

## **Capital Punishment in “When the State Kills” by Austin Sarat**

What may be more silly and hypocritical than the murder called capital punishment? The punishment itself presupposes that the punished person learns certain lesson, makes certain conclusion and reevaluates his deeds. A state kills its citizens calling the murder a punishment. The execution is a tragic paradox from the very beginning. It is completely illogical. It is illogical from the point of view of a criminal, members of a society and a state.

A great tragic paradox of the execution is hidden in the nature of a human being. According to the brilliant theorist of the state Thomas Hobbes, an individual transfers his rights to a sovereign (government). According to Hobbes these rights should not contradict to the laws of the Nature, “...man can transferre his Right to save himselfe from Death, Wounds, and Imprisonment”<sup>1</sup>.

In case with the so – called capital punishment a member of society transfers the right to kill himself which is out of understanding from the point of view of the natural law. The death penalty or it is better to say murder blessed by the conventional law is inhuman. It is more like revenge than the punishment because the punished person will neither be able to realize his fault nor commit similar crime; he will nether commit anything bad nor good, nothing. The state pretending to defend its member from the criminal just kills a criminal though there can be different ways to protect the society from the murderer.

Austin Sarat in his brilliant book “When the State Kills: Capital Punishment and the American Condition” investigates the problem of the capital punishment. The humanity has never changed and the revenge remains the main subject moving the justice. According to the author there are three parties involved into the death penalty, a convicted criminal, a victim and a state. Justice as a Goddess has been narrated from the Ancient Greeks till our days with the band on her eyes. Justice is blind and should follow the law only but not emotions.

Sarat makes distinctions between the revenge and retribution. Revenge is personal while the retribution is impersonal. According to Sarat prisoners are executed according to the social will but no one is responsible for killing them. This thesis is rather questionable. The contradiction of such statement may be seen in the theory of a state as a collective sovereign.

A state has certain responsibility for the adopted laws. It is easier to support the revenge on the state level than to find the alternative mechanisms of protecting the society against the criminals.

Thus, state supports the revenge in this or that case. The execution humanizing is hypocrisy of a state. The state tries to make the process of a murder according to law less painful, but this will never satisfy the people who require blood to satisfy their revenge. Actually there is no much difference between the public execution in the countries with the barbarian laws and “civilized” execution in the developed democratic countries.

Another crucial issue in the death penalty matter is that while killing a state may commit irrevocable fatal mistakes. Then what is the difference between the state killing an innocent person by mistake and a criminal killing the same innocent person for the criminal reasons?

Moral harm that the state killing may bring can not be underrated. While killing a person, though criminal, a state spreads responsibilities for the murder among all of its members. It harms our morality greatly. We are all become the collective murderers. “State killing damages us all, calling into question the extent of the difference between the killing done in our name and the killing that all of us would like to stop and, in the process, weakening, not strengthening, democratic political institutions”<sup>2</sup>.

Violence is an integral part of any power. At the same time according to Hannah Arendt “No government exclusively based on the means of violence has ever existed.... Power

is indeed the essence of all governments, but violence is not. Violence is by nature instrumental.....<sup>3</sup>

Arendt gave an explanation of the exclusive cases of the death penalty. One of the most indicative examples of her statements was the justification of the death penalty of the Nazi Eichmann. According to Arendt, Eichmann he did not want to share the earth with Jews, and then the Jewish government is not obliged to share the Earth with Eichman<sup>4</sup>.

But Eichmann committed the crimes of genocide against the society, but not against an individual and he was a threat to the entire society. This fact gives some basis of considering that Eichmann gave the basis to state his incompatibility with the society. This incompatibility could have been resolved by eliminating one of the parties. This thesis though questionable may approve, in a way his death penalty. But still it is difficult to take away a motive of revenge in case with Eichmann.

The state killing is some kind of weakness. The state demonstrates its ultimate inability to prevent the crime. According to the conventional laws the death penalty is the best way to eliminate the criminality, but history shows that the severity of the punishment has never been able to prevent crimes. “We kill those who murder,” Sarat observes, “because we have lost faith in our ability to figure out other ways to prevent killing.”<sup>5</sup>

The bureaucratizing the death indicated in various rituals like the medical provision and the process formalization harm the society because this undermines the state basis showing that the death penalty is regulated by the state machine. It underlines the power of the bureaucratic machine on one hand and the simple solution of complex problems by the state on the other hand. Despite of the state attempts to formalize the process of killing it will remain killing and nothing more.

If we recollect the barbarian regime of Taliban in Afghanistan, they imposed their executions to general public. The main reason was the factor of fear, to show the world their

firm intention to follow the barbarian rules, but still there was another reason for doing this. They felt their rightfulness due to their sick mentality and morality. The same is with the terrorists who are trying to impose themselves to general public. They have fanatic belief in their right to kill innocent people. While speaking about the civilized society, people who are responsible for the death penalty feel their wrongfulness though regulated by law. That means that the natural and humanistic law in their perception prevails over the conventional criminal law.

Such human feeling as revenge is an interesting phenomenon. It is impulsive. If, say a relative of a victim is offered to execute a murderer it is rather questionable if he accepts the offer. That means that our personal humanistic law prevails over the revenge. We can not revenge by killing the person according to the Bible and our humanistic nature that is why we delegate this “honorable mission” to a state. The state forwards this mission to a jury and then to a man who is switching the electricity or making the injection thus forcing him to violate the Christian law. Moreover, the state involves into this process as many people as possible thus making all of them responsible for killing according to law. All this resembles the situation when criminals try to involve as many people as possible into a crime thus sharing the responsibility, or it is better to say reducing one’s personal share of responsibility.

The capital punishment is no doubt a harmful practice for the society. Very often the capital punishment is applied not as a legal category, but as a political category of revenge.

State killing approves the violent murder no matter who is a murderer, a state acting according to the conventional laws contradicting to those of humanity or a criminal acting lawlessly.

### ***Bibliography***

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### ***Citation***

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2. Austin Sarat
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