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The New Death Penalty

By: Robert S. Morales

The old woman shuffles along, her step faltering as she walks bent and unaided, eyes fearful and dimmed by the ninety-two summers she had witnessed since her birth in 1908.

The powerful men in uniform intimidated her. Their weaponized presence along with the wicked razor wire and guntowers, lent a menacing air to this alien and oppressive environment.

The visiting rooms processing guard had curtly informed her that her wheelchair could not be taken into the institution. CDCR regulations require that all such devices be accompanied by medical documentation. How could she have known this?

The medical attendant who drove her to the prison produced a letter from the Warden. It requested that the bearer be allowed entry as her medical assistant. The request was summarily denied and the guard refused to budge. The wheelchair, he adamantly insisted, lacked the proper documentation, therefore no attendant would be required to assist the old woman — case closed.

Confused by her first visit to a maximum security prison, Helen Alvarez stood alone in the scorching desert heat, "Where am I supposed to go?" she wondered. All the squat gray buildings looked alike. She slowly turned and began her solitary trek towards what she believed was the visiting compound, each hesitant and painful step a testimony of the love she felt for her only son [REDACTED]

An elderly Black woman, also visiting her son found Helen wandering near the prison hospital parched and confused. It had taken her twenty minutes to walk fifty yards in the blistering August heat. This Good Samaritan quietly took the old mothers hand and kindly escorted her to the visiting room. This is where I first noticed her.

A woman I was romantically involved with had arrived two weeks earlier from England. She was staying at a nearby hotel and had been visiting each weekend. Both she and I watched as Helen slowly walked into the visiting room that day. I remember giving a warm hug to the saint who had rescued her from the searing heat. All who were present were visibly moved by the pathos of the situation, all were upset at the institutional cruelty we had witnessed.

The stifling nature of prison is oppressive and toxic to our common humanity, and this toxicity has a seething, pervasive element which does not distinguish between guard and prisoner. Neither emerges unscathed from these badlands of retributive punishment. The guard is as much a victim as Helen, perhaps more so. Helen would eventually recover from this ordeal; [REDACTED] unfortunately the guard had become desensitized to a degree which threatened his humanity. His Faustian bargain with CDCR's lucrative pay and fringe benefits might cost him his soul.

[REDACTED] With a compassion and insight honed by Christian and [REDACTED] and [REDACTED] ethic, I can feel for [REDACTED] 2 [REDACTED] the daily grind of [REDACTED]

With an insight and compassion honed by a Christian and Buddhist ethic, I feel for this one too. I ruminate and wonder: if this can happen to a conscientious public servant — what is happening to the prisoner? What is happening to me? As a society do we have the moral strength to summon up concern for both guard and prisoner?

The harrowing events described here took place over eleven years ago (2004); and sadly, Helen Alvarez (former Secretary to the U.S. Commissioner, and forty years a federal court reporter) would pass shortly after this heartless encounter. While she did get to visit her son Tony, it would be one of their last moments together on earth.

Both Tony and myself were housed on the same sun-baked yard. He is a dear friend close to my heart. What first drew me to Tony was his eerie resemblance to my father, whom I deeply cherished and adored. There was another reason I was drawn to Tony; he was an old man who exuded a gentle, sweet vulnerability that touched my heart. As an older man (ancient by prison standards), he seemed to be in urgent need of a guardian angel.

In all honesty, I also needed someone. I was at a point in my earth-walk journey where I was losing all sense of my own humanity. My spiritual and moral axis as a human being was losing symmetry. Each waking moment of our lives we create an empty space for the future, a space we will one day fill. The space I was creating was more than dysfunctional and I was becoming dehumanized. I desperately needed the warmth of a restorative project to ward off the bone-chilling numbness of my iron-city odyssey. I think I needed Tony as much as he needed me.

Unfortunately for Tony and I, we were serving time in a maximum security stronghold which was saturated in tar heroin. Fierce prison gangs were ruthlessly vying for control of this highly lucrative black-market and the ferocity of sporadic violence was appalling. There were murders; savage knife attacks, racial riots and brutal assaults (often in broad daylight and without concern for the lethally armed guntowers).

We were both sentenced to life terms for non-violent property offenses. This was the sole determining factor in our hapless landing in the middle of an active war zone, our lengthy term mandated that we serve our life sentence in a high-security facility.

Tony was the eldest member of our close-knit community and we could not help but feel fiercely protective towards him. My friendship with Tony would require a constant vigil of his activities for several reasons. One was his inclination to freely give to all who ask, making him a target for free-loading bums and predators. He was also exhibiting the early onset of dementia and this would prove challenging on more than one occasion.

He had a tendency to forget where his cell was located. One time I located him in another cell in an adjacent cellblock, and he appeared quite perplexed at the new decor. These antics, while amusing, proved an endless source of worry for me and I would continually chide him to be more attentive.

Men who cultivate friendships in these often lethal, steel jungles of pain and hardship form iron bonds of solidarity with one another. Brotherhood forged in the fiery crucible of shared adversity is later tempered in lifelong friendship, mutual respect, love and intense loyalty.

There exist dark places in this world where our life connection is tenuous, where the fragility of our next breath is acknowledged in selfless acts of compassion and empathy for those who cross our path, This particular Iron-House was such a place. It was only after the tumult of this five year odyssey did I understand the senseless slaughter of those brave Spartans at Thermopylae. They took a stand and died bravely, not for patriotic ideals, but for the men who stood beside them. I know this now.

The dismal news is that my old friend, Anthony Alexander Alvarez, now eighty three years of age, still continues to languish in a dungeon cell. He was sentenced in 2002 to sixty one years to life. He was sentenced to a slow lingering death for the crime of residential burglary.

How is this possible? Tony is a soft spoken, gentle man who honorably served his country during the Korean war. His heart swells with pride when he recalls his rigorous training as a U.S. Navy Frogman (forerunner to the Navy Seal program). He received an Honorable Discharge in 1955, receiving both a Good Conduct medal and Presidential Unit Citation for his meritorious service.

As a society, when we sentence an old man to death for a property offense (i.e., life sentence), we are in effect demanding a human sacrifice to **right** a **wrong**. This in itself is morally unconscionable, unethical and inhumane.

The cost of this lifelong incarceration is astronomical. One report states that California will accumulate an alarming 19.2 billion in debt over the duration of these three strike terms (California State Auditor, Report.2009-107.2, Summary. May 2010).

As a society we can no longer afford to heed the irrational cant of those truly insane, demon prophets of mass incarceration. We can no longer allow the humanity of poor men, women and children of color to be exchanged as commodities in a profit-driven correctional market (see [www.justicepolicy.org](http://www.justicepolicy.org). Racial Divide, an examination of the impact of California's Three Strike law on African-Americans and Latinos.Oct 2004).

My dear friend Tony is a doddering old man now. To this day he possesses a charming wit and gentle disposition. When we walk together my steps are soft and measured, my heart touched by his halting shuffle. His infectious humor and laughing eyes twinkle when he quips a Henry Youngman one liner. The jokes are corny and he often repeats the same punch line. But as he becomes more and more absent-minded, I laugh as if it were the funniest thing I have ever heard...love for an old friend will do this.

I am far from alone in my affection for this man. Tony has many friends who share the same sentiments as myself. One in particular is a plump, cheeky little fellow with beady eyes and a penchant for mooching. He also lives underground in a cozy burrow and the old man and this character have forged an unusual alliance.

Each morning after breakfast, Tony seats himself near an earthen mound and softly whistles. As if on cue, a tawny, small head pops up from the burrow entrance. The gopher then warily emerges, his fur sleek and polished in the soft amber sunlight. He is grossly overweight, and it takes great effort to shimmy forth from his hole and waddle over to his kind benefactor (now holding a leaf of wilted lettuce).

The old man slowly raises his hand and motions me forward. I remain hesitant and transfixed, and choose to keep my distance. There is another reason I dare not intrude. There is an endearing tenderness to this captivating scene, a reciprocal grace that softly brushes the edge of sacredness. It's as if my presence makes the sanctity of the moment profane, as if I were an intruder on hallowed ground.

The tiny figure rises up on his hind legs, delicately accepts the offering, then settles back upon his fat haunches, softly chortling, nibbling away in contentment. A gnarled and weathered hand (dappled with liver spots) tenderly reaches out to gently stroke the creature (captivated, I quickly glance around, wondering who else is amazed by this unusual scene).

A parade of pedestrians file by in the background. Chief among them are guards, inmates in tattered prison blues, and a medley of male and female staff members. A select few stop to chat with one another. Their gestures are animated and the conversation lively. All seem oblivious to the small, shrunken figure fulfilling the ancient, all-too human need for nurturing life other than one's self. There is metaphor here, albeit a tragic and unwelcome one that I hesitate to entertain.

We go unnoticed because ours is a marginal existence, peripheral; we exist within the edge, yet outside the margin; deep within the black space of their vibrating and pulsating universe, but only as cold and pale lifeless moons.

The gopher retreats back into his burrow, Tony sadly lifts his chin, spies me and his face instantly lights up. "Why hello there, Rodger!", he gushes (my name is Robert). I walk over to the old codger, laughing as I extend a hand to help him up.

As he rises I lean over and gently brush the grass from his oversized pants. We turn to leave and Tony waves at the mound, "Bye now!", he cheerfully exclaims, "I'll see you in the morning!". I imagine a tiny paw thrusting out from the burrow to wave back. The thought brings a smile to my face.

As we walk away, my heart swells with tenderness for this gentle and increasingly frail old man. He is growing more feeble with the turning of the seasons, both in mind and body, but never in heart. Still, I am fearful for my old friend, fearful that he may draw his last breath in this barren and distant place.

But as we walk and share small talk, there is another lingering fear present, one whose presence looms larger as the years come and go. This fear is that his companionship is a life lesson, that his arduous journey is gently nudging aside a trail that I must one day take. The thought chills me to the bone.

On that fateful morning of my arrest I had no intention of committing a crime. It was a reckless decision made as I drove past the blighted apartment complex where the victim of my crime lived. He was a fellow drug-addict who had earlier pilfered some petty cash from the glove compartment of my truck (a paltry \$20.00).

It was the fall of 1998. I drank heavily the night before and was high on heroin and cocaine, obviously not thinking clearly (what was I thinking?). I originally intended to confront this individual and demand the money he had stolen the week before.



I vaguely recall angrily banging on his front door and screaming out his name. When this failed to bring a response, I tried the front doorknob and it easily turned. The house had been carelessly left unlocked, more than likely because it contained nothing of value. It was a dingy, squalid flat where I had experienced numerous drug and alcohol-fueled binges.

I entered the apartment and immediately bundled up a cheap, beat up stereo. There was nothing else of value. In retrospect, I had no business violating what little privacy was available in this wretched place. The breach completed, I nervously left the premises and hurriedly walked over to my truck. As I was opening the door I found myself accosted by a relative of the victim, he had spied me coming out. I was caught flagrante delicto, what was I to do?

I had little choice but to offer a weak apology, mumbling something to the effect that his brother had robbed me earlier. I then sheepishly placed the property on the ground — and ran like hell! The police were summoned and I was arrested at gunpoint a few blocks away. For this offense I was given thirty-five years to life and I have been in the state penitentiary ever since.

My life has dramatically changed for the better since that painful period in my life. I no longer have an insatiable desire to numb myself into oblivion to blunt the trauma of an abusive and tragic childhood. I self-medicated for twenty five long years to escape my past. Since coming to prison I have discovered new coping strategies to overcome those destructive patterns of behavior which continually wrecked my life.


I am presently an Ordained Minister pursuing a Bachelor of Ministry degree. I am also in my third year of seminary study with The Urban Ministry Institute (TUMI), a four year, college level seminary program (GPA.4.0).

In a somewhat painful assessment, the arrest in 1998 probably saved my life, making the crucible of prison both a blessing and an exorcism...

But like Jesus in the Garden of Gethsemane, I am afraid to drink this cup of suffering. The haunting vision of myself becoming skeletal, becoming aged and vulnerable in this iron-city is tormenting. I want this cup of suffering to pass, not only for myself; but for the thousands of men and woman who are similarly situated, who have been given the New Death Penalty for non-violent crimes against property. Authentic justice has to offer more than despair, hopelessness and mindless retribution; it has to honor authentic redemption. How can it be otherwise?

**POSTSCRIPT:** The story of Anthony Alvarez and the author is neither unique nor exceptional. There are thousands of other non-violent offenders who have been left behind in the wake of the Three Strike Reform Act of 2012. A poll taken in July of 2011 shows that 62% of the Californian's favor reducing life sentences for property crime offenders.





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