishment on society, which I shall notice in the present letter, is, that through the prevalent and fast-increasing feeling of repugnance to it, great offenders escape with a very inadequate visitation."*

Dickens maintained that capital punishment was not an effective deterrent to crime. He wrote: *"On murders committed in rage, in the despair of strong affection (as when a starving child is murdered by its parent) or for gain, I believe the Punishment of Death to have no effect in the least."*

Dickens also argued that executions generated sympathy for the criminal and glamorized crime rather than deterred it. He wrote:

"I learn from the newspaper accounts of every execution, how Mr. So-and-so, and Mr. Somebody else, and Mr. So-forth shook hands with the culprit, but I never find them shaking hands with the hangman. All kinds of attention and consideration are lavished on the one; but the other is universally avoided, like a pestilence. I want to know why so much sympathy is expended on the man who kills another in the vehemence of his own bad passions, and why the man who kills him in the name of the law is shunned and fled from? Is it because the murderer is going to die? Then by no means put him to death. Is it because the hangman executes a law, which, when they once come near it face to face, all men instinctively revolt from? Then by all means change it. There is, there can be, no prevention in such a law."

Later that same year, husband-and-wife murderers Frederick and Marie Manning were publicly hanged together outside Horsemonger Lane Gaol in London. Dickens was there. He wrote to the *London Times*:

". . . I believe that a sight so inconceivably awful as the wickedness and levity of the immense crowd collected at that execution this morning could be imagined by no man, and could be presented in no heathen land under the sun. The horrors of the gibbet and of the crime which brought the wretched murderers to it, faded in my mind before the atrocious bearing, looks and language, of the assembled spectators. When I came upon the scene at midnight, the shrillness of the cries and howls that were raised from time to time, denoting that they came from a chorus of boys and girls already assembled in the best places, made my blood run cold. As the night went on, screeching, and laughing, and yelling in strong chorus of parodies on Negro melodies, with substitutions of "Mrs. Manning" for "Susannah," and the like, were added to these. When the day dawned, thieves, low prostitutes, ruffians and vagabonds of every kind, flocked on to the ground, with every variety of offensive and foul behaviour. Fightings, faintings, whistlings, imitations of Punch, brutal jokes, tumultuous demonstrations of indecent delight when swooning women were dragged out of the crowd by the police with their dresses disordered, gave a new zest to the general entertainment. When the sun rose brightly—as it did—it gilded thousands upon thousands of upturned faces, so inexpressibly odious in their brutal mirth or callousness, that a man had cause to feel ashamed of the shape he wore, and to shrink from himself, as fashioned in the image of the Devil. When the two miserable creatures who attracted all this ghastly sight about them were turned quivering into the air, there was no more emotion, no more pity, no more thought that two immortal souls had gone to judgment, no more restraint in any of the previous obscenities, than if the name of Christ had never been heard in this world, and there were no belief among men but that they perished like the beasts.

"... I am solemnly convinced that nothing that ingenuity could devise to be done in this city, in the same compass of time, could work such ruin as one public execution, and I stand astounded and appalled by the wickedness it exhibits. I do not believe that any community can prosper where such a scene of horror and demoralization as was enacted this morning outside Horsemonger-Lane Gaol is presented at the very doors of good citizens, and is passed by, unknown or forgotten."

In later years, Dickens became more conservative and moderated his position. In an 1863 letter to a friend he wrote:

"I am sorry to confess that I do now believe Capital Punishment to be necessary in extreme cases; simply because it appears impossible otherwise to rid Society of certain members of whom it must be rid, or there is no living on this earth. But I believe a public execution to be a savage horror far behind the time, affording an indecent and fearful gratification to the worst of people."

Another of Collins friend was Douglas Jerrold, a writer and editor most closely associated with the humor magazine *Punch*. Jerrold was more radical than Dickens and well known for his opposition to the death penalty. In a clever bit of theological reasoning, Jerrold wrote:

"Death would indeed be punishment, could it only be administered by the executioner; but as God has made it the draught for all men — the inevitable cup to be drained to the dregs by all who live — since there is not one man privileged to pass it — is not that a strange punishment for the deepest wickedness of guilt, if the same evil must at the last foreclose the life of the nobly good?"

In a piece called "Lesson of Life" in his book *Cakes and Ale* (1852) Jerrold invents a friendly debate

between a Capuchin monk and a hangman, the hangman perversely taking the position against capital punishment:

“Do you think, most holy Father, that the mob of Paris come to a hanging as to a sermon — to amend their lives at the gibbet] No : many come as they would take an extra dram ; it gives their blood a fillip — stirs them for an hour or two : many to see a fellow-man act a scene which they them- selves must one day underfjo : many, as to the puppets and ballad- singers at the Pont Neuf: but, for example, why Father, as I am an honest executioner, I have in my day done my office upon twenty, all of whom were the constant visitors of years’ standing at my morning levees”

“Is it possible ?” asked the Monk.

“Believe the hangman” answered Jacques Tenebne.

“And thou wouldst punish no evil-doer with death ?” inquired

Father George.

“As I am an honest minister of the law, and live by rope, not I : for this sufficient reason ; nature having made death the punishment of all men, it is too good a portion for rogues ; the more especially when softened by the discourses of thy brother- hood.”

“And thou wouldst hang no man ?” again asked the Friar with rising wrath.

“Though I speak it to my loss,” cried Jacques, “not I !”

During Collins’ writing life capital punishment was frequently on the legislative and public agenda. At the beginning of the 19th century there were 222 crimes punishable by death, most of them crimes against property, including stealing more than five shillings, stealing a rabbit from its hutch and cutting down a tree. In 1808 pick-pocketing and many lesser offenses were removed from the list of capital crimes. The 1823 Judgement of Death Act gave judges the option to commute the death penalty except in cases of murder and treason; The Punishment of Death Act of 1832 reduced the number of capital offenses by two-thirds. Gibbeting (displaying the hanged body in public) was also stopped in 1832.

In 1861—Collins was by then at his peak as writer—various acts of Parliament reduced the number of civilian capital crimes to five: murder, treason, espionage, arson in royal dockyards, and piracy with violence. A royal commission on capital punishment, convened from 1864-1866, concluded that there was no need to abolish the death penalty but urged that public hangings be stopped, as they were in 1868. The practice of beheading and quartering executed traitors stopped in 1870.

Collins and Gaskell were roughly contemporaries (she was 14 years older) and possibly acquaintances (both wrote for Dicken’s magazines, although Dickens found Gaskell resistant to his heavy-handed editing which, not surprisingly, made every author sound a bit like Charles Dickens.) They shared similar liberal politics, an interest in issues affecting the poor, women and children and did not hesitate to use their art to advance their causes.

Although **Lois the Witch** and **The Dead Alive** could not be more different in tone, characterization and plot, they share several similarities beyond the obvious one of centering on the death penalty. Both are based on true stories. Both take place in the United States, the geographical and cultural differences allowing them, perhaps, a degree of licence they would not have enjoyed had their books been set closer to home.

Most significantly, both feature communal hysteria: a mass delusion with supernatural overtones that clouded judgment and spun normal, benign events to a murderous state. They would both, I would like to think, be surprised and amused by the comparison.

For further reading:

Wilkie Collins (Authors in Context) by Lyn Pykett (Oxford University Press, 2009) is the perfect combination of biography and commentary about the era in which Collins wrote.

For more about **The Dead Alive: Wilkie Collins’s The Dead Alive: The Novel, the Case, and Wrongful Convictions** Rob Warden, Scott Turow (introduction) (Northwestern University Press, 2005)

For more about the history of the death penalty in Great Britain: **Hanging in the Balance: a history of the abolition of capital punishment in Britain.** Brian P. Block, John Hostettler (Waterside Press, 1997)

Herman Melville and the Death Penalty

by Susan Ives

Herman Melville (1819-1891) was born into a well-to-do family in New York. His father went bankrupt when Melville was 12; his education was cut short and he eventually took to the sea (first as a cabin boy) to make his own way in the world. He recounted such fantastic tales of his voyages and adventures in the South Seas that his friends suggested he write them down. The result was **Typee** (1846), **Omoo** (1847) **Mardi** (1849), **Redburn** (1849), **White Jacket** (1850) and, of course, **Moby Dick** (1851). His first novels were intended to be nonfiction but the stories were so exotic that no one believed them to be true. By the time **Moby Dick** was published his writing had fallen out of favor; his tale of Captain Ahab and the white whale garnered mixed reviews and sunk out of sight. Not until after World War I, almost 75 years after its release, did **Moby Dick** get the recognition it deserves as one of the masterpieces of Western literature. Melville continued writing books, short stories and poems in obscurity (**Bartleby The Scrivener** and **Benito Cereno** are well worth reading), eventually taking a job as a customs inspector in New York City.

Other than **Billy Budd**, Melville's only other book to directly address crime and punishment is **White Jacket**, subtitled *The World in a Man-of-War*. It is worth examining at length as many of the objections Melville raises in regards to flogging are identical to those used by opponents of the death penalty.

After describing some lighthearted facets of life aboard ship -- what sailors eat, where they sleep, their amateur theatricals— Melville gets down to flogging. In what was perhaps an inspiration for **Billy Budd**, he describes the whipping of Peter, "a handsome lad about nineteen years old . . . a great favorite in his part of the ship.":

Let us have the charity to believe them—as we do—when some Captains in the Navy say, that the thing of all others most repulsive to them, in the routine of what they consider their duty, is the administration of corporal punishment upon the crew; for, surely, not to feel scarified to the quick at these scenes would argue a man but a beast.

*You see a human being, stripped like a slave; scourged worse than a hound. And for what? **For things not essentially criminal, but only made so by arbitrary laws.***

In the next chapter Melville addresses "Some Of The Evil Effects Of Flogging":

One of the arguments advanced by officers of the Navy in favor of corporal punishment is this: it can be inflicted in a moment; it consumes no valuable time; and when the prisoner's shirt is put on, that is the last of it. Whereas, if another punishment were substituted, it would probably occasion a great waste of time and trouble, besides thereby begetting in the sailor an undue idea of his importance.

*Absurd, or worse than absurd, as it may appear, all this is true; and if you start from the same premises with these officers, you, must admit that they advance an irresistible argument. But in accordance with this principle, captains in the Navy, to a certain extent, inflict the scourge—which is ever at hand—for nearly all degrees of transgression. In offences not cognisable by a court-martial, little, if any, discrimination is shown. **It is of a piece with the penal laws that prevailed in England some sixty years ago, when one hundred and sixty different offences were declared by the statute-book to be capital, and the servant-maid who but pilfered a watch was hung beside the murderer of a family.***

*But what torments must that seaman undergo who, while his back bleeds at the gangway, bleeds agonized drops of shame from his soul! Are we not justified in immeasurably denouncing this thing? Join hands with me, then; and, **in the name of that Being in whose image the flogged sailor is made, let us demand of Legislators, by what right they dare profane what God himself accounts sacred.***

Is it lawful for you to scourge a man that is a Roman? asks the intrepid Apostle, well knowing, as a Roman citizen, that it was not. And now, eighteen hundred years after, is it lawful for you, my countrymen, to scourge a man that is an American? to scourge him round the world in your frigates?

*It is to no purpose that you apologetically appeal to the general depravity of the man-of-war's-man. **Depravity in the oppressed is no apology for the oppressor; but rather an additional stigma to him, as being, in a***

large degree, the effect, and not the cause and justification of oppression.

Melville's arguments — as he hints himself — apply equally to the death penalty: that it does not discriminate among petty and serious offenses; that it violates the sanctity of the human being created in the image of god; and that “depravity” is not a moral failing but rather a logical response to an unjust system.

In the next chapter, Melville embarks on an astute constitutional analysis of flogging, including the right of *habeus corpus* and explains that flogging is not administered equally, as would befit a democratic society:

*Now, in the language of Blackstone, again, there is a law, “coeval with mankind, dictated by God himself, superior in obligation to any other, and no human laws are of any validity if contrary to this.” That law is the Law of Nature; among the three great principles of which Justinian includes “that to every man should be rendered his due.” But we have seen that the laws involving flogging in the Navy do **not** render to every man his due, since in some cases they indirectly exclude the officers from any punishment whatever, and in all cases protect them from the scourge, which is inflicted upon the sailor. Therefore, according to Blackstone and Justinian, those laws have no binding force; and every American man-of-war's-man would be morally justified in resisting the scourge to the uttermost; and, in so resisting, would be religiously justified in what would be judicially styled “the act of mutiny” itself.*

His argues that flogging is simply wrong:

*We plant the question, then, on the topmost argument of all. Irrespective of incidental considerations, we assert that flogging in the navy is opposed to the essential dignity, of man, which no legislator has a right to violate; that it is oppressive, and glaringly unequal in its operations; that it is utterly repugnant to the spirit of our democratic institutions; indeed, that it involves a lingering trait of the worst times of a barbarous feudal aristocracy; in a word, we denounce it as religiously, morally, and immutably **wrong**.*

*No matter, then, what may be the consequences of its abolition; no matter if we have to dismantle our fleets, and our unprotected commerce should fall a prey to the spoiler, the awful admonitions of justice and humanity demand that abolition without procrastination; in a voice that is not to be mistaken, demand that abolition today. It is not a dollar-and-cent question of expediency; it is a matter of **right and wrong**. And if any man can lay his hand on his heart, and solemnly say that this scourging is right, let that man but once feel the lash on his own back, and in his agony you will hear the apostate call the seventh heavens to witness that it is **wrong**. And, in the name of immortal manhood, would to God that every man who upholds this thing were scourged at the gangway till he recanted.*

Melville's final argument against flogging is that it doesn't work. He describes three British admirals, including Lord Nelson, who avoided flogging yet ran disciplined ships suggests that “witless cruelty” may actually increase the instance of mutiny:

It is a matter of record, that some English ships of war have fallen a prey to the enemy through the insubordination of the crew, induced by the witless cruelty of their officers; officers so armed by the law that they could inflict that cruelty without restraint. Nor have there been wanting instances where the seamen have ran away with their ships, as in the case of the Hermione and Danae, and forever rid themselves of the outrageous inflictions of their officers by sacrificing their lives to their fury.

Many chapters later Melville describes monthly muster and the mandatory reading of the Articles of War:

Of some twenty offences--made penal--that a seaman may commit, and which are specified in this code, thirteen are punishable by death.

*“**Shall suffer death!**” This was the burden of nearly every Article read by the Captain's clerk; for he seemed to have been instructed to omit the longer Articles, and only present those which were brief and to the point.*

*“**Shall suffer death!**” The repeated announcement falls on your ear like the intermitting discharge of artillery. After it has been repeated again and again, you listen to the reader as he deliberately begins a new paragraph; you hear him reciting the involved, but comprehensive and clear arrangement of the sentence, detailing all possible particulars of the offence described, and you breathlessly await, whether **that** clause also is going to be concluded by the discharge of the terrible minute-gun. When, lo! It again booms on your ear—**shall suffer death!** No reservations, no*

contingencies; not the remotest promise of pardon or reprieve; not a glimpse of commutation of the sentence; all hope and consolation is shut out — **shall suffer death!** That is the simple fact for you to digest; and it is a tougher morsel, believe White-Jacket when he says it, than a forty-two-pound cannon-ball.

But there is a glimmering of an alternative to the sailor who infringes these Articles. Some of them thus terminates: "**Shall suffer death, or such punishment as a court-martial shall adjudge.**" But hints this at a penalty still more serious? Perhaps it means "**death, or worse punishment.**"

Your honors of the Spanish Inquisition, Loyola and Torquemada! produce, reverend gentlemen, your most secret code, and match these Articles of War, if you can. Jack Ketch, **you** also are experienced in these things! Thou most benevolent of mortals, who standest by us, and hangest round our necks, when all the rest of this world are against us—tell us, hangman, what punishment is this, horribly hinted at as being worse than death? Is it, upon an empty stomach, to read the Articles of War every morning, for the term of one's natural life? Or is it to be imprisoned in a cell, with its walls papered from floor to ceiling with printed copies, in italics, of these Articles of War?

But it needs not to dilate upon the pure, bubbling milk of human kindness, and Christian charity, and forgiveness of injuries which pervade this charming document, so thoroughly imbued, as a Christian code, with the benignant spirit of the Sermon on the Mount. But as it is very nearly alike in the foremost states of Christendom, and as it is nationally set forth by those states, it indirectly becomes an index to the true condition of the present civilization of the world.

As, month after month, I would stand bareheaded among my shipmates, and hear this document read, I have thought to myself, Well, well, White-Jacket, you are in a sad box, indeed. But prick your ears, there goes another minute-gun. It admonishes you to take all bad usage in good part, and never to join in any public meeting that may be held on the gun-deck for a redress of grievances. Listen:

Art. XIII. "If any person in the navy shall make, or attempt to make, any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death."

Art. XIV. "No private in the navy shall disobey the lawful orders of his superior officer, or strike him, or draw, or offer to draw, or raise any weapon against him, while in the execution of the duties of his office, on pain of death."

Do not hang back there by the bulwarks, White-Jacket; come up to the mark once more; for here goes still another minute-gun, which admonishes you never to be caught napping:

Part of Art. XX. "If any person in the navy shall sleep upon his watch, he shall suffer death."

Murderous! But then, in time of peace, they do not enforce these blood-thirsty laws? Do they not, indeed? What happened to those three sailors on board an American armed vessel a few years ago, quite within your memory, White-Jacket; yea, while you yourself were yet serving on board this very frigate, the *Neversink*? What happened to those three Americans, White-Jacket--those three sailors, even as you, who once were alive, but now are dead? "**Shall suffer death!**" those were the three words that hung those three sailors.

Have a care, then, have a care, lest you come to a sad end, even the end of a rope; lest, with a black-and-blue throat, you turn a dumb diver after pearl-shells; put to bed for ever, and tucked in, in your own hammock, at the bottom of the sea. And there you will lie, White-Jacket, while hostile navies are playing cannon-ball billiards over your grave.

By the main-mast! then, in a time of profound peace, I am subject to the cut-throat martial law. And when my own brother, who happens to be dwelling ashore, and does not serve his country as I am now doing--when **he** is at liberty to call personally upon the President of the United States, and express his disapprobation of the whole national administration, here am I, liable at any time to be run up at the yard-arm, with a necklace, made by no jeweler, round my neck!

Melville then describes the origins of the Articles of War:

Whence came they? They cannot be the indigenous growth of those political institutions, which are based upon that arch-democrat Thomas Jefferson's Declaration of Independence? No; they are an importation from abroad, even from Britain, whose laws we Americans hurled off as tyrannical, and yet retained the most tyrannical of all.

But we stop not here; for these Articles of War had their congenial origin in a period of the history of Britain when the Puritan Republic had yielded to a monarchy restored; when a hangman Judge Jeffreys sentenced a world's champion like Algernon Sidney to the block; when one of a race by some deemed accursed of God--even a Stuart, was

on the throne; and a Stuart, also, was at the head of the Navy, as Lord High Admiral. One, the son of a King beheaded for encroachments upon the rights of his people, and the other, his own brother, afterward a king, James II, who was hurled from the throne for his tyranny. This is the origin of the Articles of War; and it carries with it an unmistakable clew to their despotism.

Melville disapproves of the composition of courts martial:

The concluding sections of the Articles of War treat of the naval courts-martial before which officers are tried for serious offences as well as the seamen. The oath administered to members of these courts--which sometimes sit upon matters of life and death--explicitly enjoins that the members shall not "at any time divulge the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

Here, then, is a Council of Ten and a Star Chamber indeed! Remember, also, that though the sailor is sometimes tried for his life before a tribunal like this, in no case do his fellow-sailors, his peers, form part of the court. Yet that a man should be tried by his peers is the fundamental principle of all civilised jurisprudence. And not only tried by his peers, but his peers must be unanimous to render a verdict; whereas, in a court-martial, the concurrence of a majority of conventional and social superiors is all that is requisite.

[. . .] What can be expected from a court whose deeds are done in the darkness of the recluse courts of the Spanish Inquisition? when that darkness is solemnised by an oath on the Bible? when an oligarchy of epaulets sits upon the bench, and a plebeian top-man, without a jury, stands judicially naked at the bar?

In view of these things, and especially in view of the fact that, in several cases, the degree of punishment inflicted upon a man-of-war's-man is absolutely left to the discretion of the court, what shame should American legislators take to themselves, that with perfect truth we may apply to the entire body of the American man-of-war's-men that infallible principle of Sir Edward Coke: "It is one of the genuine marks of servitude to have the law either concealed or precarious." But still better may we subscribe to the saying of Sir Matthew Hale in his History of the Common Law, that "the Martial Law, being based upon no settled principles, is, in truth and reality, no law, but something indulged rather than allowed as a law."

Melville anticipates the counter-argument that these rules are needed in time of war:

Some may urge that the severest operations of the code are tacitly made null in time of peace. But though with respect to several of the Articles this holds true, yet at any time any and all of them may be legally enforced. Nor have there been wanting recent instances, illustrating the spirit of this code, even in cases where the letter of the code was not altogether observed. The well-known case of a United States brig furnishes a memorable example, which at any moment may be repeated. Three men, in a time of peace, were then hung at the yard-arm, merely because, in the Captain's judgment, it became necessary to hang them. To this day the question of their complete guilt is socially discussed.

How shall we characterise such a deed? Says Blackstone, "If any one that hath commission of martial authority doth, in time of peace, hang, or otherwise execute any man by colour of martial law, this is murder; for it is against Magna Charta."

Magna Charta! We moderns, who may be landsmen, may justly boast of civil immunities not possessed by our forefathers; but our remoter forefathers who happened to be mariners may straighten themselves even in their ashes to think that their lawgivers were wiser and more humane in their generation than our lawgivers in ours. Compare the sea-laws of our Navy with the Roman and Rhodian ocean ordinances; compare them with the "Consulate of the Sea;" compare them with the Laws of the Hanse Towns; compare them with the ancient Wisbury laws. In the last we find that they were ocean democrats in those days. "If he strikes, he ought to receive blow for blow." Thus speak out the Wisbury laws concerning a Gothland sea-captain.

Be it here, once and for all, understood, that no sentimental and theoretic love for the common sailor; no romantic belief in that peculiar noble-heartedness and exaggerated generosity of disposition fictitiously imputed to him in novels; and no prevailing desire to gain the reputation of being his friend, have actuated me in anything I have said, in any part of this work, touching the gross oppression under which I know that the sailors suffers. Indifferent as to who

may be the parties concerned, I but desire to see wrong things righted, and equal justice administered to all.

*Nor, as has been elsewhere hinted, is the general ignorance or depravity of any race of men to be alleged as an apology for tyranny over them. On the contrary, it cannot admit of a reasonable doubt, in any unbiased mind conversant with the interior life of a man-of-war, that **most of the sailor iniquities practised therein are indirectly to be ascribed to the morally debasing effects of the unjust, despotic, and degrading laws under which the man-of-war's-man lives.***

Soon after **White Jacket** was published, flogging was eliminated in the U.S. Navy. During the debates, one senator recommended that a copy of this book be given to every legislator. It would be presumptuous, though, to extrapolate from Melville's abhorrence of flogging to assume that he was equally opposed to the death penalty.

Melville was not especially political, although he was well read, well travelled and well informed. He was opposed to slavery, although not an active abolitionist. His time on ships (in that era, perhaps the most integrated social system in the United States) and travels to the South Seas left him with an unshakable belief in the dignity of all people, regardless of race or class. It is clear from **White Jacket** that he would oppose punishments that discriminated by race or class as not being suitable in America, the land of equality under the law. It is clear that he values process; his objection to the "Shall suffer death!" punishments in the Articles of War are not a blanket rejection of hanging, but rather an objection to the absence of the due process of law.

If we were able to talk to Melville today, my prediction is that he would not necessarily favor abolition of the death penalty but would be deeply alarmed that, according to the American Civil Liberties Union, "People of color have accounted for a disproportionate 43% of total executions since 1976 and 55% of those currently awaiting execution." He would most likely, as the ACLU suggests, support a moratorium on executions until this disparity could be resolved.

Billy Budd was the last book Melville wrote. It was unfinished at the time of his death in 1891, a messy mound of manuscript that was not deciphered and published until 1924. As scholars winkled out Melville's intent they made changes; the most significant one for our purposes one was the changing of the ship's name from the H.M.S. Indominatible to the H.M.S. Bellipotent, meaning "war power." The trajectory of the book is from "The Rights of Man" to "War Power" to "Atheism" (*Atheist*.)

Billy Budd is dedicated to Jack Chase, a fellow foretopman on the U.S.S. United States, the ship and experiences on which **White Jacket** is based. The difference in style between the two novels is striking. **White Jacket**, although ostensibly fiction, is a not much more than a series of anecdotes and commentary loosely tied together by a perfunctory plot. **Billy Budd** is a fully realized work, covering much of the same factual material but with a profound literary power and meaning.

Critics more insightful than I have analyzed the deeper themes of **Billy Budd** and I will leave it to them and the reader's own judgement to continue this intriguing discussion. But consider this:

In 1850 Congress passed the Fugitive Slave Act, which required the return of escaped slaves to their masters, even if the slaves had landed in a "free" northern state. Melville's father-in-law, Lemuel Shaw, was chief justice of the Massachusetts Supreme Court and, in this capacity, judged several cases involving the act. Although he was known as a strong opponent of slavery, he consistently ruled in favor of the Act, claiming that he bound by the constitution and the law to return slaves to their masters. Other states ruled differently. Wisconsin declared it unconstitutional; the Missouri court routinely held that residence in a free state granted freedom. Some states passed personal liberty laws, requiring jury trials.

Was Melville thinking of his father-in-law when he created the character of Captain Vere? He never said, but both Judge Shaw and Captain Vere, tragically torn between their deeply held beliefs and what they perceive to be their sworn duty; had neither the radical imagination nor the courage to break free of convention. Both lived in a time when their countries seem to be under threat: from mutinies in Vere's case and from dissolution of the Union in Shaw's. In both instances the merits or demerits of the individual cases were subsumed by the notion of the greater good: neither **Billy Budd** nor the escaped slaves may be permitted

to escape punishment: or the established order, both judges feel, will be undermined. Sailors will mutiny; slaves will escape with impunity.

Melville paints a portrait of close to pure “good” in Billy Budd and a portrait of unmitigated “evil” in Claggart. The true focus of this book, though, is Captain Vere, who is ultimately neither good nor evil but merely human. Vere is meant to be respected and even admired as an educated, thoughtful, “good” man, yet his decision to hang Billy Budd is heartless. Yet, whatever Vere decided in the case of Billy Budd would be, on some level, wrong. Melville gives us a clue to where he stands in the digression on the heroism of Lord Nelson (chapter 4), in which he rails against “the Benthamites of war.” This is a reference to Jeremy Bentham, a founder of Utilitarian theory, which promotes “the greatest good for the greatest number” or, as expressed in the Declaration of Independence, “the pursuit of happiness.” The moral expediency of Utilitarianism is held opposite moral absolutism, which holds that there is absolute right and absolute wrong and the real-world effects of moral decisions are immaterial. Here, Melville gives us a clue of where he stands. Although he sympathizes with Captain Vere, he thinks he chose wrong.

But as Melville was looking backwards he was also very much in the present, and here we find parallels as well. The 1880s was a time of increasing disparity between rich and poor and conflict between management and labor. Melville was distraught that in this land of equality and opportunity there seemed to be developing a class system that could rival that of the old world.

This growing rift is perhaps most dramatically illustrated by the Haymarket tragedy in Chicago. On May 1, 1886, as many as half a million workers rallied throughout the country for an eight hour work day. In New York, 10,000 workers rallied at Union Square, a ten minute walk straight down Park Avenue from Melville’s home. Two days later, in Chicago, police fired into a crowd of striking McCormick plant workers. Two workers were killed. The next day, the workers rallied downtown in Haymarket Square. Someone threw a pipe bomb; eight policemen and four bystanders were killed and at least 60 policemen were injured, many, in the confusion, shot by the “friendly fire” of the police’s own revolvers. Eight of the anarchists who organized the rally were arrested and four ultimately executed, although it was universally acknowledged that none of them had thrown the bomb and had, in fact, opened the rally with a plea for nonviolence.

Another example from this conflict is that of the Molly Maguires, a predominately Irish secret society that resisted exploitative conditions in the anthracite coalfields of Pennsylvania. In 1877 ten of the “Mollies” were hanged for crimes including murder and kidnapping based solely on the allegations of one mine owner backed up by the testimony of a Pinkerton detective he hired to infiltrate the group. To this day opinion is divided about whether the Molly Maguires were violent or merely “inconvenient” to the mine owners.

Both of these cases have startling similarities to Billy Budd. The labor organizers were hanged not on the merits of their individual cases but rather to set an example, to discourage “mutiny” of the workers against capital. Just as in chapter 30 Melville gives us a distorted newspaper account of Billy Budd’s alleged crimes and Claggart’s bogus heroism the media of the time and the history books of today more often than not give a one-sided and oftentimes erroneous picture of the Haymarket “martyrs” and the Molly Maguires. Martyrs or criminals?

Rutgers professor H. Bruce Franklin pointed out another historical event that perhaps influenced Melville. In August 1890 William Kemmler became the first person executed in an electric chair. For two years prior to the execution the legality of the method was debated in the courts and in public opinion. Opponents called it “cruel and inhuman;” advocates claimed that electrocution was painless, like euthanasia — the exact word debated by the purser and the surgeon after Billy Budd’s hanging.

Perhaps if Melville himself had time to polish Billy Budd before his death these ambiguities would have been resolved. Perhaps not. The messiness of the book is part of its strength. When we are faced with difficult decisions we are all Captain Vere — torn between moral absolutism (which, at its worst, can become fanaticism) and Utilitarianism (which, at its worst can become Machiavellian moral nihilism) but, in the end, we must chose.

For further reading:

Melville: His World and His Work by Andrew Delbanco (Knopf, 2005) is an excellent biography.

H. Bruce Franklin's intriguing essay, **Billy Budd and Capital Punishment**, is available online at <http://andromeda.rutgers.edu/~hbf/bbcap.htm>

The 1962 film of **Billy Budd** with Peter Ustinov as Captain Vere and a young Terrence Stamp as Billy is the best. There is also a 1998 film of the glorious Benjamin Britten opera **Billy Budd** (with a script by E.M. Forester.)

The ACLU report, **Race and the Death Penalty** (2003) is available online at <http://www.aclu.org/capital/unequal/10389pub20030226.html>

Jeremy Bentham included his Utilitarian analysis of capital punishment in **The Rationale of Punishment** (1830), reprinted in **Capital Ideas: 150 classic writers on the death penalty** by Susan Ives (peaceCENTER Books, 2009)

You may find **Ethics for Adversaries: The Morality of Roles in Public and Professional Life** by Arthur Isak Applbaum (Princeton University Press, 1999) useful in understanding the tension between privately held beliefs and public duties.

Leonid Andreyev and the Death Penalty

by Susan Ives

Leonid Nikolayevich Andreyev (1871-1919) was born in Oryol Province, Russia. His father was a land inspector for the government; his mother belonged to the impoverished Polish nobility. From high school age onward he made multiple suicide attempts: laying on the tracks hoping to be run over by a train (it passed over him) stabbing himself (he missed all vital organs) shooting himself (the bullet bounced off a button on his coat) . . . He was described as “of a morbid temperament.” In retrospect he appears to have been bipolar; mental illness and binge drinking plagued him all his life. When he was 20 he wrote in his diary, “*I want to be famous, I want to write something . . . to show . . . that the whole life of man . . . is one big senseless delusion. . . I want my book . . . to drive people insane; I want them to hate and curse me but still read it, and . . . kill themselves.*” Andreyev attended law school, with a break to recover from yet another suicide attempt after a failed love affair. He passed the bar in 1897, practiced for five years then went to work as a crime reporter of a daily paper in Moscow.

Andreyev was befriended by Maxim Gorky and introduced by him to a prominent writer’s circle, *Sreda*, where he hung out with prominent authors. His first stories were published in 1901. Andreyev’s writing was modern: too dark, violent, symbolic and sexual for some critics. Tolstoy’s wife complained that his stories were “in need not of a critic but a clinic,” but Tolstoy himself praised the short story “In the Fog.” In his first novel, **The Red Laugh** (1905), war spreads an epidemic of psychosis from the regiment of a wounded officer to his brother and then to society at large. It was translated into eleven languages a year after its publication. Later that year – after a brief imprisonment for allowing the Social Democratic central committee to meet in his living room—he published **And it Came to Pass that the King was Dead** (sometimes published as **Thus It Was**), a pessimistic fable about the French Revolution. First, the traitors to the king are executed in a bloody frenzy:

“From the lamp-post dangled the corpse of some executed traitor who had not succeeded in reaching the shelter of his prison. His extended legs seeking the ground, almost touched the heads of the dancers, and the corpse itself seemed to dance, yes, it seemed to be the very master of ceremonies and the ring-leader of the merriment, directing the dance. ” . . . Now they were putting the traitors to death. They had sharpened their sabres, axes and scythes; they had gathered blocks of wood and heavy stones and for forty- eight hours they worked in the prisons until they collapsed from fatigue. They slept anywhere near their bloody work, they ate and drank there. The earth refused to absorb the streams of sluggish blood; they had to cover it with heaps of straw, but that covering too was drenched and transformed into brownish refuse. Seven thousand traitors were put to death that day. Seven thousand traitors had bitten the dust in order to cleanse the city and furnish life to the newborn freeborn. They marched again to see the Twentieth and held up to his view the chapped off heads and the torn out hearts of the traitors. And he saw them. Then confusion and consternation reigned in the popular assembly. They sought him who had given the order to slay and could not detect him. But someone must have given the order to slay. Was it you? Or you? Or you? Jut who had dared to give orders where the popular assembly alone had the right to command? Some are smiling — they seem to know something.

“Murderers !”

“No ! But we have compassion with our native land, while you express pity with traitors!”

The people turned on the king, known as “The Twentieth,” so now it is his turn to die and occasion for a macabre celebration:

“Suddenly the drums broke into a tattoo, scattering abroad their martial beats, and rending the air into myriads of particles which hindered one from seeing. Commotion on the scaffold, the little figure has vanished. He is being executed. The drums beat again and all of a sudden, hoarsely and brokenly, cease from their tumult. On the spot where the Twentieth had stood just a moment before there is a new little figure with extended hand. And in that hand there is seen something tiny, that is light on one side and dark on the other, like a pin head dyed in two colors. It is the head of the King. At last! The coffin, with the body and the head of the King, was rushed off somewhere, and the conveyance that bore it away drove off at a breakneck speed, crushing the people in its path. It was feared that the frenzied populace would not spare even the remains of the tyrant. But the people were terrible indeed. Imbued with the ancient slavish fear they could not bring themselves to believe that it had really taken place, that the inviolable sacrosanct and potent sovereign had placed his head under the ax of the executioner: desperately and blindly they besieged the scaffold; eyes very often play tricks on one and the ears deceive. They must touch the scaffold with their hands; they must breathe in the odor of royal blood, steep their arms in it up to the elbows. They fought, scrambled, fell and screamed. There something soft, like a bundle of rags, rolls under the feet of the crowd. It is the body of one crushed

to death. Then another and another. Having fought their way to the heap of ruins which remained of the scaffold, with feverish hands they broke off fragments of it, scraping them off with their nails; they demolished the scaffold greedily, blindly grabbing heavy beams, and after a step or two fell under the burden. And the crowd closed in over the heads of the fallen while the beams rose to the surface, floated along as if borne on some current, and diving again it showed for a moment its jagged edge and then disappeared. Some found a little pool of blood that the thirsting ground had not yet drained and that had not yet been trampled underfoot, and they dipped into it their handkerchiefs and their raiment. Many smeared the blood on their lips and imprinted some mysterious signs on their foreheads, anointing themselves with the blood of the King to the new reign of freedom. They were intoxicated with savage delight. Unaccompanied by song or speech they whirled in a breathless dance; ran about raising aloft their bloodstained rags, and scattered over the city, shouting, roaring and laughing incontinently and strangely."

In 1919, Eugene M. Kayden wrote in *The Dial*, "Between the two revolutions of 1905 and 1917 Leonid Andreyev was without a doubt the foremost writer in Russia. His name was always spoken with veneration, in mysterious whispers, as a grim portentous magician who descended into the ultimate depths of the nether side of life and fathomed the beauty and tragedy of the struggle."

The anarchist Emma Goldman wrote extensively about Andreyev in her 1914 book **The Social Significance of the Modern Drama**, calling him "the youngest and at the present time the most powerful dramatist of Russia." She quotes extensively from his 1907 play, **King-Hunger**. King-Hunger is at the trial of the Starving. The judges sit in high chairs, in "bloated importance." The courtroom is filled with curiosity seekers, idle ladies dressed as if for a ball; college professors and students looking for case studies of criminal depravity; rich young girls satisfying a perverted craving for excitement. The first starveling is brought in, muzzled.

King-Hunger. What is your offense, starveling?

Old Man. I stole a five-pound loaf, but it was wrested from me. I had only time to bite a small piece of it. Forgive me, I will never again —

He is condemned and King Hunger proposes that the court adjourn for lunch. The scene is one of gluttony. A lean boy is brought in, muzzled; he is followed by a ragged woman.

Woman. Have mercy! He stole an apple for me, your Honor. I was sick, thought he. "Let me bring her a little apple." Pity him! Tell them that you won't any more. Well! Speak!

Starveling. I won't any more.

Woman. I've already punished him myself. Pity his youth, cut not at the root his bright little days!

Voices. Indeed, pity one and then the next. Cut the evil at its roots.

— One needs courage to be ruthless.

— It is better for them.

— Now he is only a boy, but when he grows up —

King-Hunger. Starveling, you are condemned.

Another starveling, heavily muzzled, is dragged in. He protests to the court: he has always been a faithful slave. But King-Hunger announces that the man is dangerous, because the faithful slave, being strong and honest, is "obnoxious to people of refined culture and less brawny." The slave is faithful today, King-Hunger warns the judges, but "who can trust the tomorrow? Then in his strength and integrity we will encounter a violent and dangerous enemy." In the name of justice the faithful slave is condemned. Finally the last starveling appears. He looks half human, half beast.

King-Hunger. Who are you, starveling? Answer. Do you understand human speech?

Starveling. We are the peasants.

King-Hunger. What's your offense?

Starveling. We killed the devil.

King-Hunger. It was a man whom you burnt.

Starveling. No, it was the devil. The priest told us so, and then we burnt him.

The peasant is condemned. The session of the Court closes.

King-Hunger. To-day you witnessed a highly instructive spectacle. Divine, eternal justice has found in us, as judges and your retainers, its brilliant reflection on earth. Subject only to the laws of immortal equity, unknown to culpable compassion, indifferent to cursing and entreating prayers, obeying the voice of our conscience alone—we illumed this earth with the light of human wisdom and sublime, sacred truth. Not for a single moment forgetting that justice is the foundation of life, we have crucified the Christ in days gone by, and since, to this very day, we cease not to grace Golgotha with new crosses. But, certainly, only ruffians, only ruffians are hanged. We showed, no mercy to God

himself, in the name of the laws of immortal justice—would, we be now, disconcerted by the howling of this impotent, starving rabble, by their cursing and raging? Let them curse! Life herself blesses us, the great sacred truth will screen us with her veil, and the very decree of history will not be more just than our own. What, have they gained by cursing? What? They are there, we're here. They are in dungeons, in galleys, on crosses, but we will go to the theater. They perish, but we will devour them—devour—devour.

During all of Andreyev's writing life, the Russian Empire was in turmoil. Tsar Nicholas II, unable to administer his vast and rapidly-industrializing empire, responded by concentrating power and becoming increasingly oppressive. Revolutionary groups formed, some violent, some less so; there were also democratic reform groups, some legal, some not; many Russians were loyal to the tsar and there were perhaps some who did not care. Ideologies changed; loyalties shifted. Andreyev's views are hard to pin down. Sympathetic to the suffering of the masses, he was pessimistic about political solutions. Gorky called him "a doubter," and wrote "in the essence of his spirit, Andreyev was profoundly indifferent towards politics, only rarely displaying fits of external curiosity about them." In 1916 Andreyev became the editor of the literary section of a newspaper published with the support of the tsar's government. He welcomed the end of the Romanov dynasty in February Revolution of 1917, but was so dismayed by the Bolsheviks' coming to power in the October Revolution of 1917 that he moved to Finland, where he was free to write anti-Bolshevik articles. He died there in 1919.

Pre-Soviet Russia had a complicated relationship with the death penalty. As early as the 10th Century, Russia's first legal code placed limits on vengeance for murder. Jaroslav the Wise banned executions in 1054, an act historians suggest is the first abolition of the death penalty. In 1125 the Prince of Kiev wrote, "Do not kill anyone, either guilty or not, nor do you order to kill. Do not destroy a Christian soul, even in case death is well deserved." Capital punishment was not reinstated in Russia until the Mongols brought the institution with them in 1398. This is not to say there were no executions: there were just no laws authorizing it.

Over the years the number of capital crimes increased. In 1398 there was just one: a theft performed after two prior convictions. The Paslov Code of 1497 added theft committed in a church and stealing a horse. By 1649 there were 63 capital crimes. Peter the Great doubled that number and inaugurated some horrific execution methods: drowning, burying alive and forcing liquid metal into the throat.

His daughter, Elizabeth, officially suspended the death penalty in 1744, a moratorium that lasted 11 years. Catherine II, whose liberal views were consistent with her acceptance of the Enlightenment, expressed dislike for the death penalty, writing in 1767: "In the usual state of the society, death penalty is neither useful nor needed."

In 1824 the legislature refused to approve a new version of the penal code because it included capital punishment. A year later, the Decembrist revolt failed, and a court sentenced 36 of the rebels to death. Nicholas I surprisingly commuted all but five of the sentences, in an era when revolts against the monarchy had almost universally resulted in an automatic death sentence.

The death penalty was officially outlawed shortly after the February Revolution of 1917. The provisional government enacted the prohibition on March 12, but, two months later, weakened it by allowing the death penalty for soldiers on the front. That government lasted less than a year. The subsequent Soviet government confirmed the abolition almost immediately after assuming power, but soon restored it for some crimes. Over the next several decades, the death penalty was alternately permitted and prohibited, sometimes in very quick succession.

This complicated heritage is reflected in Russian literature: Russians wrote about capital punishment more directly than authors of other nationalities, sometimes from personal experience.

In 1849 Fyodor Dostoevsky, along with some 20 others, was brought to St. Petersburg's Semyonovsky Platz to be shot for his affiliation with the Petrashevsky circle, a group of idealistic young intellectuals. The charges included listening to a story that criticized the army; possessing an illegal printing press; reading an open letter which disparaged the church and government; and participating in a plot to kill Czar Nicholas I. The last accusation he vehemently denied.

In the center of the plaza, surrounded by soldiers, a scaffold was mounted with three poles. People crowded around. The accused were stripped and left to stand in their underclothes in freezing temperatures. The sentence was read. The first three of the accused were blindfolded and tied to the poles. Dostoevsky waited for his turn in the second group of three; the soldiers shouldered the arms. At that moment an official waved a white handkerchief. The mock execution was stopped and the official read a new sentence—the tsar's amnesty. Dostoevsky was instead sentenced to four years of penal servitude in Siberia and another four years of service

as a soldier, also in Siberia.

Nineteen years later, Dostoevsky put this experience to use in his novel **The Idiot** (1868), in which the Prince describes an execution he witnessed in France:

“At five o’clock in the morning he was asleep—it was October, and at five in the morning it was cold and dark. The governor of the prison comes in on tip-toe and touches the sleeping man’s shoulder gently. He starts up. ‘What is it?’ he says. ‘The execution is fixed for ten o’clock.’ He was only just awake, and would not believe at first, but began to argue that his papers would not be out for a week, and so on. When he was wide awake and realized the truth, he became very silent and argued no more—so they say; but after a bit he said: ‘It comes very hard on one so suddenly’ and then he was silent again and said nothing.

“The three or four hours went by, of course, in necessary preparations—the priest, breakfast, (coffee, meat, and some wine they gave him; doesn’t it seem ridiculous?) And yet I believe these people give them a good breakfast out of pure kindness of heart, and believe that they are doing a good action. Then he is dressed, and then begins the procession through the town to the scaffold. I think he, too, must feel that he has an age to live still while they cart him along. Probably he thought, on the way, ‘Oh, I have a long, long time yet. Three streets of life yet! When we’ve passed this street there’ll be that other one; and then that one where the baker’s shop is on the right; and when shall we get there? It’s ages, ages!’ Around him are crowds shouting, yelling—ten thousand faces, twenty thousand eyes. All this has to be endured and especially the thought: ‘Here are ten thousand men, and not one of them is going to be executed, and yet I am to die.’ Well, all that is preparatory.

“At the scaffold there is a ladder, and just there he burst into tears—and this was a strong man, and a terribly wicked one, they say! There was a priest with him the whole time, talking; even in the cart as they drove along, he talked and talked. Probably the other heard nothing; he would begin to listen now and then, and at the third word or so he had forgotten all about it.

“At last he began to mount the steps; his legs were tied, so that he had to take very small steps. The priest, who seemed to be a wise man, had stopped talking now, and only held the cross for the wretched fellow to kiss. At the foot of the ladder he had been pale enough; but when he set foot on the scaffold at the top, his face suddenly became the color of paper, positively like white notepaper. His legs must have become suddenly feeble and helpless, and he felt a choking in his throat—you know the sudden feeling one has in moments of terrible fear, when one does not lose one’s wits, but is absolutely powerless to move? If some dreadful thing were suddenly to happen; if a house were just about to fall on one;—don’t you know how one would long to sit down and shut one’s eyes and wait, and wait? Well, when this terrible feeling came over him, the priest quickly pressed the cross to his lips, without a word—a little silver cross it was—and he kept on pressing it to the man’s lips every second. And whenever the cross touched his lips, the eyes would open for a moment, and the legs moved once, and he kissed the cross greedily, hurriedly—just as though he were anxious to catch hold of something in case of its being useful to him afterwards, though he could hardly have had any connected religious thoughts at the time. And so up to the very block.”

Anton Chekhov (1860-1904) was a slightly older contemporary of Andreyev. They were not friends: Chekhov thought Andreyev’s writing to be pretentious and artificial. He wrote, *“What makes you think Leonid Andreyev is a writer? He’s simply a lawyer’s clerk, the kind that loves talking prettily.”*

In his well-known short story *“The Bet”* a banker bets a lawyer that he cannot spend two years in solitarily confinement; in *“The Head Gardener’s Tale”* the people of a town cannot bring themselves to condemn the murderer of a beloved doctor. In his novel **The Duel** (1891), Chekhov assembles a totally unpleasant group of people who at one point discuss the death penalty:

“Since he is incorrigible, he can only be made innocuous in one way. . . .” Von Koren passed his finger round his throat. “Or he might be drowned . . .,” he added. “In the interests of humanity and in their own interests, such people ought to be destroyed. They certainly ought.”

“What are you saying?” muttered Samoylenko, getting up and looking with amazement at the zoologist’s calm, cold face. “Deacon, what is he saying? Why — are you in your senses?”

“I don’t insist on the death penalty,” said Von Koren. “If it is proved that it is pernicious, devise something else. If we can’t destroy Laevsky, why then, isolate him, make him harmless, send him to hard labor.”

“What are you saying!” said Samoylenko in horror. “With pepper, with pepper,” he cried in a voice of despair, seeing that the deacon was eating stuffed aubergines without pepper. “You with your great intellect, what are you saying! Send our friend, a proud intellectual man, to penal servitude!”

“Well, if he is proud and tries to resist, put him in fetters!”

Samoylenko could not utter a word, and only twiddled his fingers; the deacon looked at his flabbergasted and

really absurd face, and laughed.

“Let us leave off talking of that,” said the zoologist. “Only remember one thing, Alexandr Daviditch: primitive man was preserved from such as Laevsky by the struggle for existence and by natural selection; now our civilization has considerably weakened the struggle and the selection, and we ought to look after the destruction of the rotten and worthless for ourselves; otherwise, when the Laevskys multiply, civilization will perish and mankind will degenerate utterly. It will be our fault.”

“If it depends on drowning and hanging,” said Samoylenko, “damnation take your civilization, damnation take your humanity! Damnation take it!”

Leo Tolstoy was the best known and most vocal opponent of capital punishment of the time. He wrote two short stories addressing the topic: “To Dear!,” a humorous piece lamenting the high cost of executions and “Esarhaddon, King of Assyria,” a mystical fable about the interconnectedness of humankind. His most famous activist piece, titled “I Cannot Be Silent,” was published in 1908:

“. . . I take up today’s paper. Today, the 9th of May, it is something awful. The paper contains these few words: “Today in Kherson on the Strelbitsky Field, twenty peasants were hung for an attack made with intent to rob, on a landed proprietor’s estate in the Elizabetgrad district.

“Twelve of those by whose labor we live, the very men whom we have depraved and are still depraving by every means in our power—from the poison of vodka to the terrible falsehood of a creed we do not ourselves believe in, but impose on them with all our might — twelve of these men, strangled with cords by those whom they feed and clothe and house, and who have depraved and still continue to deprave them. Twelve husbands, fathers, sons, from among those on whose kindness, industry and simplicity alone rests the whole of Russian life, were seized, imprisoned and shackled. Then their hands are tied behind their backs lest they should seize the ropes by which they would be hung, and they are led to the gallows. Several peasants similar to those who are about to be hung, but armed, dressed in clean soldiers’ uniforms, with good boots on their feet and with guns in their hands, accompany the condemned men. Beside them walks a long-haired man, wearing a stole and vestments of gold or silver cloth, and bearing a cross. The procession stops. The manager of the whole business says something: the secretary reads a paper; and when the paper has been read, the long-haired man, addressing those whom other people are about to strangle with cords, says something about God and Christ. Immediately after these words, the hangmen (there are several, for one man could not manage so complicated a business) dissolves some soap, and having soaped the loops in the cords that they may tighten better, seize the shackled men, put shrouds on them, lead them to a scaffold and place the well-soaped nooses around their necks.

And then, one after another, living men are pushed off the benches which are drawn from under their feet, and by their own weight suddenly tighten the nooses round their necks, and are painfully strangled. Men, alive a minute before, become corpses dangling from a rope; at first slowly swinging, and then resting motionless.

All this is carefully arranged and planned by learned and enlightened people of the upper class. They arrange to do these things secretly at daybreak so that no one shall see them done, and they arrange that the responsibility for these iniquities shall be so subdivided among those who commit them that each may think and say that it is not he who is responsible for them. They arrange to seek out the most depraved and unfortunate of men and, while obliging them to do this business planned and approved by themselves, still keep up an appearance of abhorring those who do it. Even such a subtle device is planned as this; sentences are pronounced by a military tribunal, yet it is not the military but civilians who have to be present at the execution. And the business is performed by unhappy, deluded, perverted and despised men, who have nothing left them but to soap the cords well, that they may grip the necks without fail, then to get well drunk on poison sold them by these same enlightened upper-class people, in order more quickly and fully to forget their souls and their quality as men. A doctor makes his round of the bodies, feels them, and reports to those in authority that the business has been done properly; all twelve are certainly dead. And those in authority depart to their ordinary occupations, with the consciousness of a necessary though painful task performed. The bodies, now grown cold, are taken down and buried.

The thing is awful!

And this is not done once, and not to these twelve unhappy, misguided men from among the best class of the Russian people only, but is done unceasingly for years, to hundreds and thousands of similar misguided men, misguided by the very people who do these awful things to them.

And not this kind of dreadful thing alone is being done, but on the same plea and with the same cold-blooded cruelty, all sorts of other tortures and violence are being perpetrated in prisons, fortresses and convict settlements.

And while this goes on for years all over Russia, the chief culprits of these acts — those by whose order these

things are done, those who could put a stop to them — fully convinced that such deeds are useful and even absolutely necessary, either devise methods and make up speeches how to prevent the Finns from living as they want to live, and how to compel them to live as certain Russian personages wish them to live; or else publish orders to the effect that “In Hussar regiments the cuffs are collars of the men’s jackets are to be of the color of the latter, while the pelisses of those entitled to wear them are not have braid round the cuffs over the fur.”

This is awful!

Leonid Andreyev craved the approval of Tolstoy. Many critics have speculated that the short novel included here, **The Seven Who Were Hanged** (1909), which is dedicated to Tolstoy, was written to curry favor with him by celebrating his pet cause. Other critics have posed that the purpose of the novella, which paints a sympathetic portrait of five would-be suicide bombers, was to solidify his revolutionary credentials. Andreyev’s own introduction to the English translation emphasizes that it is a book about the death penalty: *“My task was to point out the horror and the iniquity of capital punishment under any circumstances.”* At its deepest level, however, this is not a book about the death penalty at all: it is a book about death itself. The great sadness of the book is not that the revolutionaries are being executed; it is that they are young and about to die. The horror of the story of the two thieves is not in their deaths; it is in their lives. The execution is but the last of a life-long string of unmitigated miseries.

The Tolstoy text that seems most in harmony with **The Seven Who Were Hanged** is his 1907 pamphlet, **Thou Shall Kill No One**:

“It comes to this, that were the possibility given to everyone to kill all whom they consider harmful to themselves, almost the whole Russian population would be slain. The revolutionists would kill all the rulers and capitalists, the rulers and capitalists would kill all the revolutionists, the peasants, all the landlords, the landlords all the peasants, etc. This is not a joke. It really is so; and this terrible condition has already continued for a couple of years and becomes worse and worse each year.”

Andreyev was out of favor with the Soviets and his work was suppressed for many years. His play **He Who Was Slapped** was made into a movie in 1924: MGM’s first film. **The Seven Who Were Hanged** has been Andreyev’s most popular story in the West:

*“Whenever I heard about an execution, I’d read about it, but it’s hard to take. One of my favorite books about young people being executed was (Leonid) Andreyev’s *The Seven Who Were Hanged*, just a fantastic story. Andreyev was a Russian writer in the latter part of the 19th century. Because there were seven of them, I learned a lot about their habits, knowing that they were going to die on a certain morning, and I thought that maybe I could write a story somewhat like that.”*

Ernest Gaines, author of “A Lesson Before Dying”
National Book Critics Circle Award for fiction (1993);
Oprah’s Book Club (1997)

MGM’s 1924 silent film **He Who Gets Slapped**, starring Lon Chaney, is now available on DVD and can be watched online at <http://video.google.com/videoplay?docid=5767253815622002246>

Chekhov’s “The Bet” and “The Head Gardener’s Story” and Tolstoy’s “Too Dear!” and “Esarhaddon, King of Assyria” are included in the peaceCENTER anthology, **Death Sentences: 34 Classic Short Stories About the Death Penalty**. (peaceCENTER Books, 2009)

There is no current biography of Andreyev in English. Leonid Andreyev: A Study by James B. Woodward (Clarendon Press, 1969) and Leonid Andreyev by Josephine M Newcombe (Frederick Ungar, 1978) Are both out of print.