

The
LAST DAY
of a
CONDEMNED
MAN

Victor Hugo.

NEW FOREWORD BY
DAVID DOW

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Victor Hugo

Translated from the French by Arabella Ward

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Note on “The Last Day of a Condemned Man”

Foreword

We do not know his name or exactly what he did. We know little about his present, less about his past, and nothing of his childhood. We do not know the name of his victim, or even with certainty that there was a victim. A book about the death penalty that does not tell us the details of the death of the victim is a rare (perhaps unprecedented) volume, yet that is the book Victor Hugo has written. We know nothing that Hugo believes to be unessential to our judgment, yet we nevertheless know everything Hugo thinks we need to know to conclude that capital punishment is an abomination.

Hugo was forthright about his intention in writing *The Last Day of a Condemned Man*. He abhorred capital punishment. He said the idea for writing the book came to him at the site of an execution: in the public square, as an execution was taking place, a scene Hugo says he walked upon “casually.”¹ Hugo wanted to see the death penalty abolished. He did not live to see that happen, but he played a role in its demise. His instrument was this novella.

To make his radical case, Hugo adopted a radical approach. Visit any abolitionist website in the U.S. or peruse any abolitionist tract and you will learn excruciating details of travesties of justice, for the American approach is to focus on particulars. I do not mean this observation as a criticism. On the contrary, the American abolitionist strategy is sensible, because it is undoubtedly true that the death penalty favors white skin over skin of color and dramatically favors wealthy defendants over poor ones. It is true that defense lawyers in capital cases are often abysmally bad. It is true that

racism pervades the criminal justice system, and inserts itself most insidiously in the death penalty domain. It is true that a significant percentage, perhaps as much as a quarter, of the death row population comprises men with serious mental illness; and a handful, perhaps 3 percent, perhaps a bit more, committed no crime at all. Attention to the particulars is a sound tactic—I have used it often myself—because people who care about equality and fairness may have their support of capital punishment eroded upon learning of the inequality and inequity that characterize our death penalty regime.

In the United States, therefore, in literature as well as political discourse, discussions of the death penalty almost invariably pivot on the facts of the specific crime or the particular criminal. Briefs written by prosecutors to justify imposing a death sentence, and opinions written by judges upholding the punishment, recite in punctilious and gory detail the facts of the brutal murder (and what murder is not?)—facts that typically have nothing whatsoever to do with the legal issue before the courts. Yet our moral sense is quieted, or, if not entirely quieted, at least numbed, by these recitations. We can ignore the brutality of an execution and evade the lawlessness that is attendant to it by averting our eyes and closing our rational minds and focusing all our attention on the horrible facts of the crime.

Occasionally, a death sentence is set aside by judicial review. When that occurs, it is again, ironically perhaps, typically the result of unique facts of the case: the police or prosecutors hid a crucial piece of evidence; or all people of color were stricken by prosecutors from the jury; or the accused wrongdoer is mentally retarded, or otherwise not fully morally culpable. For expedience's sake, perhaps, Hugo, abolitionist that he was, may have supported his latter focus on facts, for the result of this attention is that a human life is spared. But then again, if he were to remain true to his conviction that capital punishment is wrong, he might have deemed these facts irrelevant as well, for even they divert our attention from the crux of the

matter, which is, quite simply, whether the death penalty is ever morally sound. Speaking of his book, Hugo said: I have tried “to omit any thing of a special, individual, contingent, relative, or modifiable nature.”² Morality is found in generalizations, and individual cases are the enemy of generalizations. Hugo aimed for universality, for a broad moral claim, and he hit the target in its bull’s eye.

Originally published in French in 1829 under the title *Le dernier jour d’un condamné*, Hugo in this short novel strips away all the exterior, contingent, and variable facts—that is to say, all the facts that differ from one crime to another; from one perpetrator to another; from one victim to another; from one courtroom to another, indeed, from one society to another—and he leaves us with naked psychology, the interior of the human mind, the common core of all humanity. His protagonist is a man sentenced to death in France. We know little else. He has a daughter who believes he is already dead. He will face the guillotine, but, as was customary in France in the nineteenth century—and as remains the practice in China and other nations still today—the condemned does not know precisely when he will be executed until the moment is upon him. He expects his stay in prison to last around six weeks, give or take. (Hugo’s protagonist is executed at 4 o’clock. He learns the fateful hour has arrived at 3.) He dies amidst a “horrible crowd ... , a crowd which longs and waits and laughs.”

This scene of a public execution will be unfamiliar to contemporary readers. In the U.S., prison authorities carry out executions in relative secret, often in the middle of the night. Members of the media are present; typically, so are family members of the murderer and his victim. But the procedure takes place behind prison walls, with little fanfare and little public interest. It has not always been this way. The last public execution in America did not occur until 1936, when Rainey Bethea was hanged in front of more than 20,000 onlookers in Owensboro, Kentucky. And of course, lynchings, which

some scholars regard as thematically connected to the current regime of capital punishment, were not uncommon as long as two decades later, especially in South, and these horrific scenes likewise unfolded in full view of large and boisterous crowds.

In France, executions never moved indoors, as it were; they took place in public, up until the end. There is a certain logic to having heads roll in the streets. If one objective of inflicting this ultimate sanction is to deter other crimes, it seems preferable for the citizenry to know the punishment exists, and to witness its infliction. North Korea uses public executions to intimidate its citizens to this very day. In parts of the Muslim world, public stonings have a carnival atmosphere. But seeing the state kill makes it more difficult to evade the moral question of whether the state ought to kill, and so at last, in 1981, not quite a century after Hugo's death in 1885, France abolished the death penalty, becoming the last nation in western Europe to do so.

Like Hamida Djandoubi, who became the final victim of the French guillotine when he was beheaded in 1977 in Marseille, the character in Hugo's novel also faces execution by guillotine, a tool conceived by Joseph-Ignace Guillotin in 1789 and used for the first time three years later. Decapitation, which had previously been reserved for executing members of the royalty, became France's sole method of execution, replacing hanging, burning, and other methods, on the theory that a speedy cutting off of the head was less cruel than the alternatives for causing death. This same rationale led U.S. jurisdictions two hundred years later, in the early 1980s, to embrace lethal injection as a method of killing. Conceived of by A. Jay Chapman, a medical examiner in Oklahoma, lethal injection was used for the first time when the State of Texas executed Charlie Brooks in 1982. (Texas has since carried out more than 400 executions by lethal injection, a number which accounts for more than one-third of all executions in the U.S.) Of the thirty-six states that execute criminals, all except Nebraska kill inmates with

a three-drug combination that initially puts them to sleep, then paralyzes them, and finally induces cardiac arrest. (Nebraska continued to electrocute inmates until the method was declared cruel and unusual by the Nebraska Supreme Court in 2008.) The history of capital punishment, therefore and paradoxically, reveals the state's very unease with the punishment, for the history of capital punishment has been a steady if quixotic quest to identify a mode of bringing about death that is supposedly more humane than its predecessor—until at last the legislature concludes that the taking of human life is inherently cruel, regardless of the method by which the sanction is carried out. Our system of crime and punishment has progressed, so to speak, from stark brutality, to more nuanced brutality, to the recognition that all intentional homicide is brutal, to abolition.

Hugo's protagonist says that the public "see nothing but the execution, and doubtless think that for the condemned there is nothing anterior or subsequent!" Hugo is no theologian. We therefore cannot learn from him whether there is indeed anything subsequent. His interest is in the anterior (and, of course, the present). Hugo understands that the condemned suffers immensely, but not primarily as a direct consequence of the infliction of the punishment. Rather, Hugo's protagonist suffers exquisitely in anticipation of his fate. He tells us what he fears and what he will miss. Because we do not know the details of what he did, we cannot help but see him as a sentient human being, instead of as a depraved killer. Supporters of capital punishment may be unmoved by Hugo's understanding that the condemned suffers immensely, for the common reaction to stories of hardships endured by those awaiting execution is that they do not suffer enough, that they have it better than their victims, that they, unlike their innocent victims, know their fate. At least we can say of this reaction that it is an honest one, revealing the only basis on which capital punishment can be defended: a visceral and unforgiving antipathy toward anyone who wrongfully takes a human life. But as Hugo shows us here, the condemned prisoner is also a human being who loves others and is loved by them, he is a man who loves

life on this earth, and who fears the mob that will come for him. We see in him what it is to be a human being: reason coupled with emotion, rationality coupled with appetite, a simple yet potent desire to live on this earth another day. Whether Hugo persuades supporters of the death penalty to abandon their position is for them to say; what is undeniable is that he shows here irrefragably that the objects of our machinery of death are human beings, not mere beasts.

Proponents cite three justifications for their support of the sanction: that it is cheaper than the alternatives, including life in prison; that it deters other crimes; and that it satisfies society's retributive impulse. As we know from extensive documentation, however, the death penalty actually costs more than the alternatives, and there is no reliable evidence at all that it deters. So we are left with the final justification, which is, truth be told, not so much an argument as an explanation. Defending executions by saying that nothing else will satisfy society's retributive impulse could be used with equal efficacy to justify lynching or torture, and it probably has been. If it were sufficient to justify an action on the sole ground that we feel a strong impulse to pursue that action, our world would indeed be a Hobbesian one, yet Hugo recognizes that, with respect to capital punishment, there is no other justification, or at least none that is not facetious.

When asked on CBS's *Sixty Minutes* whether he had seen the video of Saddam Hussein's hanging, President George W. Bush said he had seen part of it. He did not, he told reporter Scott Pelley, watch Saddam fall through the trap door, on the short journey to having his neck broken. Pelley asked him why not. President Bush responded that he is not a "vengeful" person. That might seem like a surprising disclosure from a man who, as Governor of Texas, presided over 152 executions, but it does serve to highlight that there is no other reason—none besides vengeance, now euphemistically known as retribution—for the state to kill.

And that, in the end, is how Hugo succeeds: by showing us a criminal, a prisoner, a mere man, whom we have no urge or impulse to kill or even harm, for whom we feel not disgust or loathing, but empathy. When he laments that he will see no more sunrises and hear no more singing birds, we know exactly what he means, because these are our regrets, too. Whatever he has done, he is still flesh and blood, a living, breathing, fully realized human being, so that when we kill him, by whatever sterile means we accomplish the deed, we have taken a human life, we have committed a homicide, in contravention of the single norm that every society in the history of human civilization has embraced: Thou shalt not kill.

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Preface

The only preface to the first editions of this work, published at first without the author's name, were the following lines:—

“There are two ways of accounting for the writing of this book: First, a bundle of torn, yellow papers was found, on which were written, in order, the last thoughts of a poor wretch; second, there was a man, a dreamer, who was given to studying nature for the sake of art. He was a philosopher perhaps, or a poet, I know not just what; but he took hold of this fancy, or rather he let it take hold of him, and he could rid himself of it only by putting it into a book.

“These are the two theories, and the reader may choose the one which pleases him the better.”

At the time of the publication of the book, the author did not think it wise to say too much. He preferred to wait, and see if his views were understood. They were; and today he can unmask the political and social ideas which he wished to make popular in this innocent and clearly stated story. He declares, or rather he acknowledges frankly, that the *Last Day of a Condemned Man* is nothing more than a plea, direct or indirect as one pleases, for the abolishment of capital punishment. His idea was to make posterity see in his book, should they read it, not the special plea of such or such a convict, of such or such a criminal (which is always an easy and transient thing), but the general and permanent plea of all criminals, now and forever; it was the great right of humanity urged and pleaded by every voice before mankind, which is the highest court of appeals; it was the

ultimate principle, *abhorrescere a sanguine*, established before the existence of the criminal courts themselves; it was the sombre and fatal question which trembles at the foundation of every capital prosecution, under the triple thickness of pathos with which the bloody rhetoric of the people of the king is covered; it was the question of life and death, I say, naked, unclothed, freed from the sonorous subterfuge of the court-room, cruelly brought into the light, laid where it can and must be seen, and where it really is, in its rightful place, its horrible place, not in the court-room, but on the scaffold, not before the judge, but before the hangman.

This is what he aimed to do; and if posterity should ever grant him the glory of having accomplished it, and he hardly dares hope that it will, he would ask for no other crown.

He says, and he repeats it, that he works in the name of every possible prisoner, innocent or guilty, before every court, before every judge, every jury, and every feeling of justice. This book is dedicated to any and every judge. And that the plea may be as great as the cause, he had (and this is why the story was written as it is) to eliminate from the consideration of the subject the discussion of *remote cause and inevitable accident, particular case and special exception, precedent, mitigating circumstances, story, anecdote, issue, and title*; and limit it, if this is limiting, to pleading the condemned man's cause, whensoever he be condemned and whatsoever be his crime. Happy, if without other instrument than his idea, he has searched sufficiently to make a heart bleed under the *aes triplex* of a judge! Happy, if he has roused sympathy for those who believe themselves in the right! Happy, if by searching deep within the heart of the judge, he has occasionally succeeded in finding a man!

When the book appeared, three years ago, there were some who imagined that it was worth while to question if the idea was the author's. Some thought it was taken from an English book, others from an American.

Strange mania, to look for the origin of things in a thousand places, and to make the stream which runs through your street start from the mouths of the Nile! No! It was taken neither from an English nor an American nor a Chinese book. The author found the idea of *The Last Day of a Condemned Man* not in any book,—he is not in the habit of going so far for his ideas; but he found it where you all may find it, where, perhaps, you have found it, (for who in his own mind has not written or dreamed of *The Last Day of a Condemned Man*?) on the public Place, on the Place de Grève. It was there that, passing by one day, he found the dread idea lying in a pool of blood, beneath the crimson arms of the guillotine.

Ever after, each time that at the will of the fatal Thursdays, in the Court of Appeals, one of the days arrived when the cry of a death-sentence was heard in Paris; every time that the author heard beneath his windows those hoarse criers calling the spectators to La Grève,—every time, the dread thought came back to him, took possession of him, filled his mind with gendarmes and hangmen, and crowds of spectators; explained to him hour after hour the last agonies of the wretched sufferer, while he confesses, while his hair is cut off, while his hands are bound; called upon him, the poor poet, to tell it all to the world, which goes on unmindful, attending to its own affairs, while this frightful thing is taking place; urged him, begged him, shook him, snatched away from him his humorous verses if he happened to be writing, and killed them before they were half begun; stopped all his work, intercepted itself between him and all else, surrounded and beset him on all sides. It was a torture,—a torture which began with the dawn, and which lasted, like that of the wretch who was being murdered at that very moment, until *four o'clock*. Only then, when the *ponens caput expiravit*, announced by the fatal voice of the clock, was the author able to breathe again, and find some peace of mind. Finally, one day,—it was, he thinks, the one after the execution of Ulbach,—he began to write this book. From that moment he found comfort. When one of those public crimes, called *legal executions*, was committed, his conscience told him that he was not conjointly liable; and he

no longer felt that drop of blood on his forehead which spurted from La Grève upon the head of every member of the social community.

But this was not enough. To wash one's hands is good, but to stop the flow of the blood is better.

He knows no higher, no holier, no nobler aim than this,—to strive for the abolishment of capital punishment. And it is from his heart that he adheres to the wishes and the efforts of the generous men of every nation, who for several years have worked to overthrow the gallows, the only tree which is not uprooted by the Revolution. It is with joy that it comes his turn, his, the poor poet, to apply his axe, and enlarge as much as possible the gash made by Beccaria, sixty years ago, on the old gallows which has stood for so many centuries over Christendom.

We have said that the scaffold is the only thing which Revolutionists do not demolish. It is seldom indeed that a revolution spares human life; and coming, as it does, to prune, cut, hack, and behead society, capital punishment is one of the instruments which it is most loath to give up.

We will admit, however, that if ever a revolution seemed to us worthy and capable of abolishing capital punishment, it was the Revolution of July. It seems to belong to the kindest popular movement of modern times to blot out the barbarous punishment of Louis XI, Richelieu, and Robespierre, and to inscribe on the face of the law the sacredness of human life. 1830 deserved to break the chopper of '93.

We hoped so for an instant. In August, 1830, there was so much generosity, such a spirit of gentleness and progress among the people, and their hearts were looking forward to such a bright future, that it seemed as if, from the very first, capital punishment were abolished from a sense of justice, and by a tacit and general consent, like the other evils which had