

**UDC 130.3**V. E. GROMOV<sup>1\*</sup><sup>1\*</sup>State Higher Educational Institution “National Mining University” (Dnipro), e-mail 0676338872@mail.ru, ORCID 0000-0002-6585-4600**METHAPHYSICS OF DEATH PENALTY**

**Purpose.** The paper studies the problem of death penalty justifiableness in terms of democratic society from the metaphysical viewpoint. Philosophical argumentation to justify death penalty is proposed as opposed to the common idea of inhuman and uncivilized nature of court practice of sentencing to death. The essence of the study is not to rehabilitate law-based murder but to explain dialectic relation of the degrees of moral responsibility of criminals and society nourishing evildoers. The author believes that refusal from death penalty under the pretence of rule of humanism is just a liberal façade, plausible excuse for defective moral state of the society which, rejecting its own guiltiness share as for current disregards of the law, does not grow but downgrades proper human dignity. **Methodology.** The author applies an approach of dialectic reflection being guided by the perception of unity, relativeness and complementarity of evil and good striving to determine efficient way of resolving their contradictions in the context of moral progress of the society. **Originality.** Proposing philosophic approach to a death penalty problem instead of legal one, the author is not going to discuss the role of horrification, control or cruelty of the measure of restraint; moreover, he does not consider the issue of its efficiency or inefficiency. The author also does not concern vexation of mind of a criminal sentenced to life imprisonment for “humanitarian” reasons. The purpose of the author is to demonstrate that aim of the punishment is to achieve justice which becomes spiritual challenge and moral recompense not only for the criminal but for the whole society. **Conclusions.** Crime is first of all a problem of a society; thus, criminal behaviour of certain individuals should only be considered through a prism of moral state of the whole community. Attitude to a death penalty is the problem of spirituality and its dramatic sophistication. The author thinks that moral standards exclude any sentimental interpretation of humanism and mercy. Humanism is the imperative requiring both personal and social responsibility for the things humiliated in a victim and human dignity dntrodden in a criminal. Law-breaker cannot be liquidated without judicial safeguards as a dangerous animal. Severe punishment of the society adequately compensates a murderer his/her human dignity. As the society is guilty partially in the existing criminality, it accepts the fact of cruel punishment applied to redress an injustice.

*Keywords:* humanism; mercy; justice; sacrifice; punishment; “metaphysical responsibility”

**Introduction**

A problem of death penalty justifiableness considered from philosophical viewpoint is the problem of moral self-awareness progress in the context of current society as well as its moral quality maturity. That is the issue of philosophic justness of prevailing ideas concerning justice. Punishment, either approved or disapproved by the society while convicting murders, is first of all the indicator of its moral health and integrity.

Legal studies concerning the measure of restraint are not philosophically grounded; they depend on the ideas of empiric expediency, social opinion climate or requirements listed in Protocol #6 of April 28, 1983 of Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950.

For instance, it is considered that if crime rate is high, then death penalty cannot be cancelled as it is no doubt horrifying and restricting factor.

Prematureness in this sensitive issue results in intensification of criminal, i.e. “shady justice”, and killing activity. Public opinion voting “for” death penalty for murders in some countries or “against” in others is also important. Anyway, it is noted with some “humanistic” sympathy that the responsibility of criminals who have deprived of lives is being eased, death penalties are not executed and the number of free pardons is growing [2, pp. 106 – 116]. Wesley Kendall, a scientist engaged in analysis of foundations to apply death penalty in American society (death penalty is legalized in 38 American states), also concerns the facts connected indirectly with philosophical analysis of criminal essence of murder in his thesis for the degree of Doctor of Philosophy. Paying attention to the fact that “death penalty” in the USA has various degrees of social support, the author emphasizes standard arguments against death penalty: improperly investigated cases; brutal nature of sentence executions; international

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disapproval; religious views; and even impressive portraying of repentance of criminals in fiction [8, p.1- 3].

It goes without saying that such ideas are appropriate in terms of legal analysis of the problem. However, the author, beyond any bloodlines, proposes to apply philosophical approach striving to demonstrate lack of its juridical interpretation on narrow empirical foundations also involving ethical mentality. In view of criminal essence of wilful murder there is no reasonable cause explaining why adequate measure of restraint may be cancelled on the basis of public opinion, crime statistics, possible judicial errors or free pardon by high ranking officials.

### Theoretical basis and results

Nowadays many democratic countries either cancel death penalty or impose moratorium on it. Ideologists of death penalty cancelling claim that it is not compatible with principles of humanism. They say that murder is not typical for human nature. Law of justice requiring the punishment to be adequate to crime should be replaced by the principle of humanism. It means that other sanctions should be applied to murders, e.g. life imprisonment with the right to pardon or revision of the sentence after certain period of the sentence serving.

In this context, measure of adequate restraint turns out to be violated as if for the sake of higher ethical principle of humanity and mercy. In this regard currently the idea of humanism is declared in such a drastic way that those, being sure of justifiability of death penalty for egregiously criminal acts, lose their confidence being shamed to reveal their adherence to such kind of punishment. Such people begin thinking that they are morally obsolete, have tendency to vindictiveness, and misunderstand the nature of humanism.

However, let us study firstly the fact that murder contradicts human nature; and secondly the degree of its incompatibility with humanism and mercy. It should be done from the philosophic viewpoint purely without any references to empirical reality as if we took it into consideration and adopted it as the basis; if so, then we would see a person first of all as violator, aggressor, and destroyer of all the living beings.

Nevertheless, we can see that in the process of historical and cultural development of a society

uncivilized nature of manifestation of human malicious intents decreases constantly. Even if we consider sceptically that evil just becomes looking more attractive, historical experience of enmity and natural desire of safety demonstrates that in one way or another people aspire to eliminate cruelty and murders from their lives. Peacefulness, even together with hatred to enemies has always been more praisable choice and war has always been means for peace.

Neither enmity nor revenge has ever been prevailing global historical ideology. For instance, world religions represented by their founders and prominent teachers has never taught violence as a higher principle while secular ideology connected with ruling practice and social order blessing considers violence only as some inevitable evil worth regretting. During the darkest historical periods of arbitrary rules, evil deeds were either secret or covered with the ideas of justice and common welfare. None of leaders reckoning on the social support will claim that he/she worships dark forces even when his/her pia desideria or paranoia turns peoples' lives into the hell. However, those for whom evil and death have always been a subject of religious cult must hide their acts either in hermetic societies or in satanic sects.

Are the ideas sufficient to consider that violence and murder contradict the human nature as they can be connected with empiric expediency and common sense of corporal safety which consequently become the reason of the necessity of life protection and fight for freedom and justice? If we take into account only empirical reality and unavoidable historical evidences, we will not progress beyond the idea of everlasting Manichaeism antagonism between good and evil, light and darkness. Then the humanism, being affirming nowadays in such a persistent way, becomes just sentimentality, manifestation of kind-heartedness and even hypocrisy making us reject the things proper in plenty for our morality. You cannot ignore facts and it is impossible to disregard human history which has always been history of violence. However, if we want to find in human nature the foundations for humanism as the inherent worth but not from the viewpoint of practical expediency, then empirical arguments will only be constant obstacle on this way.

Is it possible to see the source of humanism in the very human essence which we, people, developing and monopolizing within history of culture,

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tend towards the exclusion of violence from private and social life? We consider that such a foundation exists. It is represented by the freedom rooted in a person, his/her sociality and the fact that we call “metaphysical ought”.

Human is transcendence, freedom; that is a creature transcending natural necessity. Transforming the nature with the help of vigorous activity, human transforms own existence into culture, proper ontology. Cultural evolution resolves the contradiction between society and nature as well as between people against each other. In generic sense, formation of a human as a free being means that from the depth of own permanent essential foundations he/she materializes as a seeker of non-violence, harmony, social solidarity which are incompatible with any bondages.

Striving for humanism is also given to him/her by “metaphysical ought” as at the moment of own origination he/she cannot create intention for freedom since it is just given him/her, “presented” /Heidegger/. That is why a person reports for the freedom not only to himself/herself but to the Presenter. Any human has certain stable ought in relation to the Creator just by nature long before he/she starts own existence with own purposes.

It should be noted that people misunderstand or distort the “transcendental project” relative to a human and his/her “eternal metaphysical responsibility” in the field of dependence under the effect of direct vital interests. It is difficult for a human to execute own essence. At least continuous spiritual evolution is required to judge from humanism as absolute categorical imperative but not from the dependence upon empiric expediency. Nevertheless, one cannot state that there are no enlightenments in the history of culture concerning the necessity. Entity factor understood as the divine afflation or manifestation of higher wisdom stimulating a person to be human in the sake of its proper moral value is known in Confucianism, Taoism, Hinduism, and Buddhism; later it has been manifested with special emphasis in Christianity and secular ideology. We can only be amazed by the fact that attractiveness of ideas of love and mercy has been stayed alive for centuries preserving their stability in the world of “all against all”. Certainly, they were far from prevailing in the sphere of punishments. Even so, in the course of overwhelming progress of human self-consciousness in culture, gradual exclusion of brutal traditions and legal sanctions takes place. In

the context of such a sad current situation in a society, it is impossible to neglect a viewpoint of human rights and humanism.

Thus, it seems like the accumulation of humanism potential in culture and the disapproval of cruelty, violence as a means of problem solving should be forgotten and death penalty should be cancelled as they are not proper for human dignity. One must not kill. That is absolute moral requirement which will preserve paradoxically its imperative force forever in spite of inevitability of irreconcilable confrontations.

One may not apply affords to come to such universal conclusion as the Creator commanded clearly: “thou shalt not kill”. However, the imperative is just a principle which we should be able to implement in practice where it is constantly violated in crimes and corrected in punishments.

Humanism as an ideal desire of people to live in accordance with the spirit of mercy ethics cannot be the basis for injustice; though, being imbued with a tendency of punishment mitigation it tends to condonation and may come into conflict with justice. Thus, humanism being unblinded by sentimentality is a result of the division of higher mercy ethics into lower ethics of equal retribution for a committed crime. Real humanism is the sanction appealing for the spirit of justice of heaven.

There appears the façade of the situation when in justice of heaven something supposedly decreases both in mercy and justness as the mercy in the simplicity of its principle has the tendency to forgiveness while justness tends to the inevitability of punishment. Nevertheless, it is justice of heaven that one needs as not only certain individual but the whole mankind is guilty of the criminal deed. Generic guilt mitigates the guilt of an individual as the society has not acquired yet proper morality as well as it has not eliminated the conditions generating vengefulness and violence. An individual guilt appeals for conviction since a criminal, while breaking the laws, becomes a factor of social danger.

In order to reach justice of heaven without losses in mercy and justness, the “thou shalt not kill” commandment should be implemented in the morality; moreover, it is required that the conditions of observing the legality will be formed, the conditions depriving gradually the legality itself of legal sense “returning” it into morality. Then humanism stops being the mercy of court or the supreme power; it becomes the prevailing impera-

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tive of the whole society. Under such conditions, murders become exclusive excessive acts; in such cases there can be no death penalty.

It is clear that justice of heaven “without losses” is the ideal of monolith morality, squeezed into the absolute principle. However, the principle as an abstract expression of the materialized ideal has heuristic meaning. Monolith morality is unobtainable for the society. Humanism divided by justice becomes a complex problem of selecting a measure of restraint. Maxim of absolute morality dictates to an individual prohibition on murder as the human. Violating the total command in a society where death penalty is cancelled, a criminal usurps the right for murder dooming the community to sacrifice. The court saves criminal's life due to inadmissibility of a murder for a human, though a criminal for whom there is no such prohibition, ceases being a human. Choosing a murder, a criminal has chosen a death for himself/herself as for an evildoer. According to logics of attitude to a murder and its commitment, a criminal should be annihilated since he/she is sentenced to death by himself/herself. However, the court does not consist of criminals; that is why sentences are passed on behalf of the people who are considered to be humanistic and who do not admit death penalty. For this reason, a sacrifice for the sake of mercy falls to their share. Social majority especially those people who are close to the victims being murdered innocently do not agree with the decision to preserve lives of evil-minded murders and maniacs, but they do not participate in passing the sentences. Departed souls appeal for justice but progressive lawyers insist on humanism being sure that they have the advantage of humanity supported by the statistics of judicial errors and nondecreasing criminality in the context of punishment stiffening. They say that death penalty is not efficient as the measure to restrain grave crimes.

However, there is something wrong in that humanism. Can it be that it is achieved only by the loss of justice while justice of heaven is reached only if mercy cedes in favour of freedom for evil-doing?

Refusal of the death penalty seems to be a strong side of humanism since, apart from extrinsic advantage being in it as in a moral value, in case of making the punishment for murders less severe it should contain the element of violation of justice under the pretence of honourable stoic

attitude of mind. Having lost in justice, humanism wants to attain to unshakeable moral superiority both in its own eyes and in the eyes of the whole world.

However, humanism, losing in justice, is the illusion, deceit of kind-heartedness that cannot be a choice of justice of heaven. Real justice of heaven rather than a seeming one is the justice losing neither in humanism nor in justness. Nevertheless, how is it possible in the contradiction of tendencies of mercy and punishment? Considering them at the level of dialectic speculation, one should see not only contradiction but also complementarity, unity, identity. We need to become conscious of the fact that the punishment along with the moment of external contradiction to mercy is the humanism in the case of fair measure of restraint as well. It is true not only with regard to desperate victims but also to criminals. Evildoer, having defied human nature, is punished in the convicted person. Notwithstanding, being a representative of the human race, the criminal is sympathized as a victim of moral lapse in the imperfect mankind.

Death penalty is not a murder but a tragic act of atonement compensating the murderer his/her human dignity lost during the life and found during fair atonement. Rejecting the murderer as an evildoer, the society accepts him/her again as an unfortunate person. Now, we can only be sorry about his/her tragic fortune.

Having not cancelled death penalty, the society where causes for grave crimes are not still unrooted, sacrifices itself undertaking heavy moral burden of sentence execution. Having some prejudices as for own innocence, it admits fearlessly the punishment denied at the level of global categorical imperative. Criminality in its most outrageous forms and death penalty are moral challenge for everyone. Not only victims suffer but also their later uncovered violators, and the entire society. Everyone has own share in the atonement for the violation of moral legislation.

Life has no absolute value without death. Modern humanism rhetoric, especially in our context where people are still far from practical humanism, turns into deception, and self-interested manipulation of public consciousness. Pseudohumanism immortalizes any society decreasing its moral value. People are inculcated idea of absolute life value on the background of hypertrophic indifference to their needs in material wealth, healthcare, and environmental safety. On the other

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hand, life is connected with the things to which modern consumer society is striving – material welfare; in the abstract sense, it is connected with bodily immortality.

However, the principle of absolute wonder about life in the context of neglecting of science offered by the death is not multivalued morally. Savage crimes and murders as the measure of restraint is the sign of moral imperfection of the society, lack of its spiritual development; though to eliminate such punishment, humanism should be implemented not only rhetorically but also practically. Otherwise, the illusion of total possession of humanism will later demonstrate defects of blindness and intoxication with the hallucination of sentimental kindness which, reverencing for live, forgets the lessons of courage that only death can teach to the society striving for humanism. On the other hand, hypocrisy and self-deception of people in humanism declaration are just obvious. It is seen in total indifference to the sphere of mass culture, especially in movies where humanists and advocates of justice like characters by Schwarzenegger in their plays with death kill in passing hundreds of “bad guys” as if they are only soulless biological robots. Forcing the abolition of death penalty upon “backward countries”, Democratic West transfers the murder into the sphere of mass virtual culture inculcating into public consciousness the feeling of ease in the problem of killing the undesired people.

Objections against the life reverence which, at least in European mentality, is first of all connected with material existence, seems to be blasphemous on the background of that tragic experience of mass extermination that European society has accumulated within its history, especially speaking about the last centuries when it has hurried up to claim its being right-minded and civilized. However, cult of trouble-free life in modern con-

sumer society has become so widespread that only something horrible without any light of hope and sense has been left to the death. From eligible aspect of life, death has been turned out into dangerous antagonist not filled with that legal justification which it should have by the convention of complementarity.

Certainly, death does not matter the fact that it is unvalued for life but human errors influence directly upon the organization of their moral consciousness and ethic practice. For instance, while denying the right of society to pass death penalty on the ground that not a hair will be harmed on a human head without God’s will, criminals are not only acquitted but even presented as the executives of holy justice. Then, according to Divine Disposal, their innocent victims are punished. It seems like people have always wanted to bring holy justice on their side to justify own irresponsibility and outrage.

It is clear that life does not only protect itself; it also extirpates for its own sake. As for a person, human understanding of life cannot be restricted by the preservation of physicality; it is also determined by senses in which physical death plays a vivifying role.

The motto being the guidance for a consumer society is that the sense of life is in the life itself, and here there is nothing more to think about. That is why regardless of death it should be preserved by all the available means. Certainly, the physicality is supported in this context as that is the thing the immortality depends on. Ideology setting such attitude to life and death states that a person is a body. Such pseudohumanistic anthropology hides behind the higher culture being in reality a dangerous strain affecting the society with earthliness. It introduces confuse and delusions into moral motivation of people; at the worst it results in pretended humanism and hypocrisy.

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## МЕТАФІЗИКА СМЕРТНОЇ КАРИ

**Мета.** Дослідити питання про припустимість смертної кари у демократичному суспільстві з метафізичної точки зору. На протипагу переконанню про негуманний і варварський характер судової практики засудження на смерть запропонувати філософську аргументацію за смертний вирок. Сенс даного дослідження не у реабілітації вбивства на базі ні би то застарілого права, а в розкритті внутрішнього діалектичного взаємозв'язку ступенів моральної відповідальності злочинців і суспільства, що породжує злочин. Автор наполягає, що відмова від смертної кари під привидом торжества гуманності – лише ліберальна видимість, благовидне прикриття недоліків морального стану суспільства яке, відмовляючись від своєї частки відповідальності за існуючі беззаконня, не зростає, а навпаки принижується у людській гідності. **Методологія.** Автор використовує метод діалектичної рефлексії, усвідомлюючи єдність, відносність і додатковість добра і зла і прагне визначити продуктивний шлях вирішення суперечності між ними у моральному розвитку суспільства. **Наукова новизна.** Пропонуючи філософський підхід до проблеми припустимості смертної кари, автор не вдається до обговорення ролі страхання, стримування чи жорстокості цієї міри покарання, а також не розглядає питання про її ефективність, чи навпаки. Автор не торкається теми душевних страждань злочинців, що приречені на довічне позбавлення волі з урахування «гуманних» міркувань. Завдання автора показати, що ціль покарання – досягнення справедливості, яка стає моральним випробуванням не тільки для злочинців, але і для всього суспільства. **Висновки.** Злочинність – це насамперед суспільна проблема і тільки кризь призму духовного стану суспільного цілого слід розглядати кримінальну поведінку окремих індивідів. Ставлення до смертної кари це питання духовності та її драматичного ускладнення. Вимога моральності, за переконанням автора, виключає сентиментальне тлумачення людяності і милосердя. Гуманність це імператив, що вимагає особистої і суспільної відповідальності за принижену у жертві і відкинуту у злочинці людську гідність. Злочин не знищується як небезпечна тварина без суду і слідства. У суворому покаранні суспільство за адекватною ціною повертає вбивці людську гідність. З іншого боку суспільство примиряється з брутальною розплатою, до якої воно змушено удаватися, здійснюючи справедливість, оскільки воно само має частку вини у існуючій злочинності.

*Ключові слова:* гуманність; милосердя; справедливість; жертвоприношення; розплата; «метафізична відповідальність»

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**Цель.** Исследовать вопрос о допустимости смертной казни в демократическом обществе с метафизической точки зрения. В противоположность убеждению о негуманном и варварском характере судебной практики приговоренных к смерти предложить философскую аргументацию за смертный приговор. Смысл данного исследования не в реабилитации убийства на базе вроде бы устаревшего права, а в раскрытии внутренней диалектической взаимосвязи степени моральной ответственности преступников и общества, что порождает преступников. Автор настаивает, что отказ от смертной казни под прикрытием торжества гуманности – лишь либеральная видимость, благовидное прикрытие недостатков нравственного состояния общества, которое, отказываясь от своей части ответственности за существующие беззакония, не возрастает, а, наоборот, уменьшается в человеческом достоинстве. **Методология.** Автор использует метод диалектической рефлексии, осознавая единство, относительность и дополнительность добра и зла и стремится определить продуктивный путь решения противоречий между ними в нравственном развитии общества. **Научная новизна.** Предлагаая философский подход к проблеме допустимости смертной казни, автор не прибегает к обсуждению роли устрашения, сдерживания или

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жестокости этой меры наказания, а также не рассматривает вопрос о ее эффективности, или наоборот. Автор не касается темы душевных страданий преступников, что обречены на пожизненное лишение свободы с учетом «гуманных» соображений. Задача автора показать, что цель наказания – достижение справедливости, которая становится нравственным испытанием не только для преступников, но и для всего общества. **Выводы.** Преступность – это в первую очередь общественная проблема и только через призму духовного состояния общества целого следует рассматривать уголовное поведение отдельный индивидов. Отношение к смертной казни – это вопрос духовности и ее драматического осложнения. Требование нравственности, к убеждению автора, включает сентиментальное толкование человечности и милосердия. Гуманность – это императив, который требует личной и общественной ответственности за приниженное в жертве и отброшенное в преступнике человеческое достоинство. Преступник не уничтожается как опасное животное без суда и следствия. В суровом наказании общество по адекватной цене возвращает убийце человеческое достоинство. С другой стороны, общество смиряется с суровой расплатой, к которой оно вынуждено прибегать, осуществляя справедливость, поскольку оно само несет долю вины в существующей преступности.

*Ключевые слова:* гуманность; милосердие; справедливость; жертвоприношение; расплата; «Метафизическая ответственность»

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