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## The Personally Ugly and Socially Unacceptable: Villains by Choice Nature, or Circumstances?

Justyna Stiepanow  
*University of Gdańsk*, [jstiepanow@gmail.com](mailto:jstiepanow@gmail.com)

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## The Personally Ugly and Socially Unacceptable: Villains by Choice Nature, or Circumstances?

*Certainly the claim is justified that this criminal sanction falls more heavily on the relatively impoverished and underprivileged elements of society. The 'have-nots' in every society always have been subject to greater pressure to commit crimes and to fewer constraints than their more affluent fellow citizens. This is, indeed, a tragic by-product of social and economic deprivation, but it is not an argument of constitutional proportions under the Eighth or Fourteenth Amendment.*

*(Justice Lewis F. Powell, Jr., Furman v. Georgia, 408 U.S. 238, 1972)*

### Justyna Stiepanow\*

Anthony G. Amsterdam based his chief argument against the death penalty in *Aikens v. California* (1972) on his observation that the sanction is reserved for “the poor and powerless, personally ugly and socially unacceptable” (qtd. in Steiker 263).<sup>1</sup> Justice Lewis F. Powell, Jr. partially agreed with Amsterdam: he does not dispute the fact that American Death Rows are populated by poor inmates, however, in his opinion, their high rate should be explained by the reality of living in

areas of low economic status rather than by discriminatory prosecution and sentencing. His stance seems to be in tune with another claim by Ernest Van den Haag in *Punishing Criminals: Concerning a Very Old and Painful Question* (1975), who suggests that any involvement in crime results in immunity against one’s moral compass and finally leads to utter moral decay. Such belief is well established in a hard-working law-abiding society—poverty apparently goes hand in hand with utter moral depravity and indifference to basic social rules. What does the view reflect, however: the

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\*Justyna Stiepanow is a second-year postgraduate student with the Faculty of Languages at the University of Gdańsk, Poland. Her research interest is the institution of capital punishment, particularly the notions of time, space, and justice employed in its functioning.

real nature of villainy or merely the logic of those who share the belief?

This paper seeks to prove how such views, when confronted with a more complex analysis of villains and their circumstances, are not only too general, but are in fact induced by thinking in limited terms of reason and the rules of social contract. This paper discusses the capital cases of Patrick Elmo Sonnier and Gary Mark Gilmore—individuals rendered by legal rhetoric as monsters and “public enemies”—and their depiction in two non-fiction American literary works: Helen Prejean’s 1993 *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* and Normal Mailer’s 1979 *The Executioner’s Song*.

### **Upstream Against the Established Notion of Villainy**

This paper is exploring a long period in the U.S. culture that was initiated by the 1976 reinstatement of the death penalty, marked by increasing social support for the sanction<sup>2</sup>, and the politics of the “War on Crime”<sup>3</sup>. All these social and political factors strongly influenced the pop-culture reflections of villains and murderers. The last decades of the twentieth century witnessed a significant growth of popular interest in crime and criminals. Moreover, the horror of serial killings unlocked Hollywood filmmakers’ imaginations:

thriller films such as Jonathan Demme’s *Silence of the Lambs* (1991) and Dominic Senna’s *Kalifornia* (1993) excited the public, demonstrating the mass appeal of tales dealing with crime, murder, and realistic villains. A similar fascination was evident in documentaries: true-crime television series broadcast throughout the 2000s had titles such as *America’s Serial Killers: Portraits of Evil* and *Born to Kill? Born to Kill?* posed a puzzling question in its introduction: “What drove [the murderers] to commit those horrific crimes? Was it nature or nurture?” Regardless of the answer that the show gave per episode, the underlying message was grim: media like these suggested that uncontrollable total evil threatened peaceful American suburbs.

However, beginning with the last decade of the twentieth century, the tide seems to have turned. Productions such as the three part documentary *Paradise Lost* (1996, 2000, 2011)<sup>4</sup> by Joe Berlinger and Bruce Sinofsky, an Off-Broadway play *The Exonerated* (2002)<sup>5</sup> by Jessica Blank and Eric Jensen, Werner Herzog’s documentary *Into the Abyss* (2012),<sup>6</sup> the television series *Death Row Stories* (2014),<sup>7</sup> and many others<sup>8</sup> have questioned the American justice system and, in so doing, attempted to re-humanize the figure of the villain. These works have significant social implications insofar as they introduce an image of the capital offender that is alternative to the mainstream notion of villainy with which

the public has become intensely familiar. As such, audiences may draw independent conclusions about what constitutes villainy, as the legal and popular notion of the villain obstructs the human factor present in individual cases.

### Against God and the United States

Instead of rushing to describe the characterization of villainy, I will first establish the logic that forms its basis. It is believed that no one can be separated from their actions—they reflect who a person is. Thus, the notion of a villain as a capital felon is constructed through an understanding of his/her crime(s) and the prescribed punishments.

In popular views, villainy is often linked to immorality, yet according to the theory of positive law, morality and law are separate concepts—even though they both regulate human conduct, morality is not the source of legal validity.<sup>9</sup> Writing about English legal philosopher H.L.A Hart for *Encyclopædia Britannica*, Mathew H. Kramer gives an example of this distinction. Hart (1907-1992) maintained that while the normativity of law is not acknowledged to a legislative body, the content of legal norms may be influenced by moral demands (Kramer n.p.). Thus the separation thesis seems unenforceable in practice.

Both God and the State were included in the form of indictment that was used

until the end of the nineteenth century: the defendant, “not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, [committed a crime] feloniously and wilfully, and of his malicious aforethought ... and against the peace and government of the United States” (United States v. Sickles 1).<sup>10</sup> Here, the phrasing indicates a crime that has been perceived in terms of unlawful trespassing upon public safety and violating divine Commandments. A defendant is asserted to have disobeyed rules, thus disregarding God and letting the devil dictate their actions. This practice has continued to the present: while God has disappeared from legal arguments, it is not lawyers but rather twelve laymen who impose death sentences in the U.S. The principles by which they judge the accused remain unchanged.

The old-form indictment stipulates that the criminal act was committed against the public peace and the government, bringing to mind the Enlightenment thinkers—especially Jean-Jacques Rousseau, who also associates lawfulness with morality. In *The Social Contract, or Principles of Political Right* (1762), Rousseau asserts that by accepting the rules of society, one becomes a *moral person*—one passes from *the state of nature* into *the civil state*, thereby abandoning instincts and embracing justice. Consequently, with self-restraint exercised in the name of civic duty, one’s actions become moral. The citizen who

breaks the law demonstrates that they value his or her own interest more than they value the interest of the State. Acting against public safety, the malefactor becomes, as Rousseau puts it: “a rebel and a traitor to [his/her] country” (26). The contract violation is equal to losing civil rights, and Rousseau explicitly states that execution is an act of a higher necessity. The public safety must be placed above the individual’s right to live. Moreover, Rousseau explains that in such extreme circumstances the state is putting to death a *public enemy* rather than a man. His phrasing emphasizes that a man without morality is reduced to the physicality of *the state of nature*: “such an enemy is not a moral person, but merely a man” (26).<sup>11</sup> From such a claim there is only one step to considering the criminal in terms of their animalism. Rousseau compares criminal activity to declaring war. In *The Death Penalty, Vol. 1* (2013), Jacques Derrida frequently returns to the latter claim stressing its impact on justifying the ongoing use of capital punishment (16, 81, 172). According to such logic, one capital felon threatens the whole society with his/her departure from the moral dictates. His or her death is thus justifiable.

### **Feloniously, Wilfully, and of One’s Malicious Aforethought**

The act of murder as such is not the main focus of this paper, but defining it

helps clarify the image of the perpetrator. The notion of the capital felon emerging from the logic discussed above presupposes his/her deliberate, premeditated action against the social order; the deed confirms his/her monstrosity and moral depravity. Indeed, the old-form indictment argues that some malicious intent leads the defendant to the crime, implying that rather than acting instinctively, the villain decides on the action by the means of their intellect. Rousseau holds that reason may be used to achieve goals that defy moral demands. Driven by *amour propre*, self-interest, men excel in their reasoning not to serve morality, but to serve an opposite end. However, Rousseau’s views on human nature are rather moderate: subscribing to Enlightenment ideals, he finds in humans a mixture good and evil propensities.

By contrast, Kant formulates in *Religion within the Boundaries of Mere Reason* (1793) a rather rigorous thesis on human inclinations: ethically, he claims, men are either wholly evil or entirely good, for they are either governed by moral law or they are not. Kant asserts the propensity to evil to be an innate and universal, and yet non-necessary,<sup>12</sup> quality that provides the motivation for action. Interestingly, Kant holds that moral corruption is not the result of one’s circumstances, but is a rational decision. Facing a choice of the dominant maxim—good or evil behaviour—an agent either adopts moral law or deviates from it

towards the maxim of self-interest. Even though Kant's deliberations on evil propensities are not utterly radical (evil may not invade the agent and may be overcome by a total reform of character), the distinction between being either good or wholly deprived is sharp. I sense the influence of Kant's approach in popular formulations of the villain: he/she embraces evil, because he/she chooses so and will continue to do so.

Derrida remains very critical of Kant, referring to Kant's notion of murder, mentioned in contrast to homicide<sup>13</sup> in *The Metaphysics of Morals* (1797). He explains it thusly: "a murder (*homicidium dolosum*): that is, a putting to death, a killing that implies a wrong, some treachery (*dolos, dolus*), a crime of malice, a malicious ruse, thus an evil (*un mal*), an evildoing (*une malignité*)" (124). Derrida emphasizes the Kantian insistence of the wickedness of the deed, particularly its calculated (that is, rationally chosen) and self-seeking nature. He dubs the murder, as defined by Kant, an "absolute crime" (141). Furthermore, he discusses the Kantian definition of murder in relation to Kant's idea of the death penalty as objective (because it is included in law) and disinterested (pure of any calculation, free of impulse-driven passions). Kant argues that execution is an act opposite to murder. Derrida strongly criticises this logic, arguing that there is no difference between murder and the death penalty. Both,

as understood by Kant, are unrealistic constructs forced on popular imagination by black-and-white reasoning (141-144). Kant, who claims that human morality is rooted in the faculty of reason, presupposes the murderer's appreciation of right and wrong and thus presupposes premeditation. The legal definition of first-degree murder argues the same.<sup>14</sup>

### Language of Justification

The image of capital offenders is closely related to the nature of their punishments. As such, at this point, I look away from the villain to explore the nature of the penalty imposed on him/her. Does society measure his/her punishments according to the perception of the one who will be punished, or, conversely, is it the other way around: is the image of the offender defined in order to fit the imposed punishment? David Garland's *Peculiar Institution: America's Death Penalty in an Age of Abolition* (2010) explains the correlation between the villain and the means of his/her ultimate incapacitation, arguing that in order to make sense, the death penalty must be rendered legitimate, intelligible, or even compelling to the public. This task is accomplished through narratives and metaphors, and two out of the five metaphors utilized by Garland resonate with Kant's and Rousseau's conceptions of villainy. First, Garland's metaphor of war explains

the death penalty as a weapon and a necessary act of a society's self-defence (63). Second is Garland's metaphor of healing, whereby the death penalty becomes a "cathartic act of cleansing, a way of ridding the community of moral contamination" (66).

Ritualized and explicitly violent early-modern capital punishment performed a different function than capital punishment performs today: in this period, it helped establish, strengthen, and exercise the power of the State. Execution was also a religious event focused on the condemned person's soul and his/her passage from life to death. Randall McGowen, quoted in Garland's monograph, explains that "theology [structured] and infused the gallows" (qtd. in Garland 79). Garland cites Richard Evans' *Rituals of Retribution: Capital Punishment in Germany 1600-1987* (1996): the culprits were accompanied to the gallows by the clergy, were encouraged to repent and to take communion, and the execution was a part of their atonement for their crimes—their deaths were even compared to Christ's crucifixion. Evans states: "The language by which condemned people were described emphasized above all the moral and religious aspects of their status. They were known as 'poor sinners'" (qtd. in Garland 79). Never were the condemned deemed to be inhuman as they are today.

Since executions served to reinforce social hierarchies (Garland 76),

the Early-Modern condemned were thus dying before a sympathetic crowd. V. C. A. Gartell asserts, for example, that the Hanoverian spectators, sharing the felon's low social status, offered their support (37). As a point of contrast, Gartell mentions pro-death penalty gatherings in contemporary America: "they have barbecues outside prisons on the nights of electrocutions. 'Burn, Bundy, Burn!' their T-shirts advised" (12).<sup>15</sup> Prejean describes similar sentiments: after an execution the victim's stepfather hoped that the culprit "fries in hell for all eternity" (112). The sympathetic early modern condemned, whose deaths led to their redemptions, have been replaced in the public imagination by despicable monsters who are not to be forgiven—even in the afterlife. This shift is a result of a long process of re-defining capital punishment in the face of social changes, whereby a new rhetoric is calculated in order to sustain and justify the death penalty.

According to Garland, since the nineteenth century the death penalty has operated in an increasingly problematic environment. In the face of new humanitarian sentiments, liberal democracy, and welfarism, the institution of capital punishment needed a new justification for its legitimacy. New modern philosophy by Hegel, Bentham, Mill, and Kant present the death penalty as a life-saving deterrent to crime and just retribution for a crimi-

nal's actions (95). The metaphors of society's self-defence and of cleansing moral pollution are posed, here, as crucial arguments to support the death penalty. As a result, the more inhuman the punishment appears, the more monstrous the culprit must become.

In 1961, Albert Camus noted the anxiety and embarrassment surrounding public executions in his "Reflections on the Guillotine." In 1975, Michel Foucault published his now seminal work on the punitive system, *Discipline and Punish: The Birth of the Prison*, in which he remarks that the "monstrosity" of the capital felon is now a key factor in putting him/her to death. Garland comments on the shift, explaining that "[i]n order to kill the condemned person, it had become necessary to distance him from the human race" (96). Evans discusses this necessity in *Rituals of Retribution*: "a new language of justification," he explains, emphasizes the dangerousness, bestiality, and inhumanity of the offender (qtd. in Garland 95). As the early modern poor, pitiable sinner gives way to the monster, the once supportive audience polarizes into those who oppose the death penalty and those who support it, with the latter more unrelenting than ever before. Putting capital felons to death becomes a last resort; an exceptional measure "[j]ustified only at the extremeness of criminal wickedness, incorrigibility and danger" (Garland 91).

To argue imposing a death sentence and to win the argument, prosecutors need to include these three factors and employ their metaphors accordingly.

### **Patrick Elmo Sonnier: The Social Other**

Having established the legal and philosophical rhetoric used in conceptualizing the villain, I will now move to test this logic in the context of individual narratives. First, I will look at Helen Prejean's *Dead Man Walking* a work by a death penalty opponent written to advocate against the sanction. Despite the bias of her anti-death penalty stance, Prejean offers a logically coherent account: her tone is even-tempered, and each disturbing fact is counterbalanced by an account showing the human side of the villain. Including the arguments from the side of Sonnier's victims, Prejean frequently states that what she has experienced escapes black-and-white assertions. *Dead Man Walking* unravels many shades of grey, which are often neglected in legal considerations.

When commencing her correspondence with Patrick Elmo Sonnier, Prejean knows only his name and the nature of his crime.<sup>16</sup> Yet these are sufficient to trigger a feeling of terror, as she writes: "my blood chills" (4). She notes that the newspaper comments about Sonnier's crime have what one could call a

Rousseauian/Kantian undertone, even though she does not identify the logic as stemming from the social contract theory: “It is hard to imagine that there may be somebody in this fine community of ours who could contemplate, much less carry out, this vilest of vile deeds” (15). Prejean is aware of the effect the biased message must have had on the readers: “it makes the murders all the more vicious, because St. Martinsville ... is one of the friendliest, most hospitable places on earth ... If murders are prone to happen everywhere on the face of the earth, this is the place one would least expect” (4). The serene neighbourhood aggravates the image of the perpetrator: the more genial the victims, the more dehumanized the killer becomes. A *moral person of the civil state*, as Rousseau defines him, would not dare to disturb such tranquillity. Sonnier represents what society fears the most: a sheer violence—taking whatever one desires and has the physical power to obtain. St. Martinsville citizens perceived him accordingly, that is, through his violence and the terror it inspires.

Prejean further studies newspaper clippings, and again, what she reads employs the binary opposition between the depiction of the victims and their killers:

I look down upon the smiling faces of a teenage couple. The young man is laughing eyes and the young woman, a serene half-smile. The article tells how on the Friday evening before the murders, David

LeBlanc, age seventeen, and Loretta Bourque, eighteen, had been “just two happy faces in the crowd at a Catholic High School’s homecoming football game.” The couple had been each shot three times at close range in the back of the head with a .22-caliber rifle ... It takes a month to capture the killers. Their sneering faces appear on the front page of the *Iberian* December 2 issue: Elmo Patrick Sonnier, age twenty-seven, and Eddie Sonnier, age twenty. (15)

The expressions of happiness and serenity of LeBlanc and Bourque are contrasted with the scorn of the killers—two beautiful unfolding lives snatched away by bestial individuals. The victims’ last outing to a nearby football game renders them familiar to the reader of this local paper, whereas, on the Sonniers’ side, there is nothing to balance the scales, as if they have come from nowhere. They are represented, instead, by the .22-caliber rifle they used, and the technical details of the killings speak about their detachment from humanity. This contrast puts the Sonnier brothers at a further disadvantage; they are “personally ugly and socially unacceptable” strangers who do not belong to the community.

Prejean re-humanizes Sonnier by providing what is missing from the media coverage, namely individualized details which draw her and her readers closer to the villain. On a personal level, Sonnier is

difficult to label as a monster: “I begin to think of him as a fellow human being, though I can’t for a moment forget his crime, nor can I reconcile the easygoing Cajun ... with the brutal murderer” (13). Notably, the prison employees warn Prejean “to never relate on a *personal* level with inmates”—their detachment helps them through the execution (180). Disregarding their advice, she allows emotions into the relationship and is able to see beyond the stereotype of Sonnier as villain: “The sheer weight of his loneliness, his abandonment, draws me. I abhor the evil he has done. But I sense something, some sheer and essential humanness, and that, perhaps, is what draws me most of all” (22). The villain has, after all, a human face. Not all wicked, they escape the distinction drawn by Kant and Rousseau. However, the re-humanization, as Prejean shows, is possible only on a personal level.

### Living in Different Worlds

Countless instances in *Dead Man Walking* make the reader realize that the victims and the killers were raised in two utterly different worlds. Prejean, coming from the peaceful world of the victims, very consciously describes the counter-world. She makes the clash discernible not by commenting on it, but rather by contrasting her experiences with Sonnier’s.

Prejean’s education and structured upbringing made her who she is: a

reasonable person capable of living a moral life. Notably, from the dedication one learns that *Dead Man Walking* is a tribute to her parents: “To my mother, Gusta Mae, and my father, Louis, who loved me into life” (vi). In contrast, Sonnier grew up in abject poverty, in a broken home, moving constantly between parents. He dropped out of school in eighth grade. His father, a sharecropper, had a criminal record. Sonnier’s fondest memory of his father is when Sonnier was twelve years old: after an all-night drinking binge the father and son cycled back home intoxicated. The Sonniers made their living as hired hands working for the lowest wages, constantly struggling to satisfy their most basic needs. The family lived on the margins of society and law. Yet, in popular coverage, this fact did not suggest the Sonniers deserved compassion, but rather suggested proof of their depravity. Lloyd LeBlanc, David’s father, has the following opinion of Sonnier: “an evil man who hung out around bars with thieves and ‘trashy’ people, who spouted obscenities, who stole, and who abducted teenage kids and raped young women” (65).

Growing up in different worlds means perceiving the reality with varying sensitivity:

[Sonnier] chuckles remembering how his mother would help him with the rabbit hunt and it was always her job to put the dead rabbits in a sack and to “finish them off”

with a stick if they weren't dead yet. "And we'd be stalking along and behind us we'd hear *whack, whack, whack*—Mama beating the hell out of those rabbits." I cringe, but he tells the incident nonchalantly. I'm thinking of the clobbered rabbits. He is thinking of the food. (29)

Clearly, Sonnier's insensitivity towards the rabbits' deaths makes Prejean uncomfortable, but this does not destroy his human image. On the contrary, to a socially conscious person an awareness of Sonnier's circumstances becomes a mitigating factor when it comes to judging his violence towards the animals.

The day prior to Sonnier's execution, Prejean faints while visiting him. She recovers in the prison infirmary and returns to the Death House. Her reappearance leads to an emotive moment: Sonnier is relieved and grateful as has not expected her back. Prejean writes: "In the face of this man's utter poverty, I feel humbled" (82). She then leaves the prison and spots her siblings awaiting her in the parking lot. They came to drive her to her mother's as soon as they heard of the indisposition. The contrast is striking: Sonnier is alone in the Death House; Prejean is surrounded by her attentive, caring family. The "poverty" Prejean mentions, here, should not be understood only as the lack of financial security. Instead, it refers to his complete depravation

of love, friendship, self-worth, and proper moral guidance.

Prejean never forces her comments on the reader. However, her contrasting approach raises questions: How can Sonnier's moral depravity be objectively measured? How can he be expected to understand concepts that are strange to his world? With each newly revealed fact, it becomes evident that Sonnier is in an unequal match with judgement based on Rousseau and Kant's logic.

### **Gary Mark Gilmore: The Psychological Other**

Norman Mailer's narrative about the execution of Gary Mark Gilmore, *The Executioner's Song*, has an effect on readers that is similar to Prejean's with one exception: he takes no emotional stance in the debate on capital punishment. His work, an example of New Journalism, gathers numerous accounts—in the forms of letters, newspaper clippings, and trial transcripts. Mailer draws a broad panorama of the local community participating in the drama of Gilmore's trial and aftermath. By doing so, he shows the drama from every possible angle, thereby allowing the reader to sympathize with both sides. The demarcation line between good and evil established by Kant becomes blurry, thus placing the legal notions of right and wrong into question.

In posing capital punishment as a pre-emptive measure, a felon's future dangerousness becomes a crucial argument in a jury's choice of sentence (i.e. death or life without parole). Many American capital statutes stipulate future dangerousness combined with previous criminal records among aggravating factors, giving juries an incentive to choose death over life without parole. Garland takes note of contemporary attempts at scientific objectification of a felon's future dangerousness, explaining:

Medicine, psychiatry, abnormal psychology, and positive criminology—the new human sciences that emerged in this period [of the modern death penalty]—helpfully supplied a new language of monstrosity, each of them providing a positive source of scientific legitimacy for the institution, much as they do in the sentencing phase of American capital trials today. (96)

Gary Mark Gilmore,<sup>17</sup> the protagonist of *The Executioner's Song*, is presented at his trial as a case study example of the “public enemy.” His pre-trial psychiatric report states: “[Gilmore] has a high hostility component towards the establishment” (Mailer 379), diagnosing him with a “personality disorder of the antisocial type” (382). Gilmore's psychiatrists claimed that he had an appreciation of the distinction between right and wrong, subscribing to Kantian

formulation of *homicidium dolosum*. More importantly, they discovered Gilmore's great intellectual potential: he scored high during IQ testing. The evaluation suggests that his previous criminal records indicate a pervasive pattern of disregard for law and the needs of others. The District Attorney noted, following Rousseau's *amour propre*, that Gilmore was likely to use his intelligence to achieve immoral goals.

Did Gilmore, however, intend to continue on a path of immorality? The reader does not find any answer from Mailer. His third person narrative takes the reader inside the minds of many characters, but not inside Gilmore's. Instead, Mailer constructs Gilmore's character through his direct speech (letters, oral statements) and his actions, leaving the reader to draw his or her own conclusion. Consequently, one cannot escape doubts as to Gilmore's mindset and motivations. The reader's confusion at the D.A.'s certainty about Gilmore's future dangerousness raises a puzzling question: how could the D.A. know what neither Gilmore nor the reader knows? Thus, Mailer reveals a great deal of prejudice involved in the trial. Gilmore is shown by Mailer as deeply repentant—a quality of which a psychopath is supposedly devoid. Showing remorse only in personal interaction, in public—especially in the courtroom—Gilmore displays a great deal of hostility and arrogance towards authorities. His repentance remains unnoticed and is not

considered as a mitigating circumstance for determining his sentence. His hostility towards the establishment, on the other hand, confirms the concern that Gilmore, if kept alive, would be a threat to public safety.

### **No Obvious Motive**

Gilmore's reasons for killing remained a puzzle for the prosecution, as his financial gain from robbing the victims was little. Asked what triggered the attacks, Gilmore could not offer any explanation. To the reader's dismay, the D.A. concludes that Gilmore killed to avoid potential witness identification. He makes a strong argument in front of the jury, calling Gilmore's crime cold-blooded and stressing the alleged plan: "He [Gilmore] served time for these [previous robberies]. And he's learned something because of that time. Do you know what it is? He's going to kill his victims. Now that's smart. If you are going to make your living as a robber, that just makes sense, because a dead victim's not going to identify you" (439). The D.A. uses "going to" to imply intent, prompting jurors to imagine a life that Gilmore decided to make for himself in which, in Rousseauian terms, his excellent reasoning skills are mobilized towards an immoral end. However, there is no indication of any such plan in Mailer's narrative. The reader sees Gilmore's crimes as the final straw in a seven-month route to self-destruction: paroled after long years

of incarceration, with no practical craft to generate income and abandoned by his girlfriend, Gilmore failed to adjust to life in a hard-working and God-fearing community. His crimes, in a tragic and senseless way, concluded his failures. A part of him anticipated that, but Gilmore was too weak and too devoid of hope to break the chain of reaction. Even though he is lacking Prejean's emotional openness, Mailer achieves the same goal by noting meticulously the myriad of circumstances surrounding Gilmore's crime. Creating the full picture of the villain, Mailer subverts the social contract logic that paints the villain as a monster.

Similarly to Gilmore's, the Sonnier's crime is difficult to explain in terms of motive or premeditation. When Sonnier's brother Eddie confessed to the killings he claimed that it was LeBlanc's name, David (his girlfriend had just left him for a man named David), that prompted his rage: "he had 'lost it' ... something the boy said had triggered his rage, something had 'come over him,' and the two Davids had blurred in his mind and the gun was in his hand and he had fired" (Prejean 16). The reason seems trivial and the murders impulse-driven rather than committed in cold blood. Yet, at Sonnier's pardon hearing the A.D.A. says: "there has been no doubt in the court's mind ... that the killings were 'cool and calculated'" (64). In both Gilmore's and Sonnier's cases, the motive is invented to render them monstrous and to

obtain what community and victims' families demand the most—a death sentence.

### The Question of Compassion

Both Prejean's and Mailer's narratives inspire sympathy for their protagonists. Compassion for the culprit is present in popular reception rather than in law, although it is not entirely alien to legal proceedings. In an early episode of the popular television series *Law and Order*, an Assistant District Attorney expresses serious doubts regarding the severity of his actions against a mother who has been charged with killing her disabled son. Even though the law prescribes harsh measures, he considers leniency in this extremely emotional case. "You can't let the sympathy for the defendant distort your primary responsibility,"<sup>18</sup> he hears from his superior ("Endurance"). The phrases "my responsibility is to the victim" and "I speak for the victim" are used many times throughout the entire series. These declarations reaffirm a well-established view: the law takes the victim's side. From the victim's point of view, whose absence in the courtroom speaks volumes, killing their monstrous killers seems fair. Therefore, the public are ready to accept the logic.

Identifying with the victims agrees with one's sense of moral superiority over the offender. Renouncing his/her dark side, a person declares himself/herself

nothing like the monster. From such a stance, there is only one step towards a kind of self-righteousness that broadens the gap between the abstraction of the social contract logic and the reality of an offender's personal narrative. Therefore, to pass a fair judgement, one should rather acknowledge the dark side as an integral part of humanity than reject it as alien to human kind. Camus writes in "Reflections on the Guillotine" that "[there] is a solidarity of all men in error and aberration ... and if justice has any meaning in this world, it means nothing but the recognition of that solidarity; it cannot, by its very essence, divorce itself from compassion" (166). Camus further advocates for allowing compassion in law. He argues that it is only by recognizing the weakness of men that one can bring back the meaning into the notion of justice, which is now a hollow concept, inapplicable in real life and thus signifying a system rather than the idea (133).

### Stable But Not Still

However, the following question must be considered: does law offer any room for compassion? Indeed, the answer can be both yes and no, depending on one's approach. A careful scrutiny of the U.S. Supreme Court decisions reveals two opposed legal philosophies: strict constitutionalism and legal activism.<sup>19</sup> Dissenting in *Furman*, Chief Justice Warren

E. Burger writes: “Our constitutional inquiry ... must be divorced from personal feelings ... it is essential to our role as a court that we not seize upon the enigmatic character of the guarantee [of the Eighth Amendment] as an invitation to enact our personal predilections into law” (408 U.S. 238). A strict constitutionalist, Burger believed that the Constitution should be applied with judicial restraint and is critical of any attempts to broaden the application (alluding here to Justice Thurgood Marshall’s judicial activism).

In *Furman*, Marshall holds the death penalty to be unconstitutional *per se* for a number of reasons, but his most striking argument comes at the end of a very long statement of opinion: “At a time in our history when the streets of the Nation’s cities inspire fear and despair, rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But, the measure of a country’s greatness is its ability to retain compassion in time of crisis” (408 U.S. 238).<sup>20</sup> Marshall writes about retaining—that is, upholding—the principle of compassion, or an inherent sense of kinship. Arguing that natural human instincts should have a voice in the criminal justice system, Marshall subscribes to the doctrine of natural law—recognizing the universal social nature of men.<sup>21</sup> He further affirms: “In striking down capital punishment, this Court does not malign our system of government. On the

contrary, it pays homage to it ... In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute. We achieve ‘a major milestone in the long road up from barbarism’” (408 U.S. 238). Following the maxim: “Law must be stable, but it must not stand still,” Marshall sees incorporating a non-legal rationale into the judicial review and legislation process as a manifestation of progress.<sup>22</sup> Sympathy neither distorts law’s primary responsibility nor interferes with its stability; rather, it becomes the mark of a maturing society, the mark of improvement.

One may say that a similar fight between strict constitutionalism and judicial activism takes place within society every day. On the one hand, the obedience to law, drilled into men by a proper upbringing, constitutes an important part of their value systems. On the other hand, one cannot resist one’s natural tendency to compassion. Thus sympathy softens the sharp picture of what constitutes right and wrong drawn by legal norms.

To conclude, the villain, understood in terms of the social contract, is virtually non-existent in personalized narrations like Prejean’s *Dead Man Walking* and Mailer’s *The Executioner’s Song*. American Death Rows are inhabited by individuals whose fates are trapped by the insufficient, black-and-white logic of the criminal justice system: motivated by evil propensities, these individuals choose to violate the law and

to threaten public peace. Villains must be conceptualized as inhuman to justify their inhumane punishment. This becomes possible because capital criminals are not scrutinized in full; their “evil” sides are dramatically exposed while their human potential is conveniently omitted. This paper’s epigraph from Justice Lewis F. Powell offers a voice in the discourse carried out by the judiciary who are reluctant to include compassion in their decisions and who seek their rationale in law or philosophy. The humanities, however, deal with general formulations of abstract constructs defined through binaries: evil is understood as the total absence of good inclinations. If applied to an individual narrative, this logic reveals only what the villain lacks. Capital offenders become a “personally ugly and socially unacceptable” by-product of making an ideal society.

In order to do justice to the condemned, sentiments like Powell’s must be counterbalanced by an approach born out of compassion, brought about by a personal interaction with the condemned. Recognizing the social implications of her writing, Prejean writes in the introduction to *Dead Man Walking*: “There is much pain in these pages. There are, to begin with, crimes that defy description. There is ensuing rage, horror, grief and fierce ambivalence ... I have been changed forever by the experiences” (xi).

<sup>1</sup> Petitioning the U.S. Supreme Court on behalf of Earnest James Aikens, Amsterdam wrote: “[t]hose who are selected to die are the poor and powerless, personally ugly and socially unacceptable. In disproportionate percentages, they are also black” (qtd. in Steiker 263).

<sup>2</sup> Since its reinstatement in 1974, the percentage of Americans in favour of the death penalty continued to grow with its peak (eighty per cent in support) in September 1994 (<http://www.gallup.com/poll/1606/death-penalty.aspx>).

<sup>3</sup> The “War on Crime” was a policy launched in late 1960’s by then-President Lyndon B. Johnson to improve crime control in the U.S. The initiative involved an increase in policing and penitentiary investments as well as in federal anti-crime legislation. Within twenty years, the “War on Crime” resulted in mass incarceration.

<sup>4</sup> *Paradise Lost: The Child Murders at Rob-in Hood Hills* (1996), *The Paradise Lost: Revelations* (2000), *Paradise Lost: Purgatory* (2011) tell the story of a triple homicide committed on primary school boys in West Memphis, the investigation, the trial of three local teenagers, and its aftermath. Two of the accused, Jessie Misskelley and Jason Baldwin, were sentenced to life without parole, while the third, Damien Echols, received a death sentence. The charges were based on a false confession forced onto intellectually disabled Misskelley.

After fifteen years of incarceration they were released as the result of a procedural trick, which, though it allowed their freedom, let the state avoid taking the responsibility for the miscarriage of justice. The murders remain unsolved.

<sup>5</sup> *The Exonerated* includes first person narratives of six men who have been exonerated from the crimes that left them on Death Row, and combines their accounts with the trial records, thus providing the audience with an interesting clash of everyday language and legal jargon. The confrontation reveals how far legal theory has become abstracted and, as a result, inapplicable to particular cases.

<sup>6</sup> *Into the Abyss: A Tale of Life and Death* does not question the guilt of Jason Burkett and Michael Perry (the latter was executed within days after being interviewed by Herzog). The film equally features the law enforcement officers involved in the case, the relatives of the inmates, and their victims' families, questioning in general the moral base of the American capital system.

<sup>7</sup> *Death Row Stories* by Alex Gibney and Robert Redford, aired on CNN, has run for two seasons so far. Each episode tells a true story of a capital trial in which the guilt of the condemned has been questioned. Some of the death row inmates featured have been exonerated, but many still await their executions. The show focuses on overzealous prosecutors and legal procedural details, working to cast doubt on the whole

American capital system.

<sup>8</sup> *c.f.* *At the Death House Door: No Man Should Die Alone* (2002) by Steve James and Peter Gilbert, a U.S. documentary following Carroll Pickett, a Death House chaplain at Huntsville, Texas. Pickett served at over ninety executions. His book *Within These Walls: Memoirs of a Death House Chaplain* (2002) is another example of writing from which a more humane portrait of convicts emerges. Likewise, the 2015 Netflix documentary series *Making a Murderer*, by Laura Ricciardi and Moira Demos, focuses on the Wisconsin case of Steven Avery's false imprisonment for sexual assault, his release after eighteen years, and finally his charges and conviction for murder. Avery is depicted as an outcast of the local community, lost in the procedural maze of the criminal justice system and misjudged by society. The series convincingly argues that Avery was framed for the murder of Teresa Halbach by both the local police and the prosecution.

<sup>9</sup> In an article from the *Stanford Encyclopedia of Philosophy* titled "The Nature of Law," Andrei Marmor explains the difference between *natural law* and *positive law*. *Natural law* is determined by human inclination to live in society. In the view of natural lawyers, morality can be both the source of natural law and the condition for its validity (Marmor n.p.). Here, one can see how Christian ethics (since these are Christian faiths which lay at the foundations of

Western civilisation) intersect with law. John Locke, for instance, holds morality to actually be natural law. In the *positive law* tradition, certain conditions of the validity must be met if a norm is to become law. A norm can only become law based not on its merits but depending on its source, namely on the sovereign decision (Marmor n.p.).

<sup>10</sup> *United States v. Sickles* was a murder case tried in the District of Columbia in 1859.

<sup>11</sup> The full quote by Rousseau reads as follows:

[E]very malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country; by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case the preservation of the State is inconsistent with his own, and one or the other must perish; in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and the judgment are the proofs that he has broken the social treaty, and is in consequence no longer a member of the State. Since, then, he has recognised himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy; for such an enemy is not a moral person, but merely a man; and in such a case the right of war is to kill the vanquished (26).

<sup>12</sup> In the process of character development, evil may, but does not have to, dominate an individual's mindset, but when it invades an agent's character, then it corrupts the agent as a whole.

<sup>13</sup> Homicide (*homicidium*), in Kant's view, is a killing without evil intent. As an example of homicide, Kant offers a maternal infanticide committed in order to defend the mother's honour.

<sup>14</sup> FindLaw.com explains the term of First Degree Murder in the following way: "In most States, First Degree Murder is defined as an unlawful killing that is both wilful and premeditated, meaning that it was committed after planning or 'lying in wait' for the victim" (n.p.). The prosecution must prove the specific intent to end a human life. Deliberation and premeditation is determined on a case-by-case basis. It involves presenting the jury with a proof that the defendant had a conscious intent to kill which he or she then contemplated ahead of the killing and acted on it" (n.p.).

<sup>15</sup> Theodore Robert Bundy is perhaps America's most infamous serial killer. He was electrocuted by the state of Florida in 1989.

<sup>16</sup> Elmo Patrick Sonnier was sentenced to death for a crime he committed with his younger brother, Eddie James—the killing of a couple of teenagers, Loretta Ann Bourgue (18) and David LeBlanc (17), in 1977, in St. Martin's Parish, Louisiana. The couple was kidnapped, Borgue was raped by both brothers, and Leblanc was handcuffed

to a tree. Then the teenagers were forced to lay face down and shot at close range, three times each, at the back of the head from a .22-caliber rifle.

The brothers were convicted of the murders in 1978 and sentenced to death, however the sentence was overruled in appeal and new sentence hearings were scheduled. At this point, Eddie James Sonnier claimed that he had committed the murders. Under the Louisiana capital statute only the person who actually did the killings can be sentenced to death. The prosecution in this case claimed that Eddie's confession was a smoke screen aimed to cast doubts as to Patrick's guilt by offering an alternative version of the crime. Patrick was older, and the prosecution argued that he was the decider in the crime. Eddie's testimony was successfully challenged by the prosecution and Patrick was sentenced to death for the second time, while Eddie received a life sentence. He died in Angola State Penitentiary in 2014. Patrick was electrocuted in Louisiana State Penitentiary in 1984.

<sup>17</sup> Gary Mark Gilmore was paroled from a maximum-security federal prison in Marion, Illinois, to the custody of his family in Provo, Utah. In June 1976, about four months after his release, Gilmore robbed a secluded gas station in nearby Orem, Utah, and shot its employee, Max Jensen. The day after, he robbed a motel in Provo and shot the manager, Bennie Bushnell. Both killings were committed in a similar way:

the victims, after handing money over to Gilmore, were forced to lay face down with their arms under their body and shot point-blank at the back of the head. Jensen was shot twice, Bushnell once; he was still alive when his wife found him. The police had difficulties linking Gilmore to the Jensen's murder. Therefore, he was tried for the second crime alone and sentenced to death in Provo, in October 1976. Gilmore was executed by the firing squad in January 1977. He was the first person executed in the U.S. after a nearly ten-year moratorium on the death penalty.

<sup>18</sup> The prosecutor's primary responsibility is bringing the offender to justice and making them pay for the crime. In a capital case, which is aggravated by its very nature, the punishment must be uniquely severe to counterbalance the crime. Retribution is a goal admitted even by the U.S. Supreme Court Justices: "The instinct for retribution is part of the nature of men, and channelling that instinct in the administration of capital justice serves an important purpose in promoting the stability of a society governed by law," writes Justice Potter Stewart in *Furman* (406 U.S. 238).

<sup>19</sup> Strict constitutionalists recommend a literal reading of the Constitution, oriented with intent to discover its original meaning and to apply that meaning in contemporary ruling. The judges base their decision on legal rationale alone, rather applying the law than interpreting it. By contrast, judicial

activism is making judicial decisions based on one's religious, social or political considerations. Judicial activists are believed to decide cases before hearing arguments and to look for legal rationale in order to justify the ruling.

<sup>20</sup> Marshall was the only then-incumbent Justice with the defence attorney experience. Before his Supreme Court appointment, he had worked for NAACP Legal Defense Found and had litigated in many capital cases.

<sup>21</sup> See also Daniel Chernilo's *The Natural Law Foundations of Modern Social Theory: A Quest for Universalism* (2013), in particular Part Two "Natural Law" wherein the author reflects on Rousseau's theory of natural law. Rousseau claims that human behaviour is influenced by two instincts pointing us in opposite directions: self-interest and compassion. The latter is crucial, its goal being "[m]oderating the activity of love of self in which individual, contribut[ing] to the preservation of the whole species . . . it is this which in a state of nature supplies the place of laws, morals, and virtues, with the advantage that none are tempted to disobey its gentle voice" (qtd. in Chernilo 113).

<sup>22</sup> Attributed to Roscoe Pound (1870-1964).

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