

## Executions and Public Support for Capital Punishment in the United States: A Durkheimian Perspective

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### Abstract

This paper examines executions and capital punishment in the United States using the theoretical principles of Emile Durkheim. Durkheim's notion that executions are "repressive" (or designed to exact retribution), rather than "restitutive" (or designed to deter other criminal acts), explains why most citizens of the United States support capital punishment even though most research suggests that executions do not act as a deterrent against future homicides.

### Introduction

On November 16, 1976, condemned murderer Gary Mark Gilmore attempted suicide in his death row cell at the Utah State Prison. A prison guard discovered the lethargic Gilmore—mouth frothing and pupils dilated from an overdose of sedatives—and sounded the alarm. Gilmore was rushed to the hospital where doctors worked frantically to save his life. In the nick of time, a fatal dose of tranquilizers was pumped from his stomach, and his suicide attempt was narrowly thwarted. A few days later, after a brief respite at the hospital, he was shot through the heart by the state's firing squad. The irony in this drama is palpable. The image of prison guards summoning an emergency medical team to save a killer whose execution is immanent is almost comical. How do we explain the exhaustive effort to save Gary Gilmore? Why was he saved at all?

I argue that the answer to these questions lies in the curious fact that Gilmore's *death*, as an event *per se*, was insignificant to society, but his *execution* was a vital social concern to many in the United States. Indeed, those who worked to save him from an overdose (at no small taxpayer expense) were not trying to save his life at all, but rather to *preserve his execution*. This essay is an attempt to explain this apparent paradox using the theories of Emile Durkheim. I analyze the nature and function of the strong collective sentiments that accompany executions in the United States, and put forth the assertion that modern executions are, essentially, sacred rites that serve as the most pure expression of repressive law in a society characterized by extreme organic solidarity. I begin with a brief examination of executions as manifestations of repressive law throughout U.S. history.

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## Executions in North America

The sentence of death in the United States was, in an earlier age, prescribed for a much wider variety of deviant acts than is the case today. For example, in colonial Jamestown, blasphemy against God or the monarch, inappropriate labor on Sunday, witchcraft, and bestiality were all punishable by death.<sup>1</sup> Extensive prescriptions for capital punishment are characteristic of small, homogeneous settlements like Jamestown, where the rigors of frontier life promote a strong common bond. Survival is tenuous and the consequences of deviance are grave. This is not to say that capital punishments exist to deter would-be deviants—Durkheim argues explicitly against this—but rather that a strong common consciousness, when chafed, cries out for retribution with passion and fury.

Gillespie notes that the passionate application of capital punishment under repressive law was also present in the Old West, some 250 years after Jamestown. He recounts the story of Warren Drake, a soldier in the Mexican-American war who was found having sexual intercourse with his horse. Drake's own death sentence was commuted, but the mare was given no such reprieve. The horse was executed by a military firing squad.<sup>2</sup> Extending punishments to a horse may seem nonsensical from our vantage point, but Durkheim points out that under mechanical solidarity (found in abundance in military situations) when collective sentiments are deeply offended, society expends its wrathful energies, often in curious ways, to avenge the social wound and eradicate whatever threatens moral order—be it man or beast!<sup>3</sup>

In the twentieth century, things began to change in the United States. An increasingly diverse population and a specialized division of labor began to erode the strength of society's mechanical bonds, replacing them with interdependent ties characteristic of organic solidarity. The emergence and primacy of a distinct, comprehensive civil (restitutive) code in contradistinction to the existing penal (repressive) corpus is evidence of this social differentiation.

As the division of labor became more complex, so did the application of repressive punishments. Care was taken to ensure that the severity of punishments was matched to the severity of the crime. Durkheim points out that this meted approach to retribution stands in stark contrast to that used in more pure forms of mechanical solidarity, where, he claims, societies “do not aim to punish fairly or usefully, but only for the sake of punishing.”<sup>4</sup> As a result of this calculus, the number and type of offenses punishable by execution in the U.S. diminished drastically. Durkheim theorizes that among the first to go in these situations are religious prohibitions. This was certainly true in the United States, which had long ago adopted a constitution that respects no particular religion above another. What was capital blasphemy in Jamestown became witty dialogue in modern cinemas.

With the advent of the information age and the technological revolution, the U.S. division of labor became hyper-specialized. Restitutive law, a hallmark of organic systems, became ever more important. Ensuring the integrity of contracts, defending the civil rights of citizens and managing the interests of corporations and their property in a highly differentiated collectivity was a paramount concern of the courts. The goal of law was to restore the order that existed prior to an offending incident. Eventually, the kind of collective sentiments that had once exacted vehement expiation from offenders became watered down. By the 1960s, the restitutive spirit had even begun to invade what was formerly the exclusive domain of repressive law—criminal sanctions.

One by one, states adopted rehabilitation as their official criminal justice strategy. Rather than punishing primarily to avenge an outrage, states sought to reform offenders—to bring them back into the fold as law abiding citizens. Prisons became known as “correctional facilities.” State departments of

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<sup>1</sup> See Raymond Paternoster, Robert Brame and Sarah Bacon, *The Death Penalty: America's Experience with Capital Punishment* (New York: Oxford University press, 2007) and Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2003).

<sup>2</sup> L. Kay Gillespie, *The Unforgiven: Utah's Executed Men* (Salt Lake City: Signature Books, 1991).

<sup>3</sup> Emile Durkheim, *The Division of Labor in Society* (New York: Free Press, 1984).

<sup>4</sup> Durkheim, *Division of Labor*, 44.

justice became state departments of “corrections.” Prisoners, now called “inmates,” enjoyed adult literacy classes, psychological counseling, and even college courses among other prison benefits designed to correct their social deficiencies and restore their good character. All the while, consistent with this trend, the number of executions in the United States dropped steadily.<sup>5</sup> Finally, at the height of this movement in 1967, the death penalty in the United States was struck down by the United States Supreme Court.<sup>6</sup>

But the repressive energies that seek to assuage moral wounds remained. Mechanical solidarity and shared collective sentiments in America were subdued and tempered, but they were not dead. As the crime rate rose in the 1970s, the unsatisfied social urge to punish those who offend the integrity of the common consciousness heralded the conspicuous return of executions as a legal punishment.

But who to execute? In such an atomized society what manner of criminal act can muster enough collective ire to merit such a sentence? The answer is murder. In spite of the hyper-specialization manifest in the modern United States, there are still some universal social sentiments. One of these is the belief that murder is an abhorrent act, perhaps the most abhorrent act. That is why, after a 10 year moratorium on executions, a murderer became the first to die at society’s hand early in January of 1977. That murderer’s name, ironically, was Gary Mark Gilmore.<sup>7</sup>

### Executions as “Sacred” Ceremonies

Very few political issues in United States society have the kind of consensus surrounding them that accompanies popular support for the death penalty. Recent polls show that Americans favor capital punishment by a margin of better than 2 to 1—as close to consensus as this society can reasonably achieve on any social issue.<sup>8</sup> Yet, since the return of capital punishment, only a tiny fraction of those convicted of murder are sentenced to death. But the rarity of executions actually *contributes* to their power as social facts. They are prominent enough that they can serve their function as society’s most pure statement of moral outrage, yet unusual enough that they often garner national public news coverage. They are mysterious and enigmatic. An execution is an exceptional, awesome event. While news of prisons, courts, felonies, convictions, even murders are commonplace in the everyday, workaday world, executions are extraordinary and set apart. They are, in the Durkheimian sense, *sacred*—sequestered from mundane reality and imbued with ritual significance. Examining a typical execution reveals that they are almost like religious rites, filled with symbolism and ceremony.

Once an offender has been sentenced to death in the United States s/he is imprisoned in a special wing of the prison known as “death row.” Often, the condemned live alone in these austere, connecting cells, never associating with others in the prison population. In almost all prisons, death row has its own guards, its own kitchen, and its own exercise yard. It is isolated and set apart from the rest of the facility to preserve its “sacred” character.<sup>9</sup>

Planning for an execution is an intense and exhaustive enterprise. Gillespie writes that every imaginable contingency must be considered. In Utah, where Gary Gilmore was executed, a manual of over 600 pages of regulations, policies, and procedures exists to ensure that the ceremony goes exactly according to plan.<sup>10</sup> The team of guards that is to actually carry out the execution practices hundreds of times, and divides the work into minute tasks.<sup>11</sup> The corollary to such precise and stylized behavior is to be found in the precise way that religious rites must be performed by the faithful. Only an exact performance of the prescribed liturgy gives the sacred its proper due. Any breach of protocol is seen as the harbinger of undesirable events. It is hard to imagine such a reverent attitude toward a task as

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<sup>5</sup> William Bowers, *Executions in America* (New York: Lexington Books, 1974).

<sup>6</sup> David Garland, Randall McGowen and Michael Meranze, *America’s Death Penalty: Between Past and Present* (New York: New York University Press, 2011).

<sup>7</sup> Normal Mailer, *The Executioner’s Song* (New York: Little, Brown and Company, 1979).

<sup>8</sup> <http://www.gallup.com/poll/144284/Support-Death-Penalty-Cases-Murder.aspx>

<sup>9</sup> Robert Johnson, *Death Work: A Study of the Modern Execution Process* (New York: Wadsworth, 2005).

<sup>10</sup> Gillespie, *Unforgiven*, 8.

<sup>11</sup> L.Kay Gillespie, *Inside the Death Chamber: Exploring Executions* (New York: Prentice Hall, 2002).

intrinsically banal as buckling a strap or attaching a blindfold if executions were routine.

### **The Future of Executions**

Despite public support for capital punishment, a vocal minority of anti-death penalty activists actively seeks the re-abolition of the death penalty. Such activists object to executions on the grounds that numerous studies have shown that the death penalty does not effectively deter capital crimes. These critics may well be correct. But from a Durkheimian perspective, they are arguing past the issue. Although those who cry out for executions may invoke deterrence as a justification for their passion, this is merely *post hoc* rationalization for what is really at work: a strong collective desire, that exists *sui generis*, to preserve the collective order as it has been defined and to expunge those who most egregiously offend it.

Executions serve as the last pure, untainted bastion of repressive law in what is among the world's most diverse and differentiated societies. When the government executes a criminal, it does more than take life. By wielding deadly force, the collectivity reaffirms to itself that at least some common sentiments do exist, and, at the same time, banishes one who has greatly violated the social order from the common consciousness.

At last we see why Gary Gilmore's suicide attempt was such a provocative act. By threatening to take his own life, Gilmore was attempting to rob society of its due reprisal. By killing himself, Gilmore would have denied society the opportunity to do the job. The death of his body was immaterial, but his symbolic removal from society was vital. Perhaps that is why, in that very same Utah death row, when Heber Norton, age 74, suffered a stroke in his cell, he was rushed to the hospital. Recovered, but substantially incapacitated, he then languished in that cell as his execution date raced with his impending, natural death.