Chapter 1: Introduction

Death has been the punishment for man's worst crimes since the establishment of society many millennia ago. Since society's citizens began to segregate themselves into upper, middle, and lower classes, they have all been treated differently within their civilizations, and the punishment of death concerning these classes has been no exception. The upper classes have generally been treated more favorably in all aspects of life than have their lower-class counterparts. This was indeed the case in ancient Rome from the latter portion of the republic to the beginning of the empire, as the upper classes were wealthier, granted political and religious positions, and honored more readily, while the lower classes were forced to serve their superiors. The period in question spans from about 100 B.C. to about 100 A.D. Many things have changed from then and now. American society does not allow the capital punishment to be administered nearly as willingly as the ancient Romans did, and it also does not acknowledge the existence of classes as the Romans did.

What is to be studied here is the use of capital punishment as it pertains to the social classes of ancient Rome and the social differences (which are not quite defined and explicit enough to be deemed classes) of America. There clearly exist social and economic differences between the peoples of both time periods, and these different peoples are generally treated differently and run along different lines, so to speak. The question lies in learning how class status affects the use of capital punishment both then and now. To answer this question, death penalty techniques and how they pertained to the upper and lower classes in Rome will be discussed, as will techniques and practices used in America today.

Chapter 2: Classes

The classes in ancient Rome were divided primarily by wealth. Obviously the upper class was very wealthy, while the lower class was very poor. The upper class was made up mostly of equestrians and senators, while everyone else fell into the lower class. Class status also coincided with birth. The status of one's father often determined one's own status (Millar, 88). When it came to punishment, upper-class citizens had it pretty easy. Often the most severe punishment they would receive would be exile to an island, which was not necessarily very bad or permanent, and they were exempt from many forms of punishment, such as crucifixion, labor camps, and *ad bestias* (to the beasts) due to their strong social status (Bauman, 159). The lower class was made up of all of the poor in Rome, from slaves to Roman citizens. They did not have it nearly as easy as did their upper class counter parts concerning punishments for crimes. They were subject to all penalties, even crucifixion, though Roman citizens were not often crucified. They were regularly punished far more harshly than were the upper classes for the same crimes. For example, there are many recorded incidents in which lower-class citizens were sentenced to death or to labor while the upper-class citizens, having committed the same crime, merely had a third or a half portion of their property confiscated, or they were exiled (Bauman, 127). At the very bottom of the social rung, were the slaves. Slaves had little if any rights at all. Most slaves lived lives of torture, and death was the most common manner in which slaves were freed from their bonds. They could be put to death almost at the will of their masters (Hopkins, 118).

There are no official classes in America today, but there are the rich and the poor. The rich of today are not afforded the exact same privileges that the upper classes of

Rome were, but they naturally have easier access to services, goods, information, etc. The rich in ancient Rome were able to circumvent and alleviate punishment by making use of their honor, status, and wealth. Today, just as back then, there exist different rules for the rich and the poor. Now, the rich are able to use their resources (such as money to hire experienced attorneys, connections to judges and clerks, etc.) to avoid severe punishment, just as the rich were able to do during the empire. The poor then and the poor now both lived lives full of hard work and unfair conditions, particularly when legal troubles were in question. The poor have never had access to the kind of legal help that helps to free the rich from severe punishment or to the connections that have helped them escape torture and persecution.

Chapter 3: Roman Executions

In the early days of the Roman republic, the XII Tables specified certain punishments for certain crimes, including death. For example, if one were caught grazing his flocks and herds on the property of another under the cover of night, the XII Tables ruled that the offender was to be punished by death by hanging. Years later, this punishment was considered worse than the punishment for homicide. Burning down a barn or setting fire to a heap of grain resulted in the offender's being burnt alive, and if it could be proven that one had attempted to cast a spell or curse someone else's crops, then he would be beaten to death. Cicero portrays the fact that the XII Tables mandated death for only a few crimes, but the method of execution was very specifically explained for the few crimes that did result in execution (Bauman, 9).

An execution of a criminal in Rome was not only a public display, but it was also an event that was attended for its entertainment value, as was clearly the case when the Campanian gladiators began to fight in the fourth century B.C. (Futrell, 11). A trumpet would sound to call the people to witness a decapitation, a fatal beating, a drowning in a sack, a hurling from a cliff, a burning alive, or a throwing to wild animals. These public executions served both as social events and as deterrents for the citizens (Bauman, 18).

Proscription lists were another form of execution that was employed from time to time by the Romans. A proscription list was a list of a few hundred names that had been compiled by the man or men in power. The issuance of these proscription lists was not a regular occurrence, and, in fact, it happened only twice in Roman history. A discussion of these lists is, however, pertinent to the discussion of execution in ancient Rome during the period of time being discussed, i.e. the late republic and early empire, despite their

rare use because they occurred right in the middle of that time frame. If one's name appeared on this list, it meant that he was to be put to death and that his estate was to be confiscated by those in power, who would have been the ones that released the list. A name might appear on a proscription list for one or more of any number of reasons, including criminal activity, some form of treason, or being on the list's creator's bad side. No one, save the lists' makers themselves (Sulla and the Second Triumvirate), was safe from seeing his name on a proscription list. Indeed, many Roman knights and more than a hundred senators found their names among the doomed (Hornblower and Spawforth, 1260). These lists were not exactly judicial or right, but they were made by those in power, which put them far beyond the realm of contestation. If one discovered that his name was on the list, he had enough time to collect his belongings and escape from Rome forever. If he failed to do so, or decided not to, he would undoubtedly be killed, as was the case with Cicero.

As dictator, Sulla wrote a proscription list in 82-81 B.C. This list, easily totaling better than five hundred names, was written mainly as an act of revenge for Marius' massacres of 87. The sons and grandsons of those named on Sulla's list were shut out of public life until 49 B.C., when Caesar himself pardoned them. The next, and last, proscription list was not released until 43 B.C. (Hornblower and Spawforth, 1260).

The Second Triumvirate was composed of Mark Antony, Lepidus, and Octavian (the man who would later come to be known as Augustus). When these three came into power, they devised a proscription list to eliminate their political foes and to raise funds for their time in power. Included on the list were hundreds of knights and senators, Lepidus' brother Paullus, Mark Antony's uncle, and the famous lawyer and orator M.

Tullius Cicero. Cicero was one of the unfortunate men who was unable to escape Rome, and he was put to death (Syme, 192). He tried to sail away, but the voyage was aborted. He would not be convinced to sail again, and he returned to his home at Formiae. His slaves were carrying him on a litter to the sea when Mark Antony's soldiers caught and murdered him (Trollope, 243-244). He was the only elected consul to be put to death (Syme, 192). According to Suetonius, in his work on Augustus Caesar in De Vita Caesarum, Octavian had Brutus, one of Julius Caesar's murderers, put to death. Suetonius writes "And he was not governed by the success of victory, but he sent the head of Brutus in order that it be cast down at the statue of Caesar at Rome, and he raged on the most famous captive not without words of insult" (II, 13.6-9).

There were several main tactics that the Romans used for executing criminals. The crime committed sometimes determined the manner of death, such as unchastity of a Vestal virgin, which resulted in the Vestal's being buried alive (Bauman, 95). Some severe cases of treason in the last century B.C. resulted in death, the confiscation of property, and *abolitio memoriae* (annulment of memory). *Abolitio memoriae* ordered the striking of the condemned's name from all writings, the destruction of his statues and honors, and the denial of his honorable burial (Starr, 75-77). Cassius Severus was exiled for his treasonous slander against a subordinate of Augustus, when he suggested that the man's family had descended from a freedman. He was spared the punishment of *abolitio memoriae* (Starr, 84).Of course, no manner of execution was enjoyable or painless, but some techniques were preferable to others because of the amount of pain involved and/or the protection of the victim's honor.

A very common method of punishment was *ad bestias* (to the beasts). In this case, a criminal was put in a position which would result in his being attacked, killed, and devoured by animals. This execution was primarily saved for lower-class citizens. During the Republic, convicted criminals, who were forcibly made gladiators, were routinely thrown to the animals in the Coliseum for all to view. Balbus, one of Caesar's lieutenants, was known to throw Roman citizens to the lions in Spain (Bauman, 66). Caligula even threw many men of status to the beasts (Bauman, 66).

Beating to death (a.k.a. scourging) and decapitation were two other methods of execution that were commonly used. A victim might be tied to a tree or something similar and beaten. Scourging was one of the popular penalties for *parricidium* (the murder of a parent), but was otherwise saved for the lower class (Bauman, 72). Decapitation was considered the "standard" (Bauman, 18) method of execution in ancient Rome because it was used all the time in punishment of the lower classes.

The *poena cullei* (penalty of the sack) was a very gruesome capital punishment. It involved sewing a criminal into a sack made of leather; also sewn into the sack were a dog, a monkey, a snake, and a rooster. The sack was then hurled into a body of water (Bauman, 30). The sack penalty was worse than most because the feeling was that the sack stripped human dignity far more than most of the other punishments because one was dying with animals and he would not receive a proper burial, as would have been the case for decapitation and vivicombustion, for example. The sack was also primarily for the lower class, but it would have been used on any who were found guilty of *parricidium*, since it was one of the accepted penalties for that crime (Bauman, 72).

Vivicombustion was another fairly commonly used manner of execution. It seems that most arson related crimes were punished with the criminal being burnt alive (Bauman, 9). Burning at the stake was considered a common punishment for slaves who conspired against their masters (Aubert and Sirks, 104). Vivicombustion was also mandated for deserters and enemies of the state (Bauman, 150).

Criminals could also receive the sentence of *liberum mortis arbitrium* (free decision of death), which allowed them to choose whatever method of execution they wanted. Claudius was the first emperor to sentence this manner of execution (Bauman, 7). This sentence was essentially an order for one to commit suicide, so it was preferable to any other sentence. Suicide was a more favorable death than execution for three main reasons: it spared the condemned the indignity of public execution; it kept safe his property; and it allowed him to be given a proper burial. This sentence was only granted to the upper classes (Bauman, 74).

This sentence was used in 47 A.D., in the court of Claudius. In that year, Valerius Asiaticus stood trial for planning to usurp the emperor's throne. The trial was going well for Asiaticus, until an opponent of his, fearing that the man would be released from the charges, tricked Claudius, who was presiding over the trial. The opponent, speaking as if he were the defense counsel, asked the emperor if the defendant might choose the manner of his death. Claudius took this statement to be a confession of guilt, and sentenced Asiaticus to death. He did, however, grant the request of the fake counselor, and he allowed the condemned to choose his death. This was how the sentence of *liberum mortis arbitrium* came to be on the books officially during the empire, since before this case it had only been customary rather than legislative. The sentence had been granted many

times before this case, however. For example, Augustus sentenced Iullus Antonius to *liberum mortis arbitrium* for treason in 2 B.C. (Bauman, 54). This sentence was definitely considered an act of leniency on the part of the emperor, and it became a quite commonly used method of execution for the privileged upper class (Bauman, 74).

Crucifixion and a specific type of beating both fall under the category of *furca* (the fork). *Furca* was considered the *summum supplicium* (greatest punishment), because crucifixion was the most brutal form of execution available to the Romans, especially when it was coupled with being tied to an infertile tree and beaten, which was the other aspect of *furca* (Bauman, 151-152). Some scholars disagree about exactly what *furca* entailed. One theory says that it was simply crucifixion, but others suggest that *furca* was the beating that preceded crucifixion (Bauman, 203).

Crucifixion was undoubtedly the most brutal method of execution available to the Romans, and it goes down in history as perhaps the most brutal of all time. Crucifixion could cause death in several different ways. Most physicians believe that a crucified individual's normal respiration was hindered so severely as to cause asphyxiation. In addition to asphyxia, the victim would be suffering from shock due to preliminary flogging and/or the nails that were hammered into the hands and feet. On account of this, nailing to the cross, rather than being tied to it, was considered a privilege as it would help to bring death more quickly. Breaking of the legs was also favorable because it brought death more quickly. If the victim's legs were broken before he was set on the cross, he would not be able to lift himself, using his lower body, in order to allow for easier breathing (Aubert and Sirks, 112). This normal breathing would allow the victim to live longer, and therefore suffer much more. Sometimes victims would be granted a stool

or seat that would be fashioned to the upright post of the cross. This seat would help to prop the victim up and would allow him to breathe more easily. This seat would allow the victim to live longer, and, again, would lengthen the painful process. In crucifixion, death never comes quickly, but the pain and torture do; and they continue. It is for these reasons that crucifixion was a far worse death sentence than *ad bestias*, the sack, vivicombustion, or any other method of execution (Aubert and Sirks, 113).

In addition to the obvious pains of crucifixion, there were several insults that were added to the injury to make it that much more terrible. Victims were crucified outside of the limits of their cities, which was an insult as it symbolized the victim's rejection from the community. Also, crucifixion was considered an unclean, unworthy, unmanly way to die because it lacked one glorious and fatal open wound as a warrior of old would have received in a battle. The victim was crucified naked, and may not have been granted a proper burial, being left out for wild animals to devour (Aubert and Sirks, 113).

Most recorded crucifixions involved slaves (Aubert and Sirks, 113). Slaves could be sentenced to crucifixion either by the state for criminal activity, just like any citizen, or by their owners for any sort of indiscretion, such as disobedience. A slave's crucifixion was a public event performed by some sort of an undertaker or executioner, depending on the locality. A private undertaker might have been hired by the state to conduct the crucifixion in a colony like Puteoli, for example. Non slaves were sometimes punished by this means of death, but this was probably an act to show their loss of status following their crime (Aubert and Sirks, 114). In other words, a freedman might be crucified to show him and his community that he had forfeited his freed status for that of a slave when he committed his crime. Freedmen would occasionally be crucified, but not nearly

as often as slaves. The freedman's crime had to be severe because he held a stronger social status than did a slave. (Aubert and Sirks, 115-116).

By far, the rarest and most interesting crucifixion cases are those in which freeborn people were put to death. Freeborn people were the citizens of Rome who had all the rights granted to full Romans, whereas freedmen, who were not slaves, were not full citizens and had only a few rights. The freeborn people who were crucified would not have been of the upper class, but surely lower-class citizens. Crucifixion was obviously a very painful and wretched way to die, but the main reason the sentence was granted was the insult. The loss of rights and rejection from the Roman society were the main punishments in the eyes of Romans (Aubert and Sirks, 116). It is not surprising that slaves and freedmen were crucified because they had little or no rights of which to be stripped, and this is also why it is interesting to find recorded cases in which freeborn people, i.e. full citizens, were crucified. Of the Roman citizens, rebels, deserters, and insurrectionists were crucified to set an example (Aubert and Sirks, 118, 120).

Exile was considered a capital punishment, even though it did not result in immediate death. Those sentenced to exile may have been restricted permanently or temporarily from certain places, such as Rome or Italy. Another form of the punishment would see the convicted exiled to a certain place, as was the case with Ovid, who was transferred to Tomis. No other penalties would have been exacted on these exiles (Starr, 77). On the other hand, if one were deported to an island, which was the most severe form of exile, his property would be confiscated and the number of his servants limited (Starr, 78). Exile from Rome was not necessarily a harsh punishment, because some of the islands to which one would be exiled were quite accommodating. The convicted

might have been able to take their families with them, as well as any friends who wished to accompany them. In these instances, exile could result in a very comfortable and fulfilling life. In Book XIII of his Annals, Tacitus tells that Nero exiled Cornelius Sulla, "… therefore, nevertheless, just as if he had been convicted, he was ordered to leave the fatherland and to be confined by the walls of Massilia" (47.13-14). Sulla's exile was probably a pleasant one, because Massilia was a satisfying Greek colony. There were, however, islands of exile which were neither comforting nor fulfilling. Some were desolate and scarce of resources at best. Gyara and Seriphos were two such islets that were so small and barren, that exile to these places was little more than a sentence to a "living death" (Starr, 161).

More common than sentenced exile was voluntary exile. Upon receiving a death sentence, one would collect his estate and leave Rome in order to avoid execution. For many years, this was not a practice that was recognized by law, but rather it was more of a custom that came to be accepted by kings, magistrates, and senators. Voluntary exile probably began with treaties Rome formed with Naples, Praeneste, Tibur, and the like (Bauman, 16). These treaties essentially granted dual citizenship for Romans, which would have allowed them to begin using them as loopholes for escape from punishment. When the Roman citizens were convicted of a crime, they could simply relocate to one of the aforementioned allies, where they had already been granted citizenship. Some time in the 80's B.C., voluntary exile was written into Roman legislation officially (Bauman, 16).

The accepted rules were that when one was found guilty, he was given a short time to collect his things and escape (Bauman, 14). After the grace period had ended, if the convicted was still around, he would be executed according to the decision of the

court. If the accused tried to escape before the verdict had been announced, it would be decreed that he was an outlaw, and he would be punished accordingly (Bauman, 15).

Cicero was forced into exile in 58 B.C. In March of that year, a bill was circulated which named Cicero as an outlaw, so he voluntarily went into exile, because if he had not, he would have been put to death (Rawson, 116). Cicero was outlawed for putting several of the Catilinian conspirators to death illegally in 63, but he was really exiled because he was a political enemy to Caesar. He escaped to Thessalonica until 57, when the *comitia centuriata* unanimously voted to welcome Cicero back to Rome (Rawson, 120-121).

There were a few exceptions to exile. Anyone convicted of *parricidium* was automatically punished to the fullest extent of the law because the murdering of a parent was considered a most heinous crime. There was no possibility of exile for these offenders (Bauman, 17). Another exception was the doctrine of "quick pursuit," which Augustus began in the treason case of Caepio and Murena in 22 B.C. These men failed to appear at their trial and were thus found guilty. The two did not leave Rome quickly enough, and Augustus sent soldiers, who caught the men before they had exited Italy and executed them. The emperor sent his men early because he did not want the two criminals to escape. This doctrine was considered borderline legal at best, but since Augustus was emperor, it was accepted (Bauman, 55).

It is seen in several instances that the upper-class Romans were treated far more leniently than were the lower-class Romans. The Romans were always a little skeptical about putting the upper classes to death. They were sentenced time and again with punishments that could easily be construed as "slaps on the wrist." The lower classes, on

the other hand, were always punished to the fullest extent of the law. No one had any qualms about executing the lower classes. Emperor Tiberius feared the bad press of putting a privileged man to death, which was why he allowed the senate to hear cases and to sentence criminals. The rich were often granted the punishment of *liberum mortis arbitrium*, which was clearly the easiest, least painful, and most honorable way to die in Rome. The poor were very rarely, if ever, granted this favorable death sentence, and more likely were sentenced to an excruciating death or an excruciating life of hard labor. The rich also had the option of voluntary exile in most cases. This is the ultimate example of the rich in Rome using their status to avoid punishment. In voluntary exile, all they lost was a portion of their estate, so they essentially bought their way out. The poor could not afford to leave, even if exile was a legitimate option for them. Whereas the rich had the lenient punishments of exile and *liberum mortis arbitrium*, the poor endured the worst punishments that the Romans had to offer. Crucifixion, which was far and away the worst manner of execution, was only an option for the poor. The rich were never susceptible to crucifixion. The poor were also subject to every other harsh punishment available, including *ad bestias, poena cullei*, scourging, vivicombustion, etc. It is interesting to note that scourging and the sack were both generally reserved for the lower class, except when *parricidium* was the crime, because the murdering of a parent was considered one of the worst crimes a man could commit. When the rich were found guilty of *parricidium*, even they were punished by scourging and the sack. When upper-class citizens committed this most atrocious of crimes, they, in a sense, forfeited their upper-class status for that of the lower-class, which made them subject to the lower-class punishments of scourging and

the sack. Only when the rich were at their worst, were they punished and treated like the poor.

Chapter 4: American Executions

The capital punishment has existed in the U.S. since before it was an independent nation. Formerly it was used for a whole variety of crimes, but today it is only applied in cases of first degree murder. Officially, espionage and treason are capital crimes, but first degree murder is essentially the only crime that is handled capitally (Streib, 66-68). Capital punishment is best described by Streib when he writes:

> The operating premise is that the death penalty system begins when a capital crime is committed, the crime is investigated and the apparent offender is arrested. The trial typically follows at least a year after arrest, and subsequent appellate and post-conviction challenges extend on for many years. Actual execution, if it ever occurs, takes place typically about 10 years after the death sentence is imposed. (6)

Streib clearly and easily lays out the capital punishment system as it generally follows in America today. He includes the crime, arrest, trial, appeals, and execution, which are all vital and necessary steps for the execution of a criminal.

When a murder suspect is arrested, the capital trial court is essentially the same as any other criminal court in the U.S. The defendant is constitutionally guaranteed the right to a defense attorney. Those defendants who can afford it hire their own attorneys. The advantage to this is that the private attorney is involved in the case for the entire time that he is hired, so he knows a lot about the case and is familiar with it. Those who are unable to hire a private attorney are assigned a public defender by the court. These public defenders are often inexperienced and they only begin to gain knowledge about their cases upon their assignments to them. The prosecutors, on the other hand, are involved in

their cases for the entire processes most likely, and they have completed investigations and are probably ready to begin their prosecutions when the court appointed public defenders are just beginning to familiarize themselves with the cases (Streib, 113).

Appointed defense counselors are a perfect example to show how some class issues have not changed since the Roman times. Every citizen is guaranteed an attorney, which is a very civil and citizen friendly right. However, this right helps to showcase the differences between the rich and the poor in American society. The rich are able to pay sophisticated, high-priced, extremely experienced lawyers to defend them in capital and criminal cases. Privately hired lawyers have the time, money, contacts, and resources to develop involved, in depth, and ingenious defense strategies that may not even have a thing to do with the defendant's guilt or innocence. The poor, and even the middle class, who are unable to afford such skilled attorneys, are forced to settle for court appointed public defenders. These inexperienced public defenders do their best, but they often do not have the tools necessary to develop a sufficient defense. Many men have been convicted simply because they were lacking a proper defense. The rich are far less susceptible to execution than are the poor. The poor receive counsel far inferior to that of the rich, so they are convicted and sentenced to death far more often. In this way, the rich receive preferential treatment over the poor, much like the upper-class citizens of ancient Rome did over the lower-class citizens. It just goes to show that money talks, both then and now.

Capital cases are always heard by juries. This is dissimilar to other criminal trials in that some criminal cases do not include juries and are heard only by a judge. The same jury that decides a man's guilt is brought back later to decide upon his sentencing, that is

whether he will be put to death or spend the rest of his life in prison. The juries that decide death penalty cases and sentences are at the center of long, emotional, and complicated cases. Serving on a capital jury is, to say the least, a great responsibility (Streib, 125).

As stated above, the capital trial system is virtually identical to any other criminal trial, but once the time comes for sentencing, the death penalty process becomes quite unique. The trial jury returns for the sentencing hearing, which begins either right after the verdict of guilt has been announced or, at the very latest, the following morning. Only a handful of murderers are sentenced to death and fewer still are actually executed. It is the jury's responsibility to determine whether the murderer in question is deserving of death (Streib, 157).

For decades in America, the death penalty was the ultimate show of power. The state would execute someone, and allow it to be known who was dying and for what reason. It was believed that it would act as a deterrent if citizens knew about executions, but it was also a display of power that was meant to show how strong the state could be when it wanted. Today, the death penalty has become a much more solemn and private thing. A conscious effort is made to use the punishment as sparingly as possible, and to minimize suffering as best as possible, keeping the victim's humanity respected and honored. For example, formerly, one would die in front of an audience, but now executions are far more private (Sarat, 66-67).

In America today, there are five forms of capital punishment which are used for the executions of criminals. These are death by firing squad, hanging, electrocution, lethal gas, and lethal injection. Firing squads and hangings are only used in a few states

(Idaho, Oklahoma, and Vermont for the former, and Delaware, New Hampshire, and Washington for the latter); lethal gas in four (Arizona, California, Missouri, and Wyoming); electrocution in eight (Alabama, Arkansas, Florida, Kentucky, Nebraska [its sole method of execution and the only state of those which use the death penalty that does not employ lethal injection], Oklahoma, South Carolina, Tennessee, and Virginia); and lethal injection, which is considered the most humane method of execution, in thirty-seven states. The death penalty is not used in twelve states or in the District of Columbia. The humaneness of death penalty methods is very important because over a hundred years ago the U.S. Supreme Court ruled that executions could do nothing more than end life, so torture and/or pain may not be side effects of the execution process or it is to be deemed unconstitutional by the eighth amendment to the U.S. Constitution (Sarat, 68-69).

The firing squad may be one of the more painless methods, if performed correctly. The condemned is blindfolded, and a bull's eye target is placed over his heart. Five sharp shooters, standing behind a screen, take aim, and simultaneously fire at the victim's heart. If their aims are true, the victim dies instantly and feels no pain, in theory. The problem lies in the fact that some shooters do not want to kill a man, so they do not aim for the heart. If all of the shooters do this, the victim can easily survive the shooting, and end up in tremendous pain and agony. To avoid the shooters missing purposely, four of the guns have live ammunition and one has a blank. The idea here is that every shooter can tell himself that he fired the blank (Hillman, 20-21).

Hanging is the oldest of the execution methods still used in the U.S. The victim is blindfolded and set to stand on a trap door. When the trap door flies open, the weight of the victim's body below the neck causes traction and tearing in the cervical muscles, skin,

and blood vessels. The upper cervical vertebrae become dislocated and the spinal cord separates from the brain. It is this lesion that causes death. The volume of blood in the head immediately increases, but then the volume of blood in the brain falls drastically. This causes the respiratory and heart rate to slow until they cease altogether, and then death occurs (Hillman, 19).

Electrocution, in the form of the electric chair, was thought to be the end all of execution methods. At the time of its inception, in the nineteenth century, it was believed that electrocution would be a completely painless and humane way to put a criminal to death. In this case, the victim is strapped by his chest, groin, arms, legs, and head into the electric chair, and electrodes are positioned so that the straps also hold them in place on the victim. Through these electrodes, 500 to 2000 volts of electricity are run through the victim in thirty second intervals. A doctor, who attends the execution, checks the victim to determine when he has died, and if he has not died after the initial dose, another dose of electricity is administered. Electrocutions often go wrong, like in 1982, when John Louis Evans was given multiple electrical treatments, but was not pronounced dead for ten minutes (Hillman, 22-23).

Lethal gas is a method of execution that was experimented on by the Nazis during World War II. In this method, like electrocution, the victim is strapped into a chair. Sodium cyanide crystals are mechanically dropped into pools of sulfuric acid, which have been strategically placed under the victim’s chair. Hydrogen cyanide gas rises from the pools and is supposed to be deeply inhaled by the victim. Ideally it should take only a few seconds to perpetrate death, but if the victim struggles to stay alive by trying to avoid breathing, it may take as long as minutes. If the execution does take as long as a few

minutes, the victim may experience difficulty breathing, asphyxia, and stomach pains (Hillman, 24).

Lethal injection is the most accepted method of execution. In this method, the victim's veins are cannulated, so that a mixture of drugs and chemicals may be injected into them. The mixture is made up of the rapidly acting anesthetic known as Pentothal, the drug curare to paralyze the muscles, and potassium chloride to stop the heart. The anesthetic should render the subject unconscious immediately, so that he is asleep and free from pain throughout the execution (Hillman, 24).

The death penalty in America is a very paradoxical thing. The U.S. Constitution prohibits any punishment that is deemed "cruel and unusual," and this, of course, applies to the capital punishment. Capital punishment, however, is, by its nature, both cruel and unusual, at least according to today's standards. American citizens want an execution to be humane and painless, but this concept may not exist outside of the mind. Most forms of execution that are utilized today are most certainly neither humane nor painless.

Hanging, at its very best inflicts at least a few moments of pain, and at its worst, several minutes of asphyxiation. A firing squad may be a relatively quick and painless death if it is performed perfectly, but there is far too much of a possibility that human error will come into play and result in pain and anguish. Lethal gas involves far too much pain and discomfort to be considered humane, even when it happens according to plan. Electrocution is so barbaric that it should have been a torture device used by the Romans. An ideal electrocution, which would involve only one thirty second treatment of electricity, is thirty seconds of torture, and electrocutions often do not run smoothly, resulting in multiple doses and sometimes living combustion, as was used by the

Romans. Lethal injection is the only method of execution that might be humane and painless. The inherent problem lies in the fact that since the victim is asleep, there is no way to tell if he is in any pain or discomfort. No method of execution currently available can be deemed humane, so no method can be deemed constitutional.

Chapter 5: Roman Appeals

The concept of *provocatio* (appeal) was the Roman right of appeal. It may have been in existence as early as 509 B.C. (Cornell, 276), and it was present in the XII Tables (Jones, 33). Scholars tend to agree, however, that the first authentic law of appeal was granted in the year 300 B.C., under the *Lex Valeria* (Valerian law) (Cornell, 277). In the first year of the Republic, the court of appeals and *provocatio* became the responsibility of the *comitia centuriata* (assembly of the hundreds), in which the people were divided into a hundred groups of 194, based upon property (Burdick, 94). *Provocatio* allowed a convicted and sentenced man to appeal his conviction to the people so that the conviction or punishment might be overturned, and this assembly of the people would reevaluate the case and the ruling to either confirm or deny the original decision (Jones, 1). When first enacted, *provocatio* only applied to sentences involving execution and/or flogging, but sometime later, it was extended to include fines. It is unknown as to exactly when and how this change came about (Jones, 37).

At the beginning of *provocatio*, it applied only in Rome itself, a magistrate, who presided outside of the walls of Rome, could convict and punish someone without the right of appeal. One could even have been sentenced to death without appeal anywhere in Roman territory, outside of Rome itself. Slaves, foreigners, and freedmen were not given the privilege of *provocatio* (Jones, 20-22). It is, at best, difficult to say exactly when the right of appeal was extended beyond the walls of Rome, but it was probably in the earlier half of the second century B.C. This is believed to be the case because Porcian laws show that around this time *provocatio* was granted to soldiers and civilians outside of the city of Rome (Jones, 25).

Chapter 6: American Appeals

The American capital appellate courts have three steps through which they proceed in order to determine whether or not a criminal should actually be put to death. The direct appeal comes first. This appeal is heard by the state supreme court "to ensure that the death sentence was not imposed arbitrarily or randomly" (Burnett, 116). This appeal is guaranteed in all death penalty cases, and it is the only appeal that constitutionally guarantees appointed counsel. The state Supreme Court is enlisted to determine if the trial and sentencing were fair and mistake free. This appeal also serves to determine if the penalty is proportionate to other cases involving similar crimes and similar defendants (Burnett, 116).

The next step in the appeals process is the state habeas or post conviction review. In this step, the trial transcript is reviewed for any constitutional violations of procedure or evidence that may have resulted in the conviction and death sentence. Also, any claims that could not be brought up at trial or in the previous step of appeal may be discussed for their validity. These claims might involve problems such as ineffective counsel or failure to provide exculpatory evidence (Burnett, 116).

The last step of appellate review is the federal habeas corpus review. This appeal is a civil action stating that the conviction or sentence under which the condemned is being held was obtained unconstitutionally. This step in the appeal process is similar to the last step, except that this civil action is brought against the prison superintendent or the director of corrections. This is the final appeal. If this tactic is being employed by a prisoner on death row, it means that he has exhausted all other plausible escapes from execution (Burnett, 116).

Both the blood thirsty Romans and the judicious Americans had a system set up for the appeal of a death sentence. This suggests that even peoples separated by thousands of years knew enough to realize that there would be times in which their respective court systems would make mistakes. *Provocatio* and the American capital appeals process are the security blanket for the citizens who find themselves in the unfortunate position of standing trial for a capital crime. Compared to the American system, the Roman version can be called rudimentary at best, since the Romans appealed only once to a committee of citizens, while today no fewer than three appeals are registered for every capital conviction to several different bodies of legislators. What stands out as constituent between the Romans and Americans is the fact that any citizen had and has the right of appeal. The appeal process is one instance in which wealth and status do not affect one's ability to appeal a conviction. Even lower-class Roman citizens could invoke *provocatio,* and the first stage of the American capital appeal process begins automatically upon a sentence of death. In addition, the convicted American is guaranteed counsel throughout the first step. Beyond the first step he will need outside help though. The main point to acknowledge concerning appeals is that they were and are available to the upper class and the lower class, the rich and the poor. They are not a luxury granted to the rich and hoarded from the poor.

Chapter 7: Conclusion

It is clearly seen that the upper classes of ancient Rome were treated far more mercifully when it came to punishment than the lower classes were, and it is also seen that today the rich have many more advantages and opportunities than the poor when involved in a capital trial. Since these trends are similar for these two civilizations, separated by two thousand years, it stands to reason that they may be consistent in other civilizations throughout history. This paper then becomes important because from here scholars may study classes and executions in other civilizations to determine how different peoples have executed their criminals throughout history. This will give to scholars an insight into humanity and its feelings towards penalty and death. How different societies have dealt with the different classes will show how these societies treated their classes in general because the judicial system acts as an accurate indicator of the mind-set of a society as a whole. By studying historical trends in classes and punishments, legislators of the future will be able to determine specific tendencies and developments concerning these classes and punishments that they should avoid and impede while writing and passing legislation. Concepts such as court appointed counsel for all capital crime defendants may help to level the playing field between the rich and the poor today, ideally by decreasing the number of executions involving poor. Other solutions to problems such as this may be discovered and implemented by studying past practices in execution.

Another interesting aspect of this paper, and the eventual study of capital punishments in additional civilizations, is the progression of the penalty. From the time of the Romans to now, the death penalty has gone from a standard punishment for a

whole list of crimes to the atypical punishment for the very worst of crimes. It gradually became more and more taboo, and this trend will likely continue. Even within the two hundred year span of the Romans that is discussed, their execution methods and practices changed to become slightly more lenient, at least to the upper classes. More humane punishments were developed and more lenient sentences were granted.

As capital punishment becomes even more increasingly taboo and prohibited, these studies pertaining to its use may appear to become less valuable, but this is not the case. The information on the classes of societies will always be valid for research as long as there exist barriers, such as wealth, between citizens of the same civilizations. Until every citizen is treated the same and granted the same rights and privileges across the board, there will be a need for the research and study of class systems, and the discovering of solutions to overcome these obstacles to civilized society.

In closing, there is much to be learned yet from the study of classes and punishment. This discussion of Roman and American classes and executions is merely one aspect of a much larger and potentially a very useful tool in the studies of penal law, political science, and humanity as a whole. The past shows where mankind has been, so it can better direct itself towards the future, which will undoubtedly entail the abolition of capital punishment and the obliteration of all forms of classes and elitism.

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