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# The Contemporary Debate on Capital Punishment – with Special Regard to that in Hungary

## Abstract

The present paper deals with the contemporary controversy on the issue of death penalty, concentrating primarily on three aspects of the general debate on the matter. The goal of the article is to cover the arguments and counterarguments that have emerged today amidst the discussion on these topics. In order to achieve this goal, the present paper, after a short theoretical introduction, analyses the arguments of this debate in three separate chapters based on three distinct topics since an unintentional misunderstanding and deliberate misconceptions stem primarily from the fact that abolitionists and retentionists tend to talk alongside each other. Hence, the present article reviews three selected matters of the capital punishment controversy (humanity, necessity/death penalty vs. life imprisonment, and serving the purpose of punishment) separately. Presenting the idea in such a manner can, hopefully, clear the different standpoints and make it possible to reach a mutual understanding (albeit not agreement with each other). Due to the lack of space and for rationality considerations, this article does not cover other, also very important, matters (e.g. deterrent effect, miscarriage of justice, financial, and other aspects).

**Keywords:** capital punishment, humanity or inhumanity of executions, role of life imprisonment, abolitionist and retentionist argumentation

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# Współczesna dyskusja na temat kary śmierci – ze szczególnym uwzględnieniem przypadku Węgier

## Streszczenie

Niniejsza praca stanowi głos we współczesnej dyskusji na temat kary śmierci, skupiając się głównie na trzech aspektach poruszanej kwestii. Celem artykułu jest przedstawienie ogółu argumentów i kontrargumentów, które pojawiają się w obecnej debacie poświęconej wspomnianemu aspektowi. We wstępie artykułu zawarto krótkie omówienie najistotniejszych kwestii teoretycznych, po którym następuje analiza argumentów podnoszonych w rzeczonyj dyskusji, ujęta w formie trzech osobnych rozdziałów opracowanych na podstawie trzech różnych zagadnień. Podział ten uzasadniony jest tym, że z uwagi na to, że abolicjoniści i retencjoniści zazwyczaj zabierają głos w dyskusji jednocześnie, dochodzi do wielu nieporozumień i błędów interpretacyjnych w kontekście argumentacji przedstawianej przez obydwie strony. Artykuł stanowi swego rodzaju omówienie trzech wybranych zagadnień związanych z kontrowersjami wokół kary śmierci (humanitarność, konieczność/kara śmierci vs dożywotnie więzienie, funkcja kary), potraktowanych osobno. Przedstawienie tematu w taki sposób może rzucić wyraźniejsze światło na poszczególne stanowiska w rzeczonyj sprawie oraz przyczynić się do wzajemnego zrozumienia pomiędzy stronami sporu (choć niekoniecznie rozumianego jako konsensus). Mając na uwadze ograniczenia w zakresie objętości pracy oraz względy natury racjonalnej, w artykule pominięto pewne inne – choć także istotne – zagadnienia (np. efekt odstrasżający, błędy wymiaru sprawiedliwości, aspekty finansowe i inne).

**Słowa kluczowe:** kara śmierci, humanitarność i niehumanitarność egzekucji, funkcja dożywotniego więzienia, argumentacja abolicjonistów i retencjonistów

## Introduction

As to the controversy over capital punishment, two fundamental types of disputes – along with two kinds of reasoning supporting them – that focus on the appropriateness or applicability of death penalty can be differentiated. There are, on the one hand, philosophical or moral reasons and, on the other hand, pragmatic (empirical and logical) reasons. Pragmatic arguments are characterised by impartiality and objectivity resting on solid, empirical, and at least partly verifiable grounds. As opposed to this, moral arguments are not formed on the basis of such requirements; therefore, they cannot be regarded as par excellence rational arguments by nature. Ethical viewpoints are based on profound beliefs that are accepted as axioms; in other words, one has a particular opinion of something without backing it up logically either by means of listing supporting evidence or refuting its counterarguments. The essence of morality lies in its status as the innermost, unquestionable, and indisputable, hence, undeniable (that is, immune to rebuttal) part of the human psyche which is best described by the word “belief”<sup>2</sup>; and nothing can make those who “believe” abandon their own presuppositions and convictions.<sup>3</sup>

Hence, if someone “believes” that the ultimate moral principle is to rid society of “evil”, that is, of those people who are dangerous and purposefully trespass, posing a threat to their fellow, law-abiding citizens, and that the only proper way to change the situation is for such trespassers to receive punishment in the same form as they have offended because there is no treatment more just than that, then such a person will claim – with a solid moral conviction – that death penalty is an appropriate form of punishment. At the same time, those presenting an opposite viewpoint, who think that no human has the right to make judgments over other humans and that life is so sacred and invaluable that it is forbidden to take it away in an “ethical” society – even from those people who deliberately took away others’ life out of their own immorality, will emphasize the legitimacy of their own beliefs with the same vehemence. The debate between everyday people – and between

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<sup>2</sup> The word “belief” is not used to mean or refer to faith here, it stands for a synonym of any aprioristic point of view.

<sup>3</sup> As a result, moral conviction as a belief is irrational, which simply means that, as far as its genesis is concerned, it is not a consequence of something but depends on an aprioristic choice of values (that is, there is no rational reason or logical verification behind it).

experts with perspectives constructed based on a more sophisticated argumentation – on capital punishment takes place on exactly such moral grounds, which results in a mutual, conscious ignorance of the other party's reasoning and a shift from the point at issue to personal disagreements, rendering studies dealing with death penalty as *weapons of a philosophical jihad* rather than inferences based on rational research.

Since moral arguments as enunciations of beliefs cannot be studied rationally, that is, – to put it more simply – they do not meet the criterion of scientificity,<sup>4</sup> I will not discuss the pure forms of these arguments raised in connection with death penalty<sup>5</sup> in this paper. Moreover, when it comes to the empirical/logical arguments, I review only three main topics: the subject of humanity or inhumanity of the penalty of death; the issue of necessity (that is, the question of whether real life imprisonment or other type of incarcerations can be eligible for cases of brutal and dangerous murderers or not); and the subject of the goal of punishment (that is, what kind of punishments could serve the positive aim/s/ of the institution of criminal punishment). I will concentrate primarily on the context of Hungary; however, I am going to touch on related debates in other legal systems if it appears relevant.<sup>6</sup>

## Death penalty as an inhumane punishment

According to advocates of capital punishment, if the right of an individual to self-defence is acknowledged, meaning that they are allowed to stave off an attack presenting an imminent danger to their life also by killing the aggressor, then the right of

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<sup>4</sup> The criterion of scientificity – in contradiction to its older understanding – is not verifiability but, instead, falsifiability. It follows from this that an assertion cannot be regarded as a scientific statement if it does not – even in theory – leave any room for proving (unavoidably only temporarily, owing to the current perception of scientificity) its falseness (in the presence of appropriate conditions). Therefore, moral arguments do not constitute any part of science (just like any other declaration or conviction formed on beliefs).

<sup>5</sup> Clearly, many rational arguments build on a more or less moral base. Nevertheless, this does not necessarily entail that these are “moral” arguments, so it should come as no surprise if moral elements do occur in some or even in most of the upcoming examples that are to be analyzed without one having the obligation to call their rational/empirical nature into question because of this.

<sup>6</sup> For the elaboration of the subjects of the alleged deterrent effect of capital punishment and the miscarriage of justice, see: Z.J. Toth, *The Capital Punishment Controversy in Hungary: Fragments on the Issues of Deterrent Effect and Wrongful Convictions*, “European Journal of Crime, Criminal Law and Criminal Justice” 2013, 21(1), pp. 37–58. Besides it, for the empirical surveys about the existence or non-existence of the deterrent effect, see: idem, *The Deterrent Effect of the Death Penalty – from an Economic Point of View*, “De Iurisprudencia et Iure Publico” [www.dieip.hu] 2012, 1–2, pp. 151–186.

the society to collective self-defence must also be acknowledged. If a person as an individual has the right to self-defence, then they must also be granted such a right as a member of a community, namely, the society. Therefore, it is not only the society's right but also obligation to its members to protect them against unlawful attacks of others. And if it is able to prevent attempts on the lives of its members only by taking the life of the aggressor, then it is obliged to do so. In this respect, on the other hand, abolitionists have expressed their disagreement stating that there is a difference between a legitimate defence situation and an execution used as a punishment. In the former case, defence involving taking the life of an aggressor precedes the unlawful taking of life, thus it is an action which is able to prevent the purpose (murder) of another unlawful action from being materialized. In the latter case, in turn, capital punishment does not come before the taking of life; it does not even atone for homicide as it has already happened. If a person killed innocently could be resurrected through an execution then – as abolitionists consider – the situation would be different, but it is physically impossible and taking someone's life subsequently (execution) is not able to change the past; therefore, capital punishment as a subsequent response of the state cannot be the means of self-defence (i.e. involving taking the life of the aggressor to prevent being murdered).<sup>7</sup>

On the other hand, those believing in capital sanction not only consider execution as a means of self-defence against homicides but also draw a parallel between other state activities which – similarly to capital punishment – result in the destruction of human lives. In this regard they argue that if we acknowledge the lawfulness of such other state acts (which on top of all have well outdone executions in their effect), then, by analogy, there is no reason for not acknowledging the lawfulness of capital punishment likewise. For example, numerous specific cases could be named when a state tried to prevent the lives of the people by way of war while

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<sup>7</sup> This idea was formulated by Bertalan Szemere, Hungary's first Minister of the Interior during the revolution against the Habsburg regime and the war of independence of 1848–1849 in a very descriptive way (which is much more detailed than the one described before), and his opinion is the first of its kind, it is not the same as that of the abolitionists, or of the theoretical predecessors of Szemere, Beccaria or Bentham, because they did not even include this argument into their reasoning; see: B. Szemere, *A büntetésről s különösebben a halálbüntetésről [On Punishment, specifically on Capital Punishment]*, Halálbüntetést Ellenzők Ligája 1990, pp. 123–126. Moreover, the opinion of our second Prime Minister was also shared by Elemér Balás, among others, around the end of the 19<sup>th</sup> century, who differentiated between “normal rule of law” and a “situation of emergency”, and he did not compare them because the methods available in emergency situations could not be used in normal circumstances (due to the main differences between the two situations. E. Balás, *A halálbüntetésről [On Capital Punishment]*, Budapest 1900, p. 18). (We have to add that this reason implies the acknowledgement of capital punishment within *extra ordinem* legislation and the application of law. A contrary idea – namely that capital punishment should be avoided even in special circumstances – had been not proposed by anyone in Hungary till the 1980s.)

during that war thousands of people were killed. The same happened during the Gulf War of 1991, in Bosnia, Kosovo, and is also happening now in several places in the world with a full consent – and even the support of – civil rights organisations. So, whilst world powers eliminate soldiers serving dictatorships (who, in turn, just obey their orders; alternatively, they might be the ones who could be executed for insubordination) in order to free an oppressed nation (i.e. in good faith), an occupied country, or to put an end to another dreadful war, they are unwilling to take the life of certain expressly identified persons (not innocent persons but murderers, to be precise at that). To summarise, in the case of murderers, authorities refer to human rights on the grounds of which they are unprepared to kill, whereas in the case of war, they invoke human rights on the grounds of which they resort to killing thousands of people.<sup>8</sup>

Those who oppose capital punishment think that each method of execution is cruel and inhuman, and therefore no humane execution exists conceptually.<sup>9</sup> However quick an execution can be, there are inevitably certain pain and suffering involved. And it is not only true for the methods of execution applied in some of the developing countries today, considered barbaric by the “developed”; these methods include, for example, stoning, but also hanging, death by firing squad, electric chair, gas chamber, and even lethal injection used (also) in the US. If, for example, hanging is done improperly – e.g. the hangman calculates the length of the rope based on the weight and height of the convict erroneously, then as a result of falling from too high, the head of the convict may come off upon the execution, or otherwise the spinal cord does not break due to a short fall, and this way the convict dies choking for several minutes. The risk related to performing an execution involving a firing squad is that if shots are fired from afar, the bullets may fail to hit vital organs and so the person to be executed will die from slow exsanguination. The same happened, for example, with Eliseo J. Mares in Utah, US, in 1951, when the firing squad aimed so bad that none of the four sharp bullets hit the heart of Mares and so he simply died because of a massive loss of blood.

There are even more problems with gas chambers. Although originally they were intended to offer painless death,<sup>10</sup> they failed to serve their purpose many

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<sup>8</sup> See: J. Vigh, *A halálbüntetés eltörlésének időszerezéséről* [On Actuality of Abolition of Capital Punishment], “Belügyi Szemle” 1995, 1, p. 19; G. Pálkás, *Requiem for a Legal Institution*, “Belügyi Szemle” 2001, 6, p. 67.

<sup>9</sup> For the actual examples of flawed executions, without further details, see e.g.: M.J. Borg, M.L. Ra-delet, *On Botched Executions*, [in:] P. Hodgkinson, W.A. Schabas (eds.), *Capital Punishment. Strategies for Abolition*, Cambridge 2004, pp. 143–168.

<sup>10</sup> According to the original plans (which were made in Nevada in 1921), the convict was to be killed by poisonous gas spread to their cell at night, while they were asleep, without any prior notice.

times when used in practice. The person to be executed usually chokes for several minutes before dying while trying to release themselves from their bonds. And there are mentions of someone having managed to do so. In 1953, in the San Quentin State Prison, for example, Leandress Riley freed himself from the chair and tried to break out of the chamber. After that, the execution was of course stopped and he was strapped again, but he made attempts to escape for the second and the third time as well. Eventually, the execution was performed in front of official witnesses and wardens who were already panicking, and the public officers present could no longer be persuaded to attend any execution in gas chamber. Besides, this method of execution is the most dangerous to the persons performing and attending the execution. It can actually happen that a gas chamber is not properly insulated (it was badly constructed or got faulty because it has not been used for several years), and so there is a risk that hydrogen cyanide gas leaks out from the chamber and poisons the people standing nearby.

However, of the modern methods of execution, electric chair is the most troublesome. It often occurs that by the time the convict dies, their body has charred, their face has strained beyond recognition, their eyes have goggled or burst, and their blood vessels have burst. It has also happened several times that the convict was still alive after the first electric shock of two minutes, and so it was necessary to switch on electricity again (even repeatedly) to let them die. Theoretically, although a sudden electric shock should paralyse the brain during a fraction of 1/240 of a second before the convict can even feel any pain whatsoever, but the first execution of such kind performed on 6 August 1890 on a man named William Kemmler had to be repeated because after the first electric shock of 2,000 Volt Kemmler was still alive.<sup>11</sup> A similar case happened in 1946 in Louisiana with a minor of 17, Willie Francis, and in 1983 – with John Louis Evans in Alabama. After the first execution (which was repeated only one year after) Francis said “I felt a fire in my head and my left leg ...”<sup>12</sup> And in the case of Evans, one of the electrodes blew upon the first electric shock; during the second electric shock, flames shot out from his temple and leg; given that his heart was still beating, electricity was switched on for the third time

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By this was they would have been spared from the enormous stress of days and hours preceding the execution and their death would have been painless and calm. Due to the practical difficulties (the cell has the same airspace as the other cells, therefore it would have been impossible to apply the gas in one specific cell), the first execution was performed on 8 February 1924 on Gee Jon, a convict of Chinese origin, in a specially designed chamber that could be closed hermetically.

<sup>11</sup> A journalist present took incredible notes of the case, which we cannot publish due to length restrictions. Some parts are available in Hungarian: J. Tálas, *Gázkamra, villamosság, injekció* [*Gas Chamber, Electric Chair, Injection*], “Rubicon” 1996, 6, p. 29.

<sup>12</sup> Cited: *When the State Kills...*, Amnesty International Publications, 1989, [in:] Á. Sebes (ed.), *A halálbüntetésről* [*On Capital Punishment*], Budapest 1990, p. 170.

after that, which then killed him. In 1990 in Florida, Jesse Joseph Tafero was executed in a similar way: every time electricity was switched on, blue and orange flames shot out immediately from the head of Tafero. By the time Tafero died, his head was practically burnt.

Lethal injection<sup>13</sup> has been considered the least drastic method of execution for a long time; however, carrying out an execution this way is not always issue-free. The problem is that the cocktail of drugs is composed of three kinds of agents: a sedative and two substances: one paralysing the lungs and the other – the heart. If the timing of dosage is wrong or the needle is not inserted into a proper place, it may happen that the sedative does not produce its effect on time or such a little amount of it gets into the body of the convict that upon they wake up after a short period of time and suffer awake; in other words, they are more or less conscious while slowly suffocating. An opinion that there is another risk involved in the case of executions using lethal injections, suggesting that the majority of convicts not only have terrible pains during such executions but are not even able to communicate this suffering to the outside world has been seen to increase in popularity (and scientific research seems to substantiate it as well). Sedatives, namely sodium-thiopental (sodium pentothal), are often administered in a smaller dose than in surgical anaesthesia as a result of which the person to be executed often remains awake or wakes up. But as the second substance, the muscle relaxant (pancuronium bromide) aimed at stopping lung functions, slackens muscles, the convict appears to be sleeping, unconscious to the outside world even if the poison designed to stop heart function, kalium chlorid, produces its effect causing terrible pains. For that reason, since 2006 lethal injection executions have been suspended in several states of the US, and as of 25 September 2007 (after the US Supreme Court accepted the arguments from the case of *Baze v. Rees*, where two persons sentenced to death in the state of Kentucky contested lethal-injection execution on the grounds that it caused “unnecessary pain and suffering” and argued that it was therefore unconstitutional), the Supreme Court suspended death sentence punishment imposed in Kentucky pending a decision on whether executions carried out using such a method could be considered as “unmerciful and uncommon” punishment (i.e. unconstitutional) or not. Furthermore, as a result, the remaining states using lethal injection did the same as well – voluntarily – and so executions were allowed to continue only

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<sup>13</sup> Lethal injection was first allowed by law in Oklahoma in 1977, officially to allow the convict to donate their organs (as a last good act, which was to compensate for their wrongdoing at least a little) for medical purposes, which would have been impossible if other methods of execution were used. In reality, the reason was that this was much cheaper than the other two “fancy” methods, i.e. gas chamber or electric chair, because the poison cocktail cost only a few dollars. (It is interesting that the “humanity” of execution was not a priority).



after the decision of 18 April 2008 made in this case permitting further use of lethal injection<sup>14</sup> (nonetheless – notwithstanding the decision of the Supreme Court – fierce and endless disputes still do take place regarding the cruelty of this method).<sup>15</sup>

However, capital punishment is inhumane not only because of the methods of execution but also since a great deal of time passes between the promulgation and the execution of death sentence. It is, of course, necessary in democratic countries to reduce the risk of judicial murder to a minimum, and an opportunity must be given for the convict to request a change in the verdict at all levels – and to apply for amnesty. Long waiting time, however, corrodes convicts both physically and mentally. These people in the United States, for example, spend today fifteen years

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<sup>14</sup> *Baze v. Rees* 553 U.S. 35 (2008).

<sup>15</sup> Formally the Baze decision concerned only Kentucky, but as 29 out of 35 states allowing lethal injection applied the same protocol, the Baze decision had significance beyond itself. According to the procedure used in 30 states of the US, in almost all states allowing capital punishment, three kinds of poison had to be injected into the vein of the convict (in the remaining states, the poison cocktail consists of two elements, except in Ohio, where in 2009 a one-component poison was introduced and tried for the first time on 8 December 2009 on Kenneth Biros convict). According to the main rule, the first of these three elements (as it has been mentioned) is a simple narcotic used in surgeries (sodium-pentothal); the second is a muscle paralyzer (pancuronium-bromide), which makes the diaphragm stop working – i.e. it cannot keep the lungs in motion, therefore the convict cannot breathe and thus suffocates; finally, the third one is a heart paralyzer (potassium-chloride), which stops the heart. In 2007 two Kentucky convicts, Ralph Baze and Clyde Bowling, turned to the Federal Supreme Court (which was allowed because on 12 June 2006 the *Supreme Court* held in the *Hill v. McDonough* case that those convicted to capital punishment might turn to the Supreme Court as a final remedy if they believed that the coming execution method caused unnecessary pain [Cf.: *Hill v. McDonough* 547 U.S. 573 (2006)]) in order to prove that the execution procedure of Kentucky was “cruel and unusual”, and thus violated the 8<sup>th</sup> Amendment. According to their argument, the narcotic sodium-pentothal absorbs too quickly sometimes and its effect is gone by the time the muscle paralyzer makes it effect. As the pancuronium-bromide paralyzes all muscles, not only the diaphragm, the convict cannot send signals to the world that they are awake, even though they are conscious; this means they have to suffer with clear mind until they choke or their heart stops. On 25 September 2007 the *Supreme Court* decided to accept the petition, as it was suitable for hearing; and as the execution method of almost all states were the same as in Kentucky, an actually voluntary execution moratorium was declared by the states until it turned out whether execution of death penalty by the three-component poison was constitutional or not. Therefore, between 25 September 2007 (on which day Michael Richard was executed in Texas because at the time of the execution the authorities were unaware of the acceptance of the petition) and 18 April 2008, the delivery of the judgment in the Baze case, not one death sentence was executed (but “of course” it was applied in certain cases even in this period). Finally, the US Supreme Court ruled in the *Baze v. Rees* case with 7 to 2 votes that the petitioners did not prove sufficiently that the failure of the otherwise humane and legitimate lethal injection execution was objectively unavoidable and that there were sufficient alternative methods which the state could use in order to cause less pain to the convict, but it failed to do so; therefore, the Supreme Court rejected the petition, declaring that the use of the poison cocktail as execution method did not violate the 8<sup>th</sup> Amendment, being thus not unconstitutional. After this there was no obstacle in front of executing death sentences in states starting from May 2008; the first execution after the moratorium happened in Georgia on 6 May, and was followed by 36 more even in 2008.

on average in the so-called “death row”, separated from the rest of convicts and forced to do nothing most of their time.<sup>16</sup> It leads quickly to their physical and mental disintegration.<sup>17</sup> Plus, there is the sense of waiting, one day after another, in horror for when the decision rejecting their application for amnesty is promulgated, and if it has already happened, when they are going to be notified of the date of execution. Otherwise, in the months and years after being condemned to death, they spend most of their time thinking of the execution, imagining every tiny detail of it, their own behaviour, and the circumstances until the outside world ceases to exist and it is the thinking about their own death what is left. Separation and the fact that they are no longer considered human beings even by prison wardens contribute to this loss of personality; wardens call convicts collectively a “pack”, and are depersonalized by them through their use of other expressions – being sometimes, in fact, treated as such depersonalized beings.

In the end, the very awareness of the fact that the convict will inevitably die in a certain time is psychologically unbearable. Robert Murray uses the “airplane analogy” to explain this idea in a vividly descriptive manner: the public would surely not accept the punishment of tossing a convict out of a plane, albeit this is the same feeling for the convict as being given a lethal injection. Yet, it is not acceptable because of the psychic pain involved.<sup>18</sup>

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<sup>16</sup> In 2010 the average time spent on death row was 178 months; in 1994 “only” 122 months (about 10 years) and in 1984 – 74 months (about 6 years) (find the summary chart of time spent at the death row for the period between 1984 and 2000 here: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics: Capital Punishment, 2010 – Statistical Tables. December 2011, NCJ 236510, p. 12, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cp10st.pdf>).

<sup>17</sup> This assertion is corroborated by the Hungarian empirical investigation as well. According to a recent survey, “inmates” become more introverted and distrustful. Their self-esteem drops. They are less engaged in social activities, and they do their everyday activities very routinely. Their social connections gradually atrophy, then cease.” (Sz. Antal, L.T. Nagy, Á. Solt, *Az életfogytig tartó szabadságvesztés empirikus vizsgálata [Empirical Investigation on Real Life Imprisonment]*, “Kriminológiai tanulmányok” [“Criminological Papers”], Budapest 2009, 46, pp. 63–64).

<sup>18</sup> “Killing inmates by tossing them out of airplanes would of course be unacceptable to the public. But why? It’s as fast and effective as lethal injection. The terror of falling two minutes isn’t all that different from the terror of lying strapped to the table; and neither is physically painful. There’s a similar waiting process before each execution. If an airplane is used, you wait for the time it takes the aircraft to take off and reach the target area at the proper altitude. For lethal injection, you wait in the death house until everything’s ready and all possibility of a stay of execution has been exhausted. In an airplane, a cargo door is opened; in the death house, a curtain across the viewing window is drawn back. In an airplane, you are thrown to an absolute death and witnesses watch your body fall. In the death house, you are strapped to a gurney and witnesses watch state officials inject you with sodium thiopental. In both cases, death is sudden and final.” (R. Murray, *Execution Is Inhumane*, [in:] M.E. Williams (ed.), *Capital Punishment: Current Controversies*, Farmington Hills, MI 2005, pp. 57–61).

Due to the aforesaid, abolitionists propose an abolition – or a replacement – of capital punishment with alternative forms of punishment. Many people prefer custodial life sentence but it is highly questionable whether being aware of the fact that they would never be released is more humane and if it is so, then how much more humane it is from capital punishment. Cesare Beccaria, the initiator of abolitionism, on the other hand, would have replaced capital punishment with perpetual forced labour, although the human nature of this sanction is especially questionable. Many convicts think themselves that they would not like to live in prison all their lives without any hope of being released. Of course, we can only guess what they would actually decide if they were given the opportunity to choose between lifetime imprisonment or death here and now, in the 21<sup>st</sup> century in Europe where capital punishment is not allowed;<sup>19</sup> any dispute can only be academic for the main part.

## Necessity or lack of need for capital punishment

One of the main arguments of abolitionists against capital punishment is that it has no greater deterrent effect than other serious forms of punishment do; in consequence, there is no need to maintain it.<sup>20</sup> Neither capital punishment is suitable to inhibit the spread of anti-life crimes and so it must be abolished, and wherever it was abolished, it must not be restored. Abolitionists often refer to Beccaria anyway, but he is quoted in particular in this matter. According to Beccaria: “Crimes are more effectually prevented by the certainty than the severity of punishment<sup>21</sup> ... The certainty of a small punishment will make a stronger impression, than the fear of one more severe, if attended with the hopes of escaping.”<sup>22</sup>

<sup>19</sup> This assumption may be supported by the fact that presently more than 50 convicts serve their life imprisonment without parole, and three committed suicide in the high security zone of prison “Csillag” [“Star”] in Szeged, which keeps the most dangerous individuals of those sentenced to such punishment. (Three times killer József Budai committed suicide in 2007; Péter Csepregi, convicted for two counts of murder, committed suicide in 2008; Zoltán Ember serial killer who murdered 5 victims, committed suicide in 2015).

<sup>20</sup> This topic is also connected to the issue of the goal of punishment. This goal (or the effect of the penalty of death) can be incapacitation as well. For the incapacitation effect, see e.g.: J.P. Gibbs, *Preventive Effect of Capital Punishment other than Deterrence*, [in:] H.A. Bedau, *The Death Penalty in America*, Oxford 1982, pp. 106–108 (Gibbs himself enumerates several other effects of criminal penalty that I am not dealing with now).

<sup>21</sup> However, this statement does not prevent Beccaria from suggesting lifelong forced labour as an alternative punishment, even though it causes extreme suffering.

<sup>22</sup> C. Beccaria, *An Essay On Crimes and Punishments* [1764]. E-book, [http://files.libertyfund.org/files/2193/Beccaria\\_1476\\_EBk\\_v6.0.pdf](http://files.libertyfund.org/files/2193/Beccaria_1476_EBk_v6.0.pdf), Indianapolis, IN 2011, p. 49. (In addition: “It is not the

It is beyond doubt: with this phrase, Beccaria laid down a timeless basic truth in criminal law. It is apparent that the better the ratio of detection is and the more criminals are caught, the less probable it will be that anyone would undertake to commit a crime in the knowledge of an almost certain punishment; that is, effective law enforcement is a greater obstacle to the spread of crime everywhere. However, we also have to see that there is no country in the world where all offenders are caught, and there is no law enforcement apparatus that could have ever been able to do so anywhere, at any time – or would be so able in the future. Criminals are always one (or more) step(s) ahead of law enforcement officers. Furthermore, the capacity of the police is finite (there are many more offenders than the number of available police officers necessary to investigate the identity of all offenders), and so the threat of being seriously punished will always play a role in the detention of potential offenders.

However, in addition to that, Beccaria would have replaced capital punishment with types of punishment that are more brutal than death; in some cases – as it appeared in the title of Section XXVIII dealing with Beccaria – he himself admitted the necessity of this sanction. “The death of a citizen cannot be necessary but in one case. When, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government.”<sup>23</sup> As an example of today, in order to free a terrorist leader, their supporters hijack jets as well as take and execute hostages in order to enforce authorities to free their leaders; or a mafia boss continuing to manage a criminal organisation from inside the prison, giving instructions, for example, to liquidate witnesses who let the police put him “behind bars”. Within it, according to Beccaria, “[a] punishment, to be just, should have only that degree of severity which is sufficient to deter others.”<sup>24</sup> Of course, abolitionists of today disagree with these two phrases and emphasise that capital punishment is unnecessary in any case, arguing for the entire and irrevocable abolition of capital punishment. They certainly agree that some kind of alternative punishment is indispensable no matter how little deterrent force it may have; but opinions

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intensity of the pain that has the greatest effect on the mind, but its continuance. The more immediately after the commission of a crime a punishment is inflicted, the more just and useful it will be.”) Thus, it seems, that death penalty cannot intimidate the most cruel and brutal offenders, for example, assassins, murderers for hire and so on, so those who think they are smarter than the police officers and will not be apprehended. Hence, as per abolitionists, the solution is not making the possible penalties more severe but making the investigation work more effective.

<sup>23</sup> Ibidem, p. 51.

<sup>24</sup> Ibidem, p. 52.

are divided on what this alternative punishment should be. Beccaria at that time suggested forced labour for life,<sup>25</sup> which now would be of course unthinkable.

It is a common opinion among abolitionists that even capital punishment does not deter more people than the latter types of punishment do; however, this statement is certainly challenged by the advocates of capital punishment. They think that if it can keep if only a few people – but certainly some – from committing their planned wrongdoing; and if there is only one single person who does not commit a murder just for this reason, and if there is only one single innocent victim whose life was saved at the price of the death of other killers, it was already worth it.<sup>26</sup> The question may also be raised whether the life of one single innocent victim is worth

<sup>25</sup> “Perpetual slavery, then, has in it all that is necessary to deter the most hardened and determined, as much as the punishment of death. There are many who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others from a desperate resolution, either to get rid of their misery, or cease to live: but fanaticism and vanity forsake the criminal in slavery, in chains and fetters, in an iron cage; and despair seems rather the beginning than the end of their misery. The mind, by collecting itself and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are insufficient to resist perpetual wretchedness.” (Ibidem, p. 52).

<sup>26</sup> Olaf Hohmann furnished specific figures on the rate of recidivism: he thinks that homicide crimes have a recidivism ratio of no more than 2%, and on account of that 2% it would not be expedient to execute the remaining 98%. (Cf.: O. Hohmann, *Is the State Allowed to Kill? Thoughts on the Occasion that Capital Punishment Becomes Topical*, “Hungarian Law” 2000, 12, p. 765.) András Sajó, in his expert opinion written for the decision of the Constitutional Court regarding the abolition of capital punishment, cited statistical data from the US according to which 558 persons condemned for homicide took the life of six persons in prison during a 15-year period, while another 230 conditionally released homicide offenders took the life of one person within a 5-year period (Cf.: A. Sajó, *The Constitutionality of Capital Punishment. Expert Opinion* [A halálbüntetés alkotmányossága. Szakvélemény], [in:] T. Horváth (ed.), *The Abolition of Capital Punishment in Hungary. Documentary Collection* [A halálbüntetés megszüntetése Magyarországon. Dokumentumgyűjtemény], Miskolc 1991, p. 101), which over a 30-year interval means a recidivism ratio of 2.2% and 2.6%, respectively. There was a Canadian survey, where the behavior on conditional release of 658 persons condemned for homicide and released from prison between 1975 and 1990 as well as their accidental recidivism were observed. Within the same period (thus 15 years for those observed at the earliest and several months for those released at the latest, so during seven and a half year on average), five persons committed homicide again. Cf.: G. Erwin, *Recidivism among Homicide Offenders*, “Forum on Corrections Research” 1992, 4(2). It means a recidivism ratio (another homicide) of 3% over a period of 30 years assuming that after being released from prison the degree of danger to the society and the risk of recidivism does not change as time passes (which statement is assumed to be untrue as anyone who does not commit a new crime during the period immediately after their release is less likely to relapse at a later date, thus the estimation of approximately 2% in this Canadian survey – and in the statistics cited by András Sajó – appears to be more or less correct). Joshua K. Marquis quotes several specific cases when a murderer was released on parole and then they killed again; among others, Kenneth McDuff, who was sentenced to death on account of a murder of three juveniles, then his punishment was reduced, and he was released on probation not even after full 10 years of being sentenced, and when released, he killed at least six women. (Cf.: J.K. Marquis, *Truth and Consequences: The Penalty of Death*, [in:] H.A. Bedau, P.G. Cassell (eds.), *Debating the Death Penalty*, Oxford–New York 2004, pp. 133–134).

as much as the lives of several criminals. Many would answer saying that the life of every human being is equal and must be protected in the same way; so the lives of several persons (even if they are killers) are worth more than that of a single person. But others say that people are not equal and neither are their lives. A potential victim (an innocent, guiltless person) has more right to live than those who have already proved to be able to destroy other people acting out of self-interest. We think that taking any position in this matter – irrespective of other pragmatic arguments in connection with capital punishment – will fundamentally determine as to who would take which side in the dispute on capital punishment.

However, coming back to the theoretical argumentation regarding capital punishment, we must investigate whether imprisonment has, in fact, a deterrent force of the same degree as capital punishment does (and therefore is indeed unnecessary) or not (and therefore capital punishment is necessary after all). The advocates of capital punishment start from that the persons having committed the most serious crimes must be withdrawn from society; they must not be given more chance to endanger the life of the more honourable members of the society. That is why fixed-term imprisonment and not real custodial life sentence are considered to be inadequate measures since there is a chance that criminals being released from prison would commit another crime. For example, a person who has ever poisoned someone or some people with malice aforethought will be able to commit this crime even at the age of eighty. For no physical force is needed for it and evil-doing is not a function of age. It is also possible that someone waits for being released and behaves well in prison in order to be able to avenge themselves afterwards for all the suffering they experienced in prison – whether on the society (to the detriment of victims randomly selected) or on the person who let the police to put the offender behind bars; or if they are no longer able to take revenge themselves on their ‘target’ because the person died during the long time that had passed since then, the offender may turn against their target’s family members and descendants. The general impression is that the persons having committed the most serious crimes behave the best in prison. In the view of abolitionists, this is so because they are compelled to spend a long time in a detention facility and therefore it is in their vital interest not to aggravate their own circumstances and to obey internal regulations; in fact, according to many abolitionists, these anti-life criminals actually wake up to the seriousness of their act and its consequences in prison, and their good behaviour is an evidence that they regret their acts. The advocates of capital punishment, on the other hand, deem this behaviour as pure imitation with the single real aim to be released as soon as possible, after which the convict will present the same danger to society as before they were caught. Anthony G. Amsterdam, however, speaking in the name of abolitionists, responds to the claim suggesting that those condi-

tionally released will present further danger to society by suggesting that he denies such an argument and trusts in the expertise of those deciding on the release of such people and participating in the decision-making process. And whoever assumes – he thinks – that such experts can be wrong in determining the danger the accused could present to society in the future, i.e. that judges, wardens, psychologists, and parole officers can also be wrong, they themselves furnish an argument against someone's being sentenced to death, acknowledging the opportunity for human error and mistake which is at least as much if not much more dangerous in the event that capital punishment is imposed wrongly, resulting in an innocent person being executed.<sup>27</sup>

The advocates of capital punishment, however, intend to protect the society in all circumstances from anti-life criminals and so they completely rule out any alternative methods of punishment that provide opportunities for released convicts to commit another crime. But for the same reason (in terms of the protection of society), they do not consider real life imprisonment<sup>28</sup> to be a proper measure. If the most severe punishment is real life imprisonment, then – in the light of a lack of any threat of capital punishment – criminals can do anything in prison, they stand to lose nothing as more severe punishment may not be used against them even if they kill their fellow prisoners<sup>29</sup> or a warden. Someone who was sentenced to real life imprisonment and has no hope for being released will become incapable of being treated: no matter what they do, it may not aggravate their punishment as

<sup>27</sup> A.G. Amsterdam, *Capital Punishment*, [in:] H.A. Bedau (ed.), *The Death Penalty in America*, Oxford 1982, pp. 353–354.

<sup>28</sup> For the Hungarian regulation of real life imprisonment, see e.g.: B. Geller, *A tényleges életfogytig tartó szabadságvesztés – büntetőjog-elméleti megfontolások tükrében* [*The Actual Life Imprisonment – in the Light of Criminal Law Considerations*], [in:] M. Hollán, T.A. Barabás, *A negyedik magyar büntetőkönyv* [*The Fourth Hungarian Penal Code*], Budapest 2017, pp. 87–108. For a review of the European scene, see: F. Nagy, *Gondolatok az életfogytig tartó szabadságvesztésről* [*Thoughts on Real Life Imprisonment*] "Magyar Jog" 2013, 5, pp. 265–271.

<sup>29</sup> An example of this is György Matula, who was serving his imprisonment for a definite period of time for homicide when he teamed up with a cellmate, Lajos Raffael, and killed their third cellmate in 2010 on New Year's Eve, without any particular reason, just for fun. At the same time, it is not obvious whether the violence between murderers serving their prison terms is indeed more frequent than violence among general prison population or among criminals being at large. For example, as per Wendy Phillips Wolfson, "in 1973, the inmate's risk of being killed in prison did not exceed the victimization rate for criminal homicide in the general population outside". W.P. Wolfson, *The Deterrent Effect of the Death Penalty upon Prison Murder*, [in:] H.A. Bedau, *The Death Penalty in America*, Oxford 1982, p. 160. At the same time, the situation is very different in Hungary; it seems that the ratio of violence among prison population in Hungarian jails and prisons is higher than elsewhere (for detailed data, see: P. Ruzsonyi, *A tényleges életfogytig tartó szabadságvesztés büntetés* [*The Real Life Imprisonment*] "Börtönügyi Szemle" 2016, 3, pp. 42–60).

they have got only one life that they have to spend in prison either way.<sup>30</sup> And this will result directly in the efforts of a convict to escape the imprisonment – even in the most brutal ways, even at the cost of killing wardens since they may not be sentenced to a punishment that is more severe than the one they are serving. János Székely quotes a prime example for that context from a past issue of the *Népszabadság* daily of 18 August 1987.<sup>31</sup> The second page featured an article regarding the prison riot in Elba Island, which contained successfully, but the authorities could do nothing with the leader of the riot, Mario Tuti. The thing was that Tuti had been sentenced to life imprisonment three times by then, and he communicated openly that he was not worried about the outcome of riot; he had a reason to believe that if the riot failed, he would be sentenced to life imprisonment for the fourth time at best. The advocates of capital punishment think that an additional punishment is necessary by all means. The first choice could be life imprisonment, but we must also be able to pose a threat of punishability to recidivists and similar crimes committed in prison so that there should be something that criminals may lose even if they have got nothing left other than their bare lives.

However, abolitionists disagree with the latter (meaning that criminals condemned to life imprisonment have only their bare lives left and have nothing to lose otherwise). They think that such a convict can be threatened not only by having their life taken, but with things that relate to their comfort and facilities in prison. For example, it matters for the convict if they can write or receive letters, talk to their family members from time to time, receive visitors, do sports or educate themselves. In short, by cancelling out these possibilities, one can be punished even inside prison – without threatening a convict with taking their life. To refute this, György Pálincás puts forward an instance from Hungary, the case of Richárd Richter,<sup>32</sup> who killed three wardens and one of his fellow prisoners during his attempt to escape; limiting the range of comforts provided in prison had not been

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<sup>30</sup> Magda Marinko, an assassin sentenced in Hungary and in Serbia for premeditated homicide committed with malicious motives and with special cruelty attacked a warden escorting him in December 2003 in the special security ward of the Sátoraljaújhely prison (i.e. in Hungary's safest and strictest prison ward), pulled him to the ground and only four other wardens were able to rescue him. The motivation of Marinko is unknown, but he could have broken the neck of the warden, as he was a skilled fighter as a former foreign legionary. Marinko made "death lists" about those arresting, convicting, and guarding him, and due to the potential danger he posed, he had to be transferred two times (first from Sátoraljaújhely to Sopronkőhida, then to "Csillag" in Szeged). However, he will not have the chance to kill those on the death lists because even if he is released on parole in Hungary, he has to start serving his life imprisonment in Serbia, from which he may be released only after 40 years.

<sup>31</sup> J. Székely, *A halálbüntetés [Capital Punishment]*, "Magyar Jog" 1990, 3, p. 257, citation 16.

<sup>32</sup> See: G. Pálincás, op. cit., p. 72.



threatening enough. And according to retentionists, it is not only true in the case of Richter: the temptation of the hope for free life is much greater than what could be compensated with the threat of having the right to visiting hours taken away.

Besides, real life imprisonment does not suffice even because it does not permanently exclude the possibility for a criminal to harm another member of the society. We have already talked about crimes committed *during* an escape from prison, which cannot be punished additionally, but potential crimes are more important than those which convicts commit *as a result of* their escape from prison. Prisoners do not have to kill in order to escape. They may be just as dangerous to society if they escape by stealth, not harming anyone, as they used to be before being caught. And as there is no prison from where it would be impossible to escape, and different unforeseeable and unexpected events may happen at any time (such as fire, earthquake, prison rebellion), which can be used by convicts to escape, the advocates of capital punishment believe that it is this punishment that can only protect our society at all times from a murderer to kill again. In addition, if a person that has got out or escaped this way (remaining wanted) may not be employed but needs money – such a person will turn to robbery. And if they are caught, they could not expect more to go wrong than the trouble they were in before escaping, so then they are likely to do anything indeed in order not to get back into prison – let us say, to kill the person they have just robbed so that no witness remains in live.<sup>33</sup> Not to mention that “[l]ife imprisonment is not necessarily lifelong; life imprisonment without parole still allows governors to pardon prisoners”.<sup>34</sup>

Finally, to conclude on this issue, we have to mention the concept of continuous decline in the general deterrent effect of imprisonment.<sup>35</sup> The advocates of capital punishment think that imprisonment has a sufficient deterrent effect only (and therefore capital punishment may be unnecessary only so long) as long as there is a significant difference in the quality between the “outside” and “in-house” life. While getting into prison implies a substantial drop in living standards, it has a significant power to deter potential criminals. However, as this difference starts to fall (and today we are witnesses to detention centres being modernised), the deterrent force becomes weaker and weaker. In fact, in extreme cases, the trend

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<sup>33</sup> It is obvious that in view of a lack of capital punishment, such escapee does not have anything to lose: may rob freely, may kill their victims because after being caught they will carry on serving their sentence that started earlier, but by resorting to homicide (extermination of the witness), they try to prevent this. We may say that killing the robbed person is in their interest because with a lack of capital punishment, they cannot receive more than real life imprisonment, which means that they would be in the same situation as before their escape and the committed murder.

<sup>34</sup> E. Van den Haag, *Capital Punishment Should Be Retained*, [in:] M.E. Williams (ed.), op. cit., p. 145.

<sup>35</sup> See: J. Székely: op. cit., pp. 249–250.

may actually become positive: heated prison cells, three meals a day, possibility of washing, education and sports etc. can be more attractive for homeless and outcast people than railway stations, subway underpasses and everyday begging. Thus, in these cases, you cannot say in any event that threatening criminals with imprisonments suffices and there is no need to hold out the prospect of capital punishment. Liberty is not a value for such persons as they do not know what to do with it; they are unable to use the opportunities associated with freedom and therefore losing it does not present as much of a fear for them as if it was about their own lives. Abolitionists, on the other hand, seek to rebut the argument that theft is a typical crime committed by outcast and homeless people, and these unfortunate persons many times commit minor offences of such a degree that they can live through the winter in a penitentiary or prison after being sentenced for it. They consider liberty (as their own “property”) as a value, since most of them are not even prepared to obey the fixed in-house regulations of homeless shelters either; they rather sleep in the street in the cold weather instead; and if it is so (and that is so), then how much more threat prison can present to them as compared to the latter?

## The goal of punishment

The arguments covered in previous chapters provide sufficient grounds for a debate on capital punishment, but we could get closest to the truth if we examined the problem in light of the goals of punishment.<sup>36</sup> In Hungary, Article 79 of the Penal Code (act C of 2012) determines the goal of punishment as follows: “for the protection of society, the goal of punishment is to prevent the commitment of crimes either by the perpetrator or by anyone else”. Therefore, punishment serves an ultimate purpose – to protect society, and there are two direct (or partial) goals set in order to reach it. On the one hand, the prevention of any further criminal behaviour committed by a perpetrator (special prevention) and, on the other hand, the prevention of anyone else from behaving against criminal law in the future (general prevention). In addition to these, there is a further goal (target group) which appears in literature from time to time: retribution, and in relation to this, restoration of the legal order that has been violated by a committed crime, enforcement of the principles of justice against perpetrators, reinforcement of the rule of law, and – as

<sup>36</sup> For the possible goals of punishment, without further details, see e.g. M. Warr, M. Stafford, *Public Goals of Punishment and Support for the Death Penalty*, “Journal of Research in Crime and Delinquency” 1984, 21(2), pp. 95–111; and J.P. Gibbs: op. cit. Specifically in Hungary, see e.g.: F. Nagy, G. Tokaji, *A magyar büntetőjog általános része [General part of the Hungarian penal law]*, Budapest 1998, pp. 277–280.

their specific materialization – reassurance of public authority and thus restoration of public order and trust, and, finally, compensation offered to the victim's family (these goals may be referred to collectively as repression.).

The advocates of capital punishment believe that the goal of punishment is just retribution. This means that the application of capital punishment is necessary because this is the only punishment which is proportionate to the crime, therefore it is able to meet the public's demand for justice. Abolitionists deny that the life of a person (even if the person is a murderer) may be taken away to content the public and satisfy the need for justice (based on this, the obligation to pay taxes could be abolished as a whole, because the majority of the society would probably support it). Those who oppose capital punishment believe that only the goals defined in the Penal Code should be considered and kept in mind when murderers are sentenced.

The main goal, therefore, is the protection of society, which may be achieved by serving the two partial goals. One of these partial goals is general prevention, the other one is special prevention. In theory, the latter one may be arrived at in three ways: first, by improving the behaviour of the perpetrator, the final goal of which is to re-socialise the perpetrator, to take them back to the society after successful moral education, which means that the perpetrator regrets their actions for internal, psychological reasons, condemn their previous self, and becomes a law-abiding citizen, a useful member of the society. Second, this goal may be achieved in a way that the perpetrator does not regret their actions and does not believe that committing crime is morally wrong, but their fear from punishment and state sanctioning prevents them from acting this way in the future. This method is deterrence or legal education, through which society may be protected even if the tendency of the perpetrator to commit crime remains, because it leads to a fear of punishment (instead of moral beliefs) as a criminal law barrier. This is a less perfect solution than the previous one, of course, but it still facilitates the protection of society. The third method is to make the perpetrator harmless, which (if the first two methods prove to be unsuccessful) still contributes to the achievement of the final goal (protection of society) properly, but it is too drastic and thus should not be applied frequently.

It is obvious that resocialization of the perpetrator is impossible in the case of capital punishment. The situation is the same with legal education, because after the execution, the deterring effect is uninterpretable (at least regarding the executed person); there is no need to deter a dead person. Some abolitionists trust the success of these methods even in the case of perpetrators committing the most serious crimes, therefore they reject capital punishment because it prevents the achievement of resocialization. The advocates of capital punishment, in turn, believe that murderers should not be resocialized at all; in the case of a person who has taken

another's life, the correction effect is questionable, therefore the safety of the society should come first and not be put at risk by trying to resocialize murderers. They argue that the lives of innocent, decent people should not be risked in favour of murderers who *have already proven* to be unworthy to the trust of their society.

This leads to the conclusion that the advocates of capital punishment only consider the third method – elimination of perpetrators – acceptable, even in its most extreme variant – by physically eliminating the perpetrator. The majority of capital punishment's opponents also support elimination but in its milder form – involving namely separation from other, decent members of society. The main difference between the two groups, therefore, is their approach to the special preventive goal: abolitionists believe that it is enough to apply life imprisonment to reach the goal; the advocates of capital punishment warn about early release (no life imprisonment without parole, presidential pardon) and about the always existing threat of escape. In these cases, the perpetrator will (or may) be free again one day, therefore elimination is not 'fulfilled'. Furthermore, the advocates of capital punishment completely reject the beliefs of abolitionists according to which even murderers may be corrected and resocialized.<sup>37</sup> In the opinion of László Gábor Hajnal, the majority of examples proves that "the correction of the perpetrator is merely an idea from the age of 15, even though there are exceptions".<sup>38</sup> It is a question, of course, whether on account of these few exceptions it is wise to put society at risk carried in the resocialization of perpetrators. The advocates of capital punishment obviously answer negatively since special prevention may be *completely achieved* only if the perpetrator is eliminated for good as in every other case there is a chance for the crime to be repeated.

Another direct goal of punishment serving to protect of society (next to special prevention) is general prevention, namely the prevention of any member of society who have not committed any crime from doing so in the future. This may be achieved by establishing sanctions (punishability), by applying sanctions to the crimes of other criminals, and mainly by enforcing these sanctions in reality. It shall not be forgotten that the use of these methods is based on a common ground: deterrence. It also plays a role in "legal education" described with special prevention, but it is even more important for general prevention. Here it is not enough to deter one person (the perpetrator) from committing another crime, but many, all members of a given society (i.e. many potential criminals), which means that the enforcement of the goal of punishment appears in a new dimension and is

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<sup>37</sup> It should be noted that in the case of real life imprisonment supported by some abolitionists (instead of capital punishment), resocialization of the perpetrator is excluded as well.

<sup>38</sup> L.G. Hajnal, *Bitófa nélkül* [Without Gallows], "Börtönügyi Szemle" 1997, 3, p. 97.

given an extremely high importance. But in this case, punishing an individual (a perpetrator of a crime) becomes a mere tool: (from the aspect of general prevention) it is necessary only to teach a lesson to others. This is the reason why abolitionists deny the application of capital punishment for the goals of general prevention, because this logic leads to a conclusion that the perpetrator dies only in order to deter others from committing a crime, even though they might have never thought of committing one. Furthermore, they believe that capital punishment is not suitable for deterrence.<sup>39</sup> The advocates of capital punishment do not only focus on general prevention as a goal of punishment, but also stress the idea of special prevention resulting in the final elimination of the perpetrator and of just retribution. Moreover, they state that if capital punishment did not have a deterring-retributive effect on society, no other forms of punishment would have it, in which case general prevention as such could be removed from the goals of punishment.

Finally, we close the chapter on the goals of punishment with the thoughts of József Földvári, who believes that the existence or abolition of capital punishment is: "a political issue".<sup>40</sup> Goals of punishment may substantiate both the existence

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<sup>39</sup> As a short introduction to this topic, we can summarize the opposing viewpoints as follows. The advocates of capital punishment deem that the more severe a penalty (imposed on a perpetrator) is, the greater the fear of the consequences of a crime will be. In contrast to this, abolitionists, that is, the opponents of capital punishment, take different types of murders and try to prove that in the cases of most of these the nature of the punishment does not affect the motivation of potential perpetrators. For example, it does not impact crimes of passion. These criminals, according to abolitionists, do not deliberate in advance the possible consequences of their act, hence, they cannot be deterred by the penalty of death. This is also true for those who commit crimes when drunk or who are motivated by an overpowering, usually sexual, instinct (a so-called "drive"). [However, even when it comes to crimes committed under the influence of alcohol or crimes of passion, there is at least a moderate amount of deliberation behind one's actions. See, e.g.: I. Ehrlich, *On Positive Methodology, Ethics, and Polemics in Deterrence Research*, "British Journal of Criminology" 1982, 22, p. 128; idem, *The Deterrent Effect of Criminal Law Enforcement*, "Journal of Legal Studies" 1972, 1, p. 274; J.M. Shepherd, *Murders of Passion, Execution Delays, and the Deterrence of Capital Punishment*, "Journal of Legal Studies" 2004, 33(2), pp. 283–322.] Furthermore, it cannot deter those who themselves want to die, for example, political perpetrators (anarchists, terrorists); "indirect suiciders" who want to die but are too cowardly to do this by their own hands and want to get into such a situation where police officers have no other choice but to shoot them dead, or where the authorities have the possibility to sentence them to death and execute them [Pamela Watkins, a very rare example, was such an offender; see, e.g.: A.G. Amsterdam, op. cit., p. 357.], or suicidal murderers who, actuated by jealousy, murder, for example, their wives and/or their wives' lovers, and, not wanting to live further, commit suicide after the murder. In the end, the threat of death does not deter those who suppose the police will not catch them. Hence, as per abolitionists, the solution is not making the possible penalties more severe but making the investigation work more effective.

<sup>40</sup> J. Földvári, *Kriminálpolitika [Criminal Politics]*, Budapest 1987, p. 131.

and the abolition of capital punishment.<sup>41</sup> Therefore, the need for the existence or abolition of capital punishment cannot be determined merely upon an examination of the goals of punishment. It is necessary to consider other (political, sociological, criminological, and statistical) reasons as well.

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<sup>41</sup> "Goal of punishment proving the unnecessary of capital punishment may be found easily, but obviously we may find goals which ground the existence of this form of punishment", *ibidem*.

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