

## Capital Punishment Repeal in England: A Paradigm Shift towards Restorative Justice and Human Dignity

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### KEYWORDS

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### ABSTRACT:

The inherent disgracefulness of death consciously inflicted upon a person by his fellows, may make the death sentence highly untenable, from a strict humanitarian prospective. It's here where the concerned state authorities come into action and claim that if at all the death sentence is to be retained, its imposition must be with utmost human decency ensuring evolved standards. However, the movement away from brutal and cruel punishment has been a slow yet steady process. With the gradual evolving standards of human decency and dignity, the law needs to be changed with the changing dynamism of the dynamic society. Nonetheless, the American society, being one of the oldest civilizations in the world owes to itself that the agony at the exact point of execution should be kept to the minimum. This becomes more crucial when execution is the outcome of a judicial verdict. Courts play a vital role in major social reform, and that we as a society do have certain expectations from the very independent and impartial organ of the state. Moreover, history is a witness to significant social reforms bought by amendments to the prevalent law, through judicial process. Effective judicial intervention in social controversy requires a consensus on the goals and objectives of social change, at a time in history when as a society it is our failure to agree with the goals and purpose of social change that is one of the principal causes of social unrest. Judges have traditionally been very careful to emphasize that their role is not to make the law, merely to apply it. But it is apparent that judges play a significant role in the development of law through the interpretation of both common law principles and legislative provisions. The phrase "judicial responsibility" means not just the responsibility to uphold the law; it means the overarching responsibility to do justice. Courts should realize that as long as there is life, there is room for reform.

## 1. Introduction

Capital punishment or death penalty is an archaic juridical punishment. It has always been a part of the society's law and order system. The jurisprudence can be trace back to the millennia of Babylonian Hammurabi codification of capital jurisprudence. It was a juridical norm that was just and legitimate and where retribution was taken synonymously to delivering justice. Capital punishment was not just confined to legal practices but was normalized into the culture and way of life of the people. Culture and attitude of the people play a major role in the emergence and maintenance of such jurisprudence, which is the reason why today some are capital punishment abolitionist states while others still retain it. By the beginning of the 20th century there was normative shift in the discourse on capital punishment. The human rights discourse and the imperfect legal system, human fallibility all amount to bringing about the changes on death penalty norms.

Norms in a broader sense means standard of behaviour where it specifies the appropriateness of our conduct in the society. Inviting either rewards or punishments as it is conformed or deviated from it. It is a framework within which certain compliance of rules are expected setting out in most cases a limitation to an alternative form of behaviour (Broom and Selznick 1963). And capital punishment which is a juridical practice is one such norm that has prevailed throughout human history. Capital punishment is the legal process whereby a person is put to death for a crime committed. The judicial decree is called 'death sentence' while the actual act of killing a person is execution. Crimes which are punishable by death are called capital crimes or capital offences. The term capital originates from the Latin word 'capitalis' meaning 'regarding the head' referring to beheading.

The subject of the mode of judicial execution of death sentence has always been quite controversial. To deal with this controversy, the scholar will be critically examining the history of various methods of judicial

execution carried out in the Great Britain, analyzing how and why an ongoing mode was substituted by the other and would also be giving appropriate suggestions connected thereto.

## **2. United Kingdom**

It is a sobering thought that for all, but last twelve or fifteen years Britain's courts have been able to impose the death penalty for a variety of offences; both military and civil. Although the last murderers were hanged in 1964, death remained the punishment for a number of crimes, ranging from arson in Royal Dockyards and piracy on the high seas to treason, espionage and inciting mutiny in the army during the time of war. It was not until a few months before the end of twentieth century that the death penalty was finally abolished in this country for all offences.

Even beheading was only removed from the statute book as recently as 1973.

Here the scholar will give an account of capital punishment in Britain from the Roman occupation up to the present day. It'll be covering the rise, decline and final abandonment of a practice which many other countries today have also rejected; that of killing those who transgress against the laws of the land, rather than fining or imprisoning them. It is almost fifty years since the last execution in this country and despite occasional demands for the return of capital punishment, usually following some particularly disgusting murder by terrorists or child abusers; the majority of us seem content that the grisly ritual of execution should remain a historical curiosity.

Most people, if asked about executions in this country, will think at once of hanging. This is perhaps inevitable; nobody has been put to death in this country by any other method since the shooting of two men at Shepton Mallet Prison in Somerset in 1944. Hanging is all that most of us can recall. However, a variety of other methods for killing criminals have been used in this country over the centuries. These range from beheading with the axe and block, to boiling in a cauldron and crushing to death. It is worth asking ourselves at this juncture what the point was of executing people in such dreadful ways as burning them alive or cutting out their hearts? The answer is simple enough, although based upon a massive misunderstanding of human nature.

It was believed, at one time, that if the penalties for committing a crime were made harsh enough, then people would be discouraged from committing them in the first place. They would see the awful consequences for the perpetrators who were caught and punished, and the result would be a reduction in the rate of this particular offence. However, the crowds which gathered to watch the executions at Tyburn were generally acknowledged to be full of thieves and pickpockets, who took the opportunity presented by public executions to ply their trade, running the risk of being hanged themselves if detected in the act of theft.

It is not frightful punishments which deter crime, but the likelihood of detection. As long as the chances of being caught are slight, people will risk committing a crime. If one is likely to be caught, then even if the penalty faced is only a year or two in prison, rates for this particular crime will fall. It was not the Bloody Code which reduced crime in Britain, but rather the creation of an efficient police force.

Despite the fact that hanging was by far-and-away the most common method of capital punishment used in Britain, there is no record of its use before the coming of the Anglo-Saxons in the fifth century AD. The first named victims of capital punishment, recorded in this country, died not by the rope but by having their heads struck off with swords. It seems appropriate then to begin our investigation of executions in this country with decapitation.

### **2.1. Beheading by Sword, Axe and Rope**

Britain has a very ancient tradition of decapitation (as beheading is more technically known). The first recorded judicial execution by beheading, in this country, did not take place until the end of the third century AD, during the Roman occupation.

The Romans regarded death by beheading as the only honourable form of execution. It was the most dignified, and least painful, mode of capital punishment used in the Roman Empire. This was a death which was associated with the nobility; it was seldom inflicted upon common criminals. Both Mark Anthony's grandfather and also his son were executed in this way, as were a number of famous statesmen such as Cicero. These decapitations were achieved by using a sword rather than an axe.

Before we go any further, it is perhaps worth mentioning that executions by beheading are unusual in that they typically require a good deal of cooperation from the victim if they are to be carried out successfully. The condemned person must remain perfectly still and not move, flinch or even distract the headsman at any time. Even so, accidents and miscalculations can occur and the consequences can be horrific. An example from France illustrates this point perfectly.

In 1699, Angelique Ticquet arranged to have her husband murdered. This resulted in her being sentenced to death; the execution to take place by beheading with a sword in public. On the day of the execution, a thunderstorm broke just as Ticquet was about to ascend the scaffold. She then had the thoroughly unnerving experience of having to shelter from the rain with Charles Sanson, the public executioner who was to remove her head. Sanson did not wish to risk carrying out an execution while it was raining. The heavy, double-handed sword required considerable dexterity to wield effectively and swinging it round while keeping one's footing on a wet scaffold, during heavy rain, was asking for mishaps.

Once the storm had ended, the executioner and his victim climbed the steps to the scaffold and prepared to play their different parts. The condemned woman knelt down and asked Sanson what she should do. He replied that she should arrange her hair so that it was piled up on her head, clear of her neck. She did so and then, just as he was whirling the sword around his head, Angelique Ticquet cried out, 'Be sure not to disfigure me!' This startled the executioner and his blow went awry, merely gashing the woman on the head. He was so taken aback by this, that it took him a further three blows to take off her head.

According to the Anglo-Saxon Chronicles, the earliest record of a judicial beheading was during the Roman occupation in AD 283. The incident involved a Christian priest who sought shelter with a young man called Alban. They both lived in the British city of Verulamium, not far from London. Christianity was being suppressed at this time, and the priest was in fear of his life. Alban not only let the man stay in his house, but he was converted and subsequently baptised by him. In order that the priest could escape, Alban suggested that they exchange clothes. The result was that Alban was sentenced to death and was beheaded with a sword on the site of what later became St Alban's Abbey.

For the next 800 years or so, beheading was used as an occasional punishment by the Anglo-Saxons and Vikings. It was not until William I invaded Britain in 1066 that decapitation became an established and respectable means of undergoing capital punishment. The first, named, victim was Waltheof, Earl of Northumberland, who had taken part in the Revolt of the Earls against William's rule. He was convicted of treason and paid the price for his rebellion at St Giles' Hill, near Winchester. He was beheaded with a sword on 31 May 1076. This began a very British tradition of cutting off the heads of noblemen and women who fell foul of the monarch; a tradition which was to last for the next 700 years.

Although beheading with a sword was not unknown in later years, by far the most common method of separating heads from bodies, at least in this country, was by means of an axe and block. The reasons for the use of this technique are purely practical. For one thing, using a sword to remove somebody's head requires the complete and willing cooperation of the victim. One must stand, or kneel, perfectly still, without moving a muscle. The sword itself must be heavy and razor sharp. Not only this, but the executioner must be very skilled and highly practiced. There are many gruesome anecdotes, like the one at the beginning of this chapter, of victims who moved at the wrong moment or executioners who slipped on a wet scaffold. On the plus side, when such executions were carried out skillfully and without mishap, they could be very neat.

The beauty of the British system is that it required brute strength, rather than skill and finesse. Neither did it matter if the condemned person fainted at the last moment; the neck was secure and in a convenient position. Another benefit was that an execution by axe and block could be undertaken effectively by any able-bodied man, without prior training.

Two different blocks were used for beheadings in this country; the low and the high. The high block was preferred by most victims. It consisted of a 2ft-high block of hardwood with concave depressions scooped out on either side. The advantage of the high block for the victim was that one was able to kneel gracefully and then simply lay one's head on the block, without having to sprawl across the scaffold in an undignified fashion. The low block was used in cases where resistance was expected, and when it might be necessary to hold the condemned person in place. It was seldom more than a foot high, making it necessary for victims to lie

stretched out on their stomachs. This certainly looked less elegant than kneeling. It was also harder for the executioner to swing the axe at the correct angle.

It helped that most of those put to death like this belonged to a class with very fixed ideas about how to behave. It was also an advantage that many of the men had taken part in wars, and were expected to face death with a little more detachment than the average person. Even so, the ritual was heavily dependent on the assumption that everybody concerned – from headsman to victim – would behave properly and observe the rules of the game. On the rare occasions that these conventions were not observed, the consequences were disastrous.

The eleven blows needed to remove the Countess of Salisbury's head might be a British record, but it pales into insignificance beside some continental executions. In 1626, Count Henri de Chalais became involved in a plot to assassinate King Louis XIII of France. He was sentenced to be beheaded; the business to be carried out by the traditional French method, using a sword. It took an almost unbelievable twenty-nine strokes to remove the Count's head, and witnesses were certain that it was not until the twentieth blow that he stopped showing any signs of life.

The great majority of beheadings in this country took only one blow of the axe; this type of execution depending upon physical strength rather than any sort of skill. A heavy axe, swung over the head at a stationery target, will deliver more than enough force to cut through a human neck, provided of course that it is sharp enough.

Common criminals who were sentenced to hang for murder or theft, the hanging typically took place within a few days, or at the most weeks, of the conviction. Those awaiting death by beheading might easily spend years in captivity, never knowing when the date with the headsman would come. It must have been a tremendous psychological strain. One would go to bed each night for perhaps years on end, without knowing whether or not that day was one's last. Margaret Pole, the Countess of Salisbury, was not told until the morning of her death that she was to be executed that day. Again, this was fairly typical.

Noble prisoners, under sentence of death, were treated with all the respect due to their status in society. Guards would address them by their correct title, even, in the case of Charles I on the scaffold, as 'Sire' or 'Your Majesty'. The whole proceeding was very polite and formal. There was almost invariably an opportunity for the condemned person to make a short speech to the witnesses, before the execution took place. In a surprising number of cases, the victim praised the mercy of the monarch and acknowledged the justice of the sentence. There were sound practical reasons for this. Most of those who were to be executed in this way were leaving behind high profile families. If it was suspected by the establishment that the noble family left behind felt aggrieved by the court's verdict, or angry that their relative had not received a pardon from the King, then those people might themselves be seen as a threat to the Crown.

The beheading sword, used widely in Europe, was about 3ft long and weighed around 4lbs. Its blade was wide and ended in a blunt tip; there was no need for a sharp point. This was a double-handed weapon and the grip was covered in rough leather or fish skin. The executioner would whirl the sword around his head once or twice, before slicing through the victim's neck. The condemned prisoners either knelt upright or were seated in chairs. It was essential that they did not move throughout the whole performance. There are ghastly tales of victims having the top of their heads removed like boiled eggs, because they flinched at the wrong moment.

There is a natural reluctance to dwell unduly on the physical details of beheading. Eyewitness accounts of the process are revolting. Take the matter of blood pressure. The blood in the body is kept at a fairly high pressure. This is necessary so that efficient circulation may be maintained under any circumstances in which the body should find itself – upside down, laying flat and so on. A natural consequence of this is that when the head is removed, the blood under pressure is shot out some distance, just like any other pressurized system springing a leak. While the heart continues to pump, blood can be sprayed 6ft from the body. This is why the scaffold was liberally spread with straw.

The ultimate destination of the heads removed from the traitors is an interesting study in itself. Not everybody could be present at the execution, and so it was arranged that at least their heads could be seen, as evidence that they had paid the price for their treason. At the time, London Bridge had many shops and houses along its length, rather like the present-day Ponte Vecchio in Florence. At the Southwark end of the bridge, guarding the crossing to the walled city of London, was a gatehouse. It was here that the Keeper of the Heads had his



official residence. His job was to make sure that the heads of executed men were properly displayed above the bridge's gatehouse. The ostensible idea was that these grim relics would act as a deterrent to those minded to conspire against the monarch; the heads above the gateway on London Bridge making a powerful statement to everybody who crossed the bridge. They would remain there for years at a time – the largest number ever counted at one time was thirty-four. In later years it became customary to boil the heads in a mixture of various spices, in order to discourage carrion birds from pecking them to pieces. They were sometimes coated with pitch for the same reason. Before this, however, there was a clear expectation that the flesh of the heads would, in fact, be eaten by the birds. The words of the death sentence imposed upon those guilty of treason made this quite clear. For those who were to be hanged, drawn and quartered, for instance, the death sentence ended with these words:

‘And lastly his body to be quartered and the quarters set up in some high and eminent place, to the view and detestation of men, and to become a prey for the fowls of the air.

Separating the head from the body and ensuring that they would never be reunited, was also an integral part of the punishment. In an age which confidently expected a physical resurrection of the body on the day of Judgment, the idea that a person might be buried without his head was a shocking one, with implications for eternity!’

The last heads to be placed on show in this way were those of men who had taken part in the 1745 rebellion. We have read of the Scottish lords who were beheaded on Tower Hill. Many others were also executed for their part in this final effort to overthrow the House of Hanover. Among them were nine men who had taken arms against the Crown – a capital offence.

Times were changing and there was something quite anachronistic about different styles of execution for different classes. As the Industrial Revolution gathered pace, it was clear that this whole business was an anomaly. In 1760, Earl Ferrers, a nobleman in whose family ran a streak of insanity, shot dead his steward. He demanded and received a trial by his fellow peers, which was held in Westminster Hall. Earl Ferrers pleaded insanity, but this was such a shocking and unpopular crime that the Lords found him guilty of murder. To his dismay, the Earl was sentenced to hang for this crime, just like anybody else. He petitioned to have the mode of execution changed to beheading, but to no avail. Peers were now subject to the same laws and similar penalties as everybody else. The only concession made to his noble birth was that permission was granted for him to be hanged with a silken rope, instead of the usual hemp!

The Industrial Revolution was in full swing when last this ancient sentence was pronounced, on 28 April 1820. The sensitivities of Britain by that time, less than twenty years before Victoria ascended the throne, would not allow the full horrors of this form of execution to be enacted. It was commuted to hanging, followed by post-mortem decapitation.

There was to be no further deliberate, judicial removal of heads in Britain after the execution of the Cato Street Conspirators. It was realized by those in power that the public mutilation of corpses had no place in a modern, industrial society.

## **2.2. The Rise of Hanging**

We have seen that the first identifiable victims of capital punishment in this country suffered death by beheading. The method of execution most associated with Britain though, is hanging. The adoption of hanging, as the standard form of punishment for a wide range of offences, was a slow and gradual process, which began a few centuries after the end of the Roman occupation in the fifth century AD.

The first recorded instances of hanging as a judicial punishment in this country are to be found during the Anglo-Saxon period, which immediately preceded the Norman Conquest in 1066. Generally though, during the periods when the Anglo-Saxons and Vikings ruled much of this country, executions were rare. An extensive system of financial compensation was the norm instead. Every injury, from a lost eye to the murder of a husband, could be calculated in monetary terms; the criminal simply paid the victim or his relatives the appropriate sum in silver or gold. Alfred the Great set out a complete scale of compensation to be paid for various offences – starting with the loss of a tooth and going all the way up to the murder of an Archbishop. This changed after the arrival of the Normans. It was William the Conqueror's youngest son, William Rufus,

who made hanging a standard punishment in England. It was at first laid down as the penalty not for murder, but for poaching Royal deer. William Rufus' brother Henry, who became King Henry I on the death of his brother in 1100, really began the wholesale use of hanging as a judicial punishment in Britain. During his reign, hanging became the accepted punishment for a wide range of offences, ranging from theft to murder.

The great advantage of hanging from the point of view of a pre-industrial society, as opposed to other methods of execution, is that requires no special equipment, nor any particular skill on the part of the executioner. In its simplest form, all that is needed is a length of rope and a convenient tree. Once the condemned man has been tied up, all that is necessary is to throw the rope over a branch, tie it round the neck of the victim and then haul him into the air to strangle. This, indeed, is how most hangings were carried out in the years following the Norman Conquest. It was not long though, before various refinements were developed. For one thing, it was thought necessary to conduct executions, for their deterrent effect, in cities and towns. For this purpose, it was found more convenient to erect a wooden framework, both to make the suspension of the felon easier, but also to ensure that his death throes could be more easily seen by the large crowds who gathered for such events. This was, of course, the origin of the gallows. These early gallows were little more than upright wooden posts linked by a crosspiece. There was no sort of mechanism – that came a good deal later. The rope would be of such a length as to suspend the criminal a good way from the ground and they would be made to climb a ladder propped up against the gallows. The noose would be secured and the ladder simply twisted in order to precipitate the condemned man or woman into eternity. One explanation for the superstitious belief that walking beneath a ladder is unlucky dates from these primitive hangings. Walking beneath the ladder was the last thing which a condemned man did before his death. Unlucky indeed! Even after the introduction of custom-built frameworks, trees continued to be used for hanging well into the eighteenth century. The execution of Mary Blandy, at Oxford in 1752, was accomplished by wedging a stout piece of timber between two adjacent trees and hanging the woman from this.

Deaths from hanging of this sort almost invariably resulted from strangulation, rather than the clean breaking of the neck, which became the aim of hanging in the late nineteenth century. Strangling to death on the end of a rope is a slow and distressing business. Death can take up to half an hour and, until the loss of consciousness, the victim suffers appallingly. Reflexive voiding of urine almost invariably occurs, which gave rise to a number of coarse sayings in connection with hanging; for example, 'A man will piss when he cannot whistle' and also, 'There's no more to a hanging than a wry neck and a wet pair of breeches.'

Death on the gallows through slow strangulation might have been hideous, but it provided a tiny spark of hope to those undergoing it. This was the chance that a person might, under some circumstances, survive the operation.

Hanging flourished in Britain in the following years, reaching a crescendo during the reign of Henry VIII. According to some estimates, more than 72,000 people were put to death while Henry was king, which works out at almost 2,000 executions a year, over the course of the thirty-eight years that he was on the throne. The vast majority of these executions would have been by hanging. At this time, the death penalty was not restricted to serious crimes such as murder, but could be imposed for such trifling matters as stealing birds' eggs or associating with Gypsies. It was often the case that more than one person would be hanged at a time during the Tudor years. The authorities waited until a reasonable number of prisoners were being held under sentence of death, and then hanged them all simultaneously. The sight of a dozen or more men and women choking to death on the end of ropes was thought to be more impressive than one or two.

In 1571, a novel type of gallows was erected in the village of Tyburn, which in Tudor times was some way west of the city of London and Westminster. Tyburn was roughly where the modern-day districts of Paddington and Marble Arch are to be found. It was first recorded as being a site for hanging in the twelfth century, when Williams Fitz Osbern led a rebellion. He was dragged naked to the edge of the Tyburn stream and hanged there. From that time onwards, the hanging of those sentenced to death in London was usually carried out on this spot, although executions also took place at Tower Hill and other locations closer to the City of London.

The new gallows were a permanent structure, which stood right in the middle of the road leading into London from the west. Most gallows consisted of two uprights with a crossbar. The one at Tyburn was made of a large equilateral wooden triangle, which was supported on three posts. Half a dozen or more people could be hanged

from each of the three crossbars. The record on this gallows, a record not just for Tyburn but for the entire country, was twenty-three men and one woman, all hanged together on 23 June 1649.

These public hangings eventually led to the development of a more humane and scientific method of execution. It was noticed that some people ‘died hard’, that is to say kicking and struggling on the end of the rope, while others seemed to die at once.

We have seen that within a century or so of the Norman invasion, hanging had become the standard method for inflicting death upon criminals. Beheading was, as a rule, reserved for those of noble birth and burning for heretics and some women convicted of treason. The punishment of hanging, drawing and quartering, was reserved for commoners found guilty of treason. It was thought indecent to expose to public sight the naked bodies of women found guilty of this offence, and so it was ‘commuted’ to burning. All these types of executions amounted to a handful of exceptional and atypical cases; perhaps 99 per cent of executions in Britain have been by hanging, certainly for the last 1,000 years or so.

As Britain entered the eighteenth century, hanging had become the standard response to any number of crimes. Today, we are used to the idea that the death penalty should be reserved for particularly serious crimes such as murder, but this was not the way of thinking a few centuries ago. The number of offences carrying the death penalty increased year by year, reaching a zenith with the Bloody Code, which remained in force until the early nineteenth century.

### **2.3. Shot at Dawn: the British Firing Squad at Work**

From the beginning, the firing squad was recognized in Britain as being primarily a military punishment. Honourable death by powder and lead was regarded as a perfectly respectable way to go; almost on a par with falling on the battlefield. It was a soldier’s death. This explains Jakobs’ anxiety on being captured as to the mode of his death, if convicted of the charge against him. In this country especially, there was traditionally a hierarchy of judicial death. At the very top were executions by beheading. These were reserved for the aristocracy or even, as we saw, for royalty themselves. Slightly below this came death by shooting, always provided that it was conducted by a firing squad. Hanging came at the bottom of the league, with the subdivision of hanging, drawing and quartering being the lowest type of death of all.

The purpose of having a squad of men to administer death by shooting is twofold. In the first instance, it spreads responsibility for the death among eight or ten people, thus lessening the guilt of each individual. This idea was extended in the twentieth century by the inclusion of a blank cartridge in one of the rifles; so allowing each member of the firing squad to believe that it was not his shot which contributed to the victim’s death. This practice became very common, with the rifles being loaded and then shuffled around a little, so that nobody could tell which was which. Anybody who has actually fired a military rifle will know that the kick to the shoulder caused by the recoil of firing a live round of ammunition is quite different from the sensation of firing a blank cartridge. This particular little subterfuge is unlikely to have fooled any member of a firing party.

The other purpose of using a group of individuals, rather than one person, is that it enables the death to be removed a little further, by having the condemned man placed twenty-five yards away rather than being right next to the executioners. Putting the man at this distance and placing a target over his heart has the effect of dehumanizing him and turning him into an object – a target, rather than a person.

The first execution of a British soldier for desertion in the First World War took place barely a month after the outbreak of war, in August 1914. Nineteen-year-old Thomas Highgate went missing after taking part in the Battle of Mons, in the opening weeks of the war. He was arrested behind the lines, but claimed to be trying to rejoin his unit. Court-martialled for desertion on 6 September, he was shot at dawn by a firing squad just two days later. Two battalions of troops were ordered to witness his execution; one from the Dorset regiment and the other from Cheshire. News of his death was circulated widely to all units in France. It was clear that the British high command intended to take a very strong line on cowardice and desertion right from the start.

Executions became increasingly common as the war progressed; particularly after the fighting degenerated into trench warfare, as both sides became bogged down on the Western Front. It was here that the majority of executions took place during the war. It has been argued that, in fact, the British were quite sparing in their use of the firing squad to enforce military discipline. This may well be so, at least compared to the use of the death

penalty by other armies involved in the conflict. And in fairness to the British generals, the vast majority of death sentences were not, in fact, carried out. Throughout the whole of the First World War, over 20,000 British and colonial soldiers were convicted of offences carrying the death penalty. Of these, only 3,000 were actually sentenced to death and ultimately only just over 300, or 10 per cent, were actually shot.

None of this alters the fact that the execution of so many young men was a pretty grim business. Many of those tried for offences such as casting away their arms or disobeying an officer, did not have access to legal advice and their trials were conducted with almost indecent haste. Some of those who faced the firing squad were also very young. Sixteen-year-old Herbert Burden, for instance, lied about his age when the war started in the summer of 1914. He pretended to be eighteen, so that he could join the Northumberland Fusiliers; fighting bravely until July of the following year. A friend from his unit had suffered bereavement, and Private Burden left his post to comfort the young man. When his platoon was ordered to the front, Burden remained behind, and so found himself court-martialled for desertion. He was shot on 25 July, when he was still just seventeen years old; technically he was not even old enough to be in the army.

Most executions during the First World War followed a similar pattern. Any sentence of death would have to be confirmed by the commanding officer, and also by higher authorities at headquarters. Because 90 per cent of such death sentences would be commuted, the condemned man had every hope that he would not be shot. It was thought more humane to allow this belief to remain until the last possible moment. Many men were only informed of their impending execution the evening before they were to die.

The execution itself would invariably be carried out at first light. The prisoner would either be tied to a post, or seated in a chair. A piece of white lint, or paper, would be pinned over his heart and he would then be blindfolded. The firing party, which could consist of any number of men from eight to twelve, took their places about fifteen or twenty paces from the condemned man. From then on, military routine took over and the business was conducted as briskly as if they had been on a range. The order was given and all the men would fire simultaneously at the target. Most men died instantly, although occasionally it would be necessary for the officer in charge to deliver a coup de grâce, by finishing the man off with a pistol shot through his head.

Almost without exception, the executions carried out by firing squad were of single men, shot one at a time. Cases of multiple executions carried out simultaneously were rare. One such occurred at four o'clock in the morning on 26 July 1915, when four men from the 3rd battalion of the Worcestershire Regiment were shot side-by-side. The British army was less sensitive about this when dealing with other races. In February 1915, Indian regiments, the 5th (Native) Light Infantry, were stationed in Singapore. On the day of the Chinese New Year, they mutinied and in the ensuing chaos, thirty-two Europeans were killed. The mutineers were rounded up, and no fewer than 202 faced a mass court-martial. Forty-seven were sentenced to death, of whom ten were reprieved. On 23 February, twenty-one Indian soldiers were lined up against a wall and shot by a firing squad consisting of 105 British troops. This must surely rank as one of the largest firing squads ever recorded.

The last British execution by firing squad, during First World War, took place only four days before the end of hostilities. Private Louis Harris, of the 10th West Yorks, faced a court-martial on 19 October 1918. He was accused of cowardice in the face of the enemy and desertion. He was acquitted of the charge of cowardice, but convicted of desertion. At dawn on 7 November, he became the last ever British soldier to be shot for desertion. All remaining soldiers under sentence of death had their sentences commuted.

In 1930, the law was changed and soldiers no longer faced the firing squad for desertion, cowardice, sleeping at their post and so on. It was, however, retained for mutiny and a few other military offences in wartime. Many senior officers campaigned for the return of the death penalty for desertion during the Second World War. In 1942, when Rommel's armour was sweeping through North Africa, the British were retreating rapidly. Sir Claude Auchinleck, Commander in Chief in the Middle East, sent a telegram to the War Office asking as a matter of urgency that the death penalty for desertion be reinstated. At the time, over 120 men were awaiting court-martial for desertion in Egypt, and a staggering 1,700 men had gone missing. So precipitate was the rout of the British forces that the Military Police were forced to open fire on their own troops, in order to halt the fleeing men.



The death penalty under military law for mutiny remained after the end of the Second World War; it was a theoretical possibility in the armed forces until 1998, when Britain finally and formally abandoned all capital punishment.

#### **2.4. The Nineteenth Century: The Birth of Modern Hanging**

In 1759, a new type of gallows was tried out, which entailed the condemned person standing on a platform which was then removed. This led to the development of the so-called 'short drop', which was thought by many to be an improvement on the old method. Whereas the experimental gallows upon which Earl Ferrers died in 1760 had a drop of only a few inches, the 'short drop', otherwise known as the 'new drop', increased this to 2-3ft. Sometimes this was sufficient to break the neck; although most victims still struggled and choked on the end of the rope. This new technique was widely adopted throughout the whole of Britain.

Although it was, at first, thought that the new method of hanging would be more humane and so would ensure a speedier and less painful death, this did not always appear to be the case. The drop of 2-3ft often stunned the victim, but seldom killed them outright. The death agonies of those being hanged in this way appeared to spectators to be no less agonising than those suffered by people turned off ladders or tipped out of carts.

The case of Mary Green, hanged for counterfeiting in 1819, surely did demonstrate that the 'short drop' was flawed. On 22 March, she was hanged, being left to hang for a while after the execution. When she was cut down, she showed signs of life and, in fact, recovered and went on to live to a ripe old age.

It was with the introduction of gallows of this kind, that it became routine to pull a hood over the heads of those about to be hanged, and to tie their ankles together. The original purpose of covering the face was to spare spectators the sight of the blackened and congested faces of those choking to death. When the drop was adopted, it became more important to prevent those about to be hanged from being able to gauge the precise moment that the trapdoor was about to open. If they knew this, then there might have been a temptation to jump off the drop at the crucial moment.

After many decades of the Bloody Code, it was clear to everybody that such harsh punishments were doing nothing to address the crime rate. In addition to this, the sight of mass hangings in the centre of cities was becoming incompatible with the civilised society into which Britain was turning. In 1823, the Judgement of Death Act was passed. This made the death sentence mandatory for only two offences – murder and treason. From then on, judges could decide whether to sentence a convicted criminal to death, or to substitute a lesser penalty such as transportation or prison. The previous year had seen the last execution for shoplifting in this country, and from 1823 onwards, the number of executions fell dramatically. In 1829, the last person was hanged for forgery. In the following years hanging for offences, other than murder, gradually fell out of favour.

Further Acts, in the course of the 1830s, reduced the number of capital crimes to just sixteen. The Criminal Law Consolidation Act of 1861 reduced the number of capital offences to just four – murder, High Treason, piracy and arson in the Royal Dockyards. That same year saw the last execution for attempted murder take place at Chester.

Scenes such as those that took place during William Bousfield's execution provided ammunition for those who wanted to put an end to the practice of public hanging. It served only to provide gruesome entertainment, and did not fulfill any practical function beyond that. Nobody even paid lip service to the fiction that public displays of this kind discouraged crime. Even so, it was to be over ten years before public executions in this country finally came to an end.

The 'long drop' was being used by all prisons in 1875. Marwood calculated each drop on an individual basis, but this led to problems in the future. Although none of his 'clients' had this misfortune, after Marwood's death, James Berry took over as hangman and he managed to remove the heads of more than one person, by giving too long a drop. It was a fine line to tread. On the one hand, one wished to break the neck instantly, but at the same time, one did not wish to decapitate the victim entirely. On the other hand, nobody wanted to see any more short drops, which left people gasping and struggling for fifteen minutes on the end of a rope. Following some particularly ghastly hangings, such as the 'Goodale Mess', a commission was set up to standardize the way that the drop was calculated for hangings. It was chaired by Lord Abedare and it began sitting in 1886.

Of the twenty-three executions examined by the Aberdare Committee, two had resulted in decapitation and three in strangulation. When the final report was produced, the committee published a table of drops to which all executioners should adhere. This was all well and good, but there was nothing to compel a hangman actually to keep to these recommendations.

A few months after the Aberdare Committee published its report, Robert Upton was hanged at Oxford for the murder of his wife. The medical officer at the prison noticed that, although Berry told him that he would give a drop of 5ft, the actual drop was closer to 7ft. The jury at the inquest, which was held that same day, had heard rumours that something had gone wrong at the execution and insisted on the coffin being opened so that they could examine the dead man for themselves; when the lid of the coffin was removed, those nearby recoiled in horror.

Upton's head was barely attached to his body. The spinal cord had been severed, as had the gullet and windpipe. The head was only hanging on by a thin strip of skin and muscle. It was a miracle that it had not come off entirely.

Other recommendations of the Aberdare Committee were adopted and made mandatory. In fact, some were still in force up until the abolition of hanging in 1964.

## **2.5. The End Of Capital Punishment in Britain**

The impetus towards abolition really picked up pace following the end of the Second World War. In 1948, the Labour MP Sidney Silverman introduced a Private Members Bill, calling for the suspension of the death penalty for a period of five years. This was promptly passed by the Commons, which at this time had, of course, a Labour majority. The Home Secretary, James Chuter-Ede, announced that he would reprieve all those sentenced to death until the outcome of Sidney Silverman's bill was known. There were accordingly no executions in the United Kingdom between March 1948, when the Bill was passed by the Commons, and October of the same year when it reached the Lords. They rejected it and executions began to take place once again. In the same year, a Royal Commission was set up, under Sir Ernest Gowers, to examine all aspects of the death penalty as it was operating in Britain.

It was to be five years before the Royal Commission published their report, and it contained few surprises. It did not advocate the abolition of the death penalty, nor even its restriction. It was explicitly stated that such a move should only take place if the great majority of the public were in favour of abolition; something which has never been the case in this country. Some concern was expressed about the mental health of those tried for murder, and closer examination for psychiatric abnormalities was recommended. Apart from that, it was suggested that two executioners, rather than just one working with two assistants, should be used at double executions in future. It was felt that having only one hangman for two men slowed down the process, and imposed unacceptable mental suffering upon those being hanged. In the event, there was to be only one more double execution in Britain before the practice ended. This took place less than a year after the publication of the Royal Commission's report.

Perhaps the most shocking part of the Royal Commission's report was hidden away in the small print. It was stated that the commission did not believe that the death penalty acted as a deterrent to murder. Since this had been the main justification for hanging people for years, it was a startling admission.

Other methods of execution were examined and found wanting. Some favoured shooting, but as the report observed tartly, 'it does not possess even the first requisite of an efficient method, the certainty of causing immediate death.' There was considerable unease about the mechanism of the reprieve system. Some 45 per cent of those sentenced to death were reprieved; in most cases the decisions were made, and the recommendations forwarded to the Home Secretary, by unelected civil servants.

Hanging was coming to an end, even without further legislation. The numbers of executions carried out in this country had been declining since the beginning of the twentieth century, from twenty-nine in England and Wales in 1902, to fifteen in 1951. A tiny number were carried out in other parts of the United Kingdom. There was an even more dramatic decline in executions with the passage of the Homicide Act in 1957. The year following Victor Terry's execution, only three hangings took place in the whole of the United Kingdom. One of these was seized upon by abolitionists and became something of a cause célèbre.

The formal and irrevocable end of capital punishment in Britain occurred almost without anybody noticing, shortly before the end of the millennium. The final stages of renouncing, forever, the death penalty in this country both took place in 1998. That year, an amendment was made to the Crime and Disorder Bill which was going through Parliament, to abolish the death penalty for treason and piracy, replacing 'death' with 'life imprisonment'. In May of the same year, Parliament voted to ratify the sixth protocol of the European Convention on Human Rights, which prohibits the use of the death penalty other than in time of war.

After these moves, it was still theoretically possible for a subsequent government to reverse all this, and reinstate hanging. In November 1998, the Human Rights Act 1998 came into force. This absolutely prohibits the use of capital punishment under any circumstances, at any time in the future. As long as Britain remains in the European Union, it is bound by this law.

### **3. Conclusion and suggestions**

After doing an in-depth analysis of the methods of execution in Great Britain, the scholar is of the view that a gradual trend towards humanizing the modes resulting in less pain and are swift, so that the convict quickly passes into death is seen. This can be clearly observed in Britain, wherein the very ancient traditional method of decapitation (as beheading is more technically known) was being practiced and the heads of executed being properly displayed above the London bridge's gatehouse was brought to an end, realizing by those in power that the public mutilation of corpses had no place in a modern, industrial society. Eventually, in eighteenth century, manual hanging which had become the standard response to any number of crimes was also replaced by modern hanging with the sole objective of ending a convict's life quickly by breaking of the spinal cord and not by strangulation, thereby inflicting less pain. On the same line, public executions in the United Kingdom were put to an end by the Capital Punishment Amendment Act 1868 (31 & 32 Vict. c.24) declaring the practice to be gruesome and barbaric.

Ultimately, it was in November 1998, when the Human Rights Act, 1998, came into force which completely prohibited the use of capital punishment, resulting in its abolition.

The inherent indignities of death deliberately imposed upon a person by his fellows may well make the death penalty untenable from a truly humanitarian perspective. Given capital punishment as a present reality, however, human decency as embodied in the eighth amendment to the United States Constitution and defined by the American courts demands at least that execution be imposed more humanely than it has been in the past. The movement away from ruthless punishment has been a gradual process. The incremental humanitarian gains achieved by rejection of more cruel methods of execution in favor of less cruel methods may be significant in the progression from a barbarous society to one that espouses principles of dignity and humanity. Honest and open scrutiny of the ways we inflict death may serve eventually to raise the collective moral conscience to the point that the public will oppose any infliction of death as a punishment. Until then, rejection of present cruelties would at least "provide a little decency where today there is nothing but a sordid and obscene exhibition.

#### **Declaration**

The author hereby declares that there is absence of any conflict of interest in this work.

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