Premeditation and Responsibility in *The Stranger*

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**INTRODUCTION**

The title of Albert Camus’s 1942 novel *L’Étranger* is usually translated literally as “The Stranger.” However, it is better understood as the “foreigner” or the “outsider”—one who is a stranger to his community and his culture.† The title describes Camus’s narrator and protagonist Meursault. Meursault is the existentialist ideal personified: he moves blithely through life, nearly emotionless, acting on little more than whim and caprice and always selecting what the easiest available path. Camus’s objective is to show how French society—even French-Algerian society—cannot tolerate someone so alien to their ways of life and even their notions of humanity. He turns Meursault into a victim, persecuted and ultimately executed as much for his differentness as for his crimes.

The first half of the novel is Camus’s exploration into Meursault’s character. It opens with the death of Meursault’s mother, whom Meursault had earlier placed in a state-run home for the elderly. Meursault famously does not cry at his mother’s funeral. He shows little emotion at all, treating the event as yet another day in his life, no more or less meaningful than the ones that precede or follow it. The novel’s first half closes with Meursault’s killing of an Arab—identified only as “an Arab”—who had fought and injured Meursault’s friend earlier that same day. Camus portrays the killing as a great deal more emotionally fraught for Meursault than the death of his mother, but in a peculiar way. Meursault is blinded by the sun and oppressed by its heat. The Arab draws his knife, and “[t]he scorching blade slashed at my eyelashes and stabbed at my stinging eyes,” though Meursault is only describing the light glinting off of the blade.² The Arab is still many steps away. Then, as the sky seems to “split open from one end to the other to rain down fire,” Meursault points his gun at the Arab and pulls the trigger.³

The second half of the novel describes Meursault’s trial and eventual execution. The trial is Camus’s vehicle for demonstrating French intolerance.

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³ Id.
for Meursault’s way of being. The centerpiece of the trial is not Meursault’s 
shooting of the Arab, its apparently unprovoked nature, or even Meursault’s 
inability to justify his actions or even account for them. Rather, the trial 
focuses on Meursault’s failure to show emotion at his mother’s funeral. This, 
more than the senseless killing, funnels the outrage of the judge, jury, and 
vengeful prosecutor toward Meursault. Meursault is eventually convicted 
largely based upon testimony concerning this failure to cry and a variety of 
similar personal episodes. The prosecutor alleges that Meursault’s conduct— 
at his mother’s funeral and afterwards—demonstrates his cold, unfeeling 
heart. But his behavior is simply Camus’s existentialist ideal sprung to life.

In his portrayal of Meursault’s trial and execution, Camus’s objective 
is to depict Meursault’s expurgation from French-Algerian society on the 
basis of his otherness. For the French, that someone might not cry at his 
mother’s funeral is so incomprehensible, and so repugnant, that the individual 
must be banished (or worse). Camus thus builds the trial around evidence of 
Meursault’s status as an outsider and rests Meursault’s conviction on that 
evidence. The reader, having been privy to Meursault’s inner thoughts 
throughout the novel, is meant to understand the injustice and the 
outrageousness of Meursault’s conviction on the basis of these facts.4 As the 
reader understands (but the judge and jury do not), Meursault’s failure to cry 
at his mother’s funeral and the killing of the Arab are evidence of his general 
indifference, not his depravity.

Accordingly, most scholarly commentary has focused on the funeral 
and the emphasis placed upon Meursault’s lack of emotion at his trial.5 
Scholars have pointed to the use of those facts at trial as the apotheosis of 
French rejection of Meursault’s otherness. They have documented the 
unfairness perpetrated against Meursault and the injustice of his conviction.6 
Judge Richard Posner has written that the facts about Meursault’s mother’s 
trial would never have been allowed into evidence had his trial been held in 
the United States.7 (Interestingly, such evidence might well have been 
admissible in a French court of the time, where testimony as to the 
defendant’s “character and morals” was permitted.8) Nonetheless, as Posner 
notes, Camus’s point is not so much to criticize French criminal procedure as 
to attack the society that has judged Meursault’s attitude as unacceptable.9

(“[H]ad Meursault gotten even an impossible five years in prison instead of the guillotine, 
can anyone seriously believe that this slim book would have had a second printing?”).
5 See, e.g., Richard A. Posner, Law and Literature 42 (1998); René Girard, 
Camus’s Stranger Retried, 79 PMLA 519 (1964).
6 See, e.g., Louis Hudon, The Stranger and the Critics, 25 Yale French Studies 59, 61 
(1960).
8 Id.
9 Id. at 43.
Meursault’s lack of emotion at his mother’s death is the touchstone for Camus’s message, and thus for the critical response to the novel.

Yet it is not enough that Meursault be convicted on spurious and irrelevant facts. If Meursault is in fact guilty of murder, and if death is the appropriate penalty, then Camus’s depiction loses much of its force. The judge, jury, and prosecutor would have arrived at the right result, if only for the wrong reason. What reader would have followed Camus down the path he hoped to tread? Humans have a well-known tendency to trust and seek out evidence that confirms the outcomes that they believe to be correct. This confirmation bias would have made it difficult for Camus to maintain, with any force, that the (correct) prosecution of Meursault—even for the wrong reasons—demonstrates the antipathy of French society. It is thus necessary for Camus to demonstrate that Meursault should not have been convicted of such a serious crime and executed, and that he would not have been convicted had it not been for the irrelevant evidence from his mother’s funeral. Indeed, the verdict of death must come as something of a shock, a final betrayal of Meursault’s humanity, for it to have the desired effect. To some degree Camus he is successful; the casual reader may feel great sympathy for Meursault and view him as mistreated to an uncommon degree. But close scrutiny of the circumstances of Meursault’s crime, and the law that governs it, compel a different conclusion.

I. PERCEPTIONS OF GUILT

The tip of the spear in Camus’s effort to convince the reader of the trial’s injustice are Meursault’s lawyer and his girlfriend Marie. The lawyer, who plays a central (if often silent) role in Meursault’s life for the second half of the novel, is Camus’s primary vehicle. We are introduced to Meursault’s lawyer almost immediately following Meursault’s arrest, just a few pages into Part II of the novel. The initial portrait of the lawyer—who is never named, only referred to as “a lawyer”—is relatively positive and bespeaks confidence. The no-nonsense lawyer has already reviewed Meursault’s file and recognizes that the case is not straightforward.10 He immediately grasps the significance of Meursault’s mother’s funeral and inquires as to whether Meursault “had felt any sadness that day.”11 This is the first explicit indication that Meursault’s behavior at the funeral will play a central role in his trial. By allowing Meursault’s lawyer to deliver this news—rather than having the prosecutor blindside the defense—Camus instills within the reader a sense of confidence that the lawyer is competent and able.

10 CAMUS (Ward trans.), at 64 (“My case was a tricky one, but he had no doubts we’d win, if I trusted him.”).
11 CAMUS (Ward trans.), at 65.
At the same time, Camus suggests that the lawyer finds Meursault’s attitude distasteful, much as the judge, prosecutors, and jurors soon will. After Meursault denies that he “held back [his] natural feelings” in not crying at his mother’s funeral, the lawyer gives him “a strange look, as if he found me slightly disgusting.” He then warns Meursault that “things could get very nasty” when this story is revealed at trial. The lawyer then fails to appear at Meursault’s interview with the examining magistrate later that day “due to unforeseen circumstances,” as the magistrate reports. One cannot help but wonder if the lawyer’s disgust for Meursault has caused him to distance himself from Meursault and the case, or whether this is merely the well-worn (perhaps even in Algeria?) policeman’s trick of informing the suspect that his lawyer hasn’t yet arrived in order to prolong the questioning outside of the presence of counsel. If so, the tactic is successful as Meursault reveals several self-incriminating details at this interview. In any event, what is clear is that the lawyer has no particular interest in sheltering Meursault from the truth of his actions or the likely consequences.

Yet once the trial begins, Meursault’s attorney is all optimism. In the midst of witness testimony that appears damaging to Meursault, his lawyer tells him that “everything is working out for the best.” After closing arguments, the lawyer thinks that he will be sentenced to at most a few years of prison or hard labor. By this point the reader may have come to doubt the defense attorney’s ability, as the prosecutor lets fly one rhetorical salvo after another against Meursault and seems to encounter only feeble resistance from the lawyer. But Camus continues to reassure the reader that the lawyer is actually performing well. Following the closing argument, explains Meursault, “his colleagues came over to shake his hand. I heard: ‘That was brilliant!’ One of them even appealed to me as a witness. ‘Wasn’t it?’ he said.”

Camus also enlists Meursault’s girlfriend Marie in an effort to suggest that Meursault is unlikely to be convicted of a serious crime. During her one and only visit to Meursault in prison, she twice proclaims that he is likely to be acquitted. Marie is not a lawyer, and these remarks must be understood in context as the hopeful exhortations of someone trying to raise the defendant’s spirits. Nonetheless, they come before the prosecutor has made his case, and even before Meursault has appeared to be in any grave jeopardy. It is only natural, then, for Marie’s words to boost the spirits of any concerned readers, just as they were meant to improve Meursault’s.

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12 Id.
13 Id.
14 Id. at 91.
15 Id. at 106.
16 Id. at 105.
17 Id. at 75.
II. MEURSAULT’S CONVICTION

That is the picture that Camus endeavors to paint. But what of the law behind Meursault’s actions? From the French conquest in 1848 until Algerian independence in 1962, France administered Algeria as a French département, a status above mere colony. As such, French law applied in Algeria just as it did in France. The relevant French criminal law was the Code Pénal of 1810, which was not substantially amended until 1959, well after L’Etranger was published.

In order for Meursault to have been put to death, he must have been convicted not merely of murder but of assassinat—assassination. Murder under the French Penal code was defined as a “willful” killing, by which the French meant that it must be intentional. However, murder could only be punished with death when it was “preceded, accompanied, or followed any other crime or delict.” (This is much like an American felony murder statute, which typically turns ordinary murder—or less—into first degree murder that in many states is punishable by death.) Absent such an aggravating factor, murder was punishable at most by “perpetual hard labour”—that is, life imprisonment. Meursault’s homicide was not accompanied by any other crime, and so his sentence cannot be based upon a conviction for “only” murder.

Rather, Meursault was found guilty of assassination. The prosecutor suggests several times that Meursault acted with premeditation, though Camus does not explicate this point. The French defined assassination as a murder “committed with premeditation, or with lying in wait,” and assassination was punishable under all circumstances by death. On its face, the French penal code provides no flexibility in sentencing a criminal convicted of assassination. The code states that anyone found guilty of assassination “shall be punished with death” and provides an exception only in special instances not relevant to Meursault. In practice, however, judges retained discretion to lessen a criminal’s sentence where there existed mitigating circumstances. The code does not define the types of mitigating circumstances that a judge may take into account, but one treatise writer

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18 http://www.nyulawglobal.org/globalex/algeria.htm
19 FRENCH PENAL CODE, BOOK THE THIRD, Title II, Chapter I, § 295 (1810).
20 PENAL CODE § 304.
21 Id.
22 CAMUS (Ward trans.), at 99.
23 PENAL CODE § 296.
24 PENAL CODE § 302.
25 Id.
suggests that a defense attorney should raise the repentance of her client, his illnesses, his brilliant military service, laudatory certifications from his employers (if such exist), and so forth.\textsuperscript{27} If such mitigating factors were present, Meursault’s punishment could conceivably have been reduced by as much as two “degrees”—first, from death to life at hard labor, and second, from life at hard labor to a fixed period of years, possibly as few as five.\textsuperscript{28} Nonetheless, it seems unlikely that Meursault would have been able to take advantage of any opportunity for mitigation. Not a single traditional mitigating factor exists, and even Meursault himself is unable to conjure one. If he is convicted, he is likely facing the maximum penalty.

The fact that Meursault was convicted of assassination helps also to make sense of what might seem to modern audiences a peculiar aspect of the trial. Just before his trial begins, Meursault’s lawyer mentions his case “isn’t the most important case of the session. Right after you, there’s a parricide coming up.”\textsuperscript{29} Similarly, at the conclusion of the trial, the prosecutor mentions in court that the next case on the docket involves “the most monstrous of crimes: the murder of a father.” He then goes on to add that Meursault’s offense “inspired in him a horror nearly greater than that which he felt at the crime of parricide” as a means of impressing upon the judge and jury the heinousness of the crime.\textsuperscript{30} This might strike the modern reader as odd—why is a case of patricide the appropriate comparison? It turns out, however, that under French law \textit{parricide}—the killing of fathers or mothers\textsuperscript{31}—is similarly punishable by death as a type of aggravated murder.\textsuperscript{32} A French reader in 1942 would undoubtedly have understood parricide as a particularly odious crime, and its repeated invocation in connection with Meursault’s own trial is meant to suggest the perceived gravity of Meursault’s offense.

### III. Defense and Excuse

The extreme nature of Meursault’s crime, coupled with what would seem to be his more limited moral responsibility, is the foundation upon which Camus builds his case. The question that Camus never confronts directly, but addresses only in passing, is the crime for which Meursault should properly been convicted, had his trial been a fair one confined only to the facts relevant to the criminal act. There are a number of possibilities of varying degrees of plausibility.

\textsuperscript{27} \textit{Id.} at 309.
\textsuperscript{28} \textit{Id.} at 309-10; Penal Code § 463.
\textsuperscript{29} CAMUS (Ward trans.), at 82.
\textsuperscript{30} CAMUS (Ward trans.), at 101
\textsuperscript{31} PENAL CODE § 299.
\textsuperscript{32} PENAL CODE § 302.
The first possibility, suggested at various points by Marie and Meursault’s lawyer, is that he might have been acquitted entirely on the ground that he was acting in self-defense. The Arab had all too recently slashed Meursault’s friend Raymond open with a knife, and before the shooting he drew his knife again and held it (perhaps menacingly) towards Meursault.

But self-defense was no real option. At the time of the killing, the Arab is nearly lying on his back, having only “sat up a little” from a prone position. Even drawing his knife does not cause the Arab to stand up. Meursault is also quite a distance from the Arab. The encounter begins with Meursault approximately 10 meters away, and he only advances a few paces before he pulls the trigger. In essentially every jurisdiction in the world, much more is required before a defendant can argue that he acted in self defense. For instance, the Model Penal Code, which has been very influential among American jurisdictions, states that an individual may not use deadly force in self-defense “unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnaping or sexual intercourse compelled by force or threat.” That necessity must also be “immediate[,]” and the defendant must not have “provoked the use of force against himself.”

French law of 1942 was largely in accord. Before a right to self-defense could exist, the threat must be severe, unjust, and irreparable, such that the defendant’s actions were driven by necessity. The harm must be immediate. Thus, before an accused individual (whether in France or elsewhere) may claim the protections of self-defense, he must satisfy a litany of stringent requirements.

Meursault meets none of these conditions. He is not in serious danger, to say nothing of “immediate” danger. The Arab has not even stood up, much less moved to attack him. And it is Meursault who has happened upon the Arab and is advancing toward him, not the other way around. If anyone has provoked the confrontation, it is Meursault. There have been jurisdictions in which a subjective fear of bodily harm, even one that is objectively unreasonable, can form the basis for a valid claim of self defense.

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33 Penal Code § 328.
34 CAMUS (Ward trans.), at 58.
35 CAMUS (Ward trans.), at 59.
36 CAMUS (Ward trans.), at 58.
37 CAMUS (Ward trans.), at 58-59.
38 Model Penal Code (MPC) § 3.04(2)(b).
39 MPC § 3.04(1).
40 MPC § 3.04(2)(b)(ii).
41 GARRAUD, at 211-12.
42 Id. at 216.
But here the reader, in a privileged position of omniscience, knows that Meursault does not fear for his life. Nor would there be any reason for a judge or jury to believe that he did.

The Model Penal Code contains a further limitation on the use of deadly force: that the individual whose life or health is threatened cannot “avoid the necessity of using such force with complete safety by retreating.”43 This “duty to retreat” is now a minority position among American jurisdictions. But it was the law in France in 1942: a criminal defendant could not claim that he had acted in self defense if he could have escaped the danger by means other than violence.44 There can be little doubt that Meursault could have retreated from the prone Arab rather than shooting him, had he so chosen. This is yet another insuperable barrier to any claim of self defense that Meursault might offer.

In the absence of a claim to self defense, Meursault might have attempted to argue that his murder of the Arab was provoked and therefore “excusable.”45 The French use the term in much the same way it is employed in American criminal law, though the usage is contrary both to colloquial English and French. Under the law of provocation, “excusable” means that an offense is mitigated due to the circumstances under which it was committed, though not entirely forgiven. A claim of excuse by virtue of provocation can never be a complete defense, only an argument that the defendant should be convicted of a lesser crime.

Under French law, murder was excusable if it has been “provoked by blows, or grievous personal violence.”46 Perhaps Meursault could claim that he was provoked to kill by the Arab’s earlier assault on his friend Raymond, an assault that left Raymond bloodied and in need of medical attention.

In his closing arguments Meursault’s lawyer seems to argue for precisely this result. He pleads first that Meursault is guilty, but “with an explanation,” by which he means that the crime is excusable.47 (The original text reads: “L’avocat levait les bras et plaidait coupable, mais avec excuses.”48) The prosecutor responds by arguing that Meursault is guilty with no explanation. Later, in the same closing argument, Meursault’s attorney argues again that the jury should find that there had been “extenuating circumstances.”49 This would be a potentially significant defense for Meursault were it available. The penalty for murder, or even

43 MPC § 3.04(2)(b)(ii)(A).
44 Id.
45 Penal Code § 321.
46 Penal Code § 321.
47 CAMUS (Ward trans.), at 98
49 CAMUS (Ward trans.), at 105.
assassination, if excused is only one to five years in prison, a far cry from the life of hard labor (or death) that Meursault would otherwise face.\(^{50}\)

There is an interesting threshold question as to whether a defense of provocation is available in a case of premeditated murder. Most American jurisdictions will allow a defendant to mitigate even premeditated murder down to manslaughter if the defendant can demonstrate that he was provoked. But French commentators have recognized the inherent contradiction between a provoked killing (unthinking and irrational) and premeditation (deliberate and contemplated). Two separate treatises conclude that it would be internally inconsistent for a jury to convict a defendant of premeditated murder but excuse it for provocation. They argue that such a verdict should, as a matter of logic, be annulled by the presiding judge.\(^{51}\) One of the two treatises notes, however, that noted that the Court of Cassation, France’s highest criminal appeals court, had in fact arrived at the opposite ruling.\(^{52}\) The Court of Cassation’s ruling is consistent with the language of the French Penal Code if not the logic of the law. Assassination is a type of murder,\(^{53}\) and murder can be excused if provoked.\(^{54}\) The Penal Code also states explicitly that parricide is never excusable but says nothing about premeditated murder.\(^{55}\) So it would seem as though Meursault could surmount at least this initial hurdle.

Yet Meursault is nearly as far from being able to demonstrate that he was provoked as he is from demonstrating that he acted in self defense. First, the fact of the matter is that he was not provoked, in the sense that his actions were not driven by any heightened emotional response to the assault that had earlier taken place. Meursault goes walking on the beach and eventually finds the Arab with the same attitude of disengagement that pervades all of his other activities. Before he begins the walk, he thinks to himself, “To stay or to go, it amounted to the same thing.”\(^{56}\) When he eventually experiences some emotional upheaval, it is due to the heat and the blazing sun, not the Arab and certainly not the earlier combat. Before Meursault even encounters the Arab, he is nearly overwhelmed by the heat:

All that heat was pressing down on me and making it hard for me to go on. And every time I felt a blast of its hot breath strike my face, I gritted my teeth, clenched my fists in my trouser pockets, and strained

\(^{50}\) Penal Code § 326.

\(^{51}\) R. Garraud, Précis de Droit Criminel 326 (Librairie de la Société du Recueil Générale de Lois et des Arrêts 18ème éd. 1903); Merle, at 302.

\(^{52}\) Merle, at 302 (citing Crim. 6 août 1898, D. (P.), 99.1.95; Crim. 12 juill. 1907, D. (P.), 1909.1.279.).

\(^{53}\) Penal Code § 296.

\(^{54}\) Penal Code § 321.

\(^{55}\) Penal Code § 323.

\(^{56}\) Camus (Ward trans.), at 57.
every nerve in order to overcome the sun and the thick drunkenness it was spilling over me.\textsuperscript{57}

Criminal juries are rarely privy to a killer’s true thoughts in the moments before a homicide, and so the reader here finds himself in a privileged position. But if the question is whether a conviction for excusable homicide would be the “correct” result of Meursault’s trial, the unequivocal answer is that it would not.

Could Meursault’s attorney nonetheless have made out a plausible case for provocation? Such a defense runs immediately into a number of hurdles. The first is none of Meursault’s conduct before or after the killing would support a claim that he was provoked or excited. An argument for provocation would likely be stillborn. Moreover, Meursault would have great difficulty in satisfying several of the other elements typically required to make out a claim of mitigation by provocation. Many—though not all—criminal jurisdictions do not permit a defendant to argue that he was provoked if “cooling time” has elapsed between the provoking incident and the crime. The theory behind a standard provocation defense is that the situation (and possibly the victim), not just the defendant, bear some responsibility for the crime. That is, in some cases it may be that even a “reasonable” person would lose his temper and commit a violent act. If an otherwise reasonable person might behave in such a fashion, then perhaps the defendant should not be punished as harshly as someone who transgresses all boundaries of reasonable behavior. Yet if cooling time has passed and the defendant still has not been able to calm himself, this is an indication that the resultant crime is less attributable to the context and more attributable to the defendant himself.\textsuperscript{58}

Like the law in most American jurisdictions, French law of 1942 required that the provocation and the crime that followed it be proximate in time for the crime to be excused.\textsuperscript{59} If there were an opportunity for the criminal to reflect upon his actions, that reflection would exacerbate the crime rather than excusing it. In addition, in most American jurisdictions the question of cooling time is judged entirely objectively, rather than subjectively. That is, it does not matter whether the defendant \textit{actually} reflected or cooled. It matters only that sufficient time passed to have made

\begin{itemize}
    \item \textsuperscript{57} \textit{Id.}
    \item \textsuperscript{58} To be clear, the law of provocation, including the requirement that there be no cooling time, has received withering criticism on a number of different grounds. I do not meant here to endorse existing doctrine, only to describe it.
    \item \textsuperscript{59} \textsc{Garraud}, at 326.
\end{itemize}
such cooling possible.\textsuperscript{60} The French penal code followed the same rule, focusing specifically upon the time interval between provocation and crime.\textsuperscript{61}

Here, there can be no doubt that abundant cooling time existed. After the initial confrontation between Meursault’s friends and the Arabs, Meursault has time to accompany his friend home, attend to him, and then head back to the beach for another walk. Courts have regularly viewed even a much shorter passage of time as an adequate cooling period.

In addition, many jurisdictions would bar Meursault from offering a provocation defense because it was his friend who initiated the combat that underlies the claim.\textsuperscript{62} Again, the theory that underlies the mitigation of a crime because of provocation is that the situation or the victim is in part to blame. It is difficult to hold the Arabs responsible for Meursault’s crime when they were attacked and acted in self defense. Similarly, one cannot attribute some of the moral responsibility to the situation in which Meursault found himself when that situation was created by the individuals with whose injuries are the source of the alleged provocation.

Finally, it is generally believed that an individual should not be able to claim that he was provoked by blows or violence against anyone else. Typically, jurisdictions restrict the defense of provocation to blows or violence against the defendant himself, or against the defendant’s family and loved ones. It is unclear if Meursault has any remaining family or any loved ones at all; indeed, that is part of his problem. Regardless, no one involved in the combat with the Arabs could conceivably qualify. Meursault’s closest friend (and I use that term advisedly) among the individuals involved is Raymond. He is merely a casual friend of Meursault’s not someone with whom Meursault has any type of close connection. (Again, it is unclear whether any such person exists.)

Surprisingly, the French law of 1942 appears to be much more lenient on this score than American law. The Penal Code states that murder is excusable if provoked by violence “envers les personnes”—literally, toward one or more persons. This indicates that the violence need not be directed at the individual who commits the murder or anyone close (in relational terms). One commentator notes that the law does not demand that the violence has been against the accused. The excuse might exist either if the perpetrator of the crime or the offense has himself been attacked, or if the violence has been

\textsuperscript{60} See United States v. Bordeaux, 980 F.2d 534 (8th Cir. 1992); Kadish et al., supra note, at 450-51.

\textsuperscript{61} Garraud, supra note, at 326.

\textsuperscript{62} See, e.g., Or. Rev. Stat. § 163.135(1) (prohibiting a defendant from offering a provocation defense when the provocation stems originally from a criminal act on the defendant’s part).
exercised against his relatives or against third persons who are unknown to him.63

It suffices that the provoking blows be delivered against people. In a bizarre act of completeness, French scholars have noted that violence against property or domestic animals is not adequate.64

For an existentialist there must be a certain justice in this result. It is central to Meursault’s personality—and Camus’s notion of existentialism—that he would lack the type of close connections necessary to give rise to a claim for provocation in American jurisdictions. French law is notably more solicitous. Yet this is true only with respect for the need for personal connection. The emotional response necessary to make out a defense of provocation is equally foreign to the existentialist archetype. Camus must believe that by privileging emotion and anger the law does not deal fairly with individuals such as Meursault. And indeed there is some force to that objection. But it can provide no succor to Meursault, given the many hurdles he faces in mounting a provocation defense.

IV. PREMEDITATION AND RESPONSIBILITY

For Meursault this leaves only two possible options: conviction for murder or for assassination by premeditation. Regardless of the eventual outcome, Meursault is facing an extremely stiff penalty—death or a life of hard labor. Already this casts Meursault’s trial and conviction in a very different light. Had his mother’s funeral never been made part of the discussion, Meursault would nonetheless have been convicted of an extremely serious crime.65 The remaining question is which of those very serious crimes it would have been.

The standard for premeditation has varied from jurisdiction to jurisdiction over time, with some jurisdictions adopting positions notable in their outlandishness. For a time the state of Pennsylvania held that “no time

63 2 R. GARRAUD, TRAITÉ THÉORIQUE ET PRATIQUE DU DROIT PÉNAL FRANÇAIS 740-41 (Librairie de Recueil Sirey 3ème éd. 1914).
64 Id.
65 There is some suggestion in The Stranger that Meursault would escape serious punishment because he is a Frenchman living in Algeria and he has killed an Arab, a person of lower status. As a descriptive matter this is certainly possible; the French were notorious for their poor treatment of the indigenous Arab population of Algeria, particularly in comparison to persons of European descent. See Robert R. Brock, MEURSAULT THE STRAW MAN, 25 STUDIES IN THE NOVEL 92, 96 (1993). But if this is Camus’s point, it is a peculiar one. He is unlikely to garner much sympathy—either from modern audiences or from contemporary French ones—by arguing that Meursault should have been treated more leniently because he killed “only” an Arab. If his claim is that French society should tolerate the existentialist ideal, it is especially unconvincing to argue that this tolerance should be manifest through continued institutionalized racism.
is too short” for a defendant to premeditate a murder. An appeals court in Alabama expressed the same approach more colorfully, holding that “[p]remeditation and deliberation may be formed while the killer is ‘pressing the trigger that fired the fatal shot.’” However, most jurisdictions have recognized that such a stance would risk collapsing the distinction between premeditation and intentional but unpremeditated murder entirely. Under the majority of criminal legal systems, a killer must have “considered and weighed his decision to kill” if the government is to establish that he acted with premeditation.

French law accords with this general consensus. Section 297 of the French Code Pénal specifies that “[p]remeditation consists in a design formed, before the action, of attacking the person of any particular individual.”

What then of Meursault? If one adopts an internal perspective, it is clear that he did not premeditate the killing. When he heads back for his fateful walk along the beach, he does so for no particular reason at all: “To stay, or to make a move—it came to much the same. After a moment I returned to the beach, and started walking.” He does not form the intention to shoot the Arab until the instant before he pulls the trigger. Indeed, it would be wholly inconsistent with his entire personality and state of being to have “considered and weighed” his decision to kill. An existentialist does not premeditate! If Meursault is a reliable narrator, then he cannot be guilty of premeditated murder.

Let us suppose that we do not have the advantage of bearing witness to Meursault’s innermost thoughts and consider what evidence might have been adduced against him at trial. Because it is generally impossible, outside of the literary context, to know the defendant’s state of mind directly, courts have identified particular types of evidence that are especially probative of premeditation. In People v. Anderson, an influential California case, the California Court of Appeals classified relevant evidence into three categories:

(1) facts regarding the defendant’s behavior prior to the killing which might indicate a design to take life (“planning activity”); (2) facts

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66 Commonwealth v. Carroll, 412 Pa. 525 (1963); see also State v. Berhanu, 724 N.W.2d 181, 186 (S.D. 2006) (adopting the same approach).
69 PENAL CODE § 297 (emphasis added).
71 See René Girard, Camus’s Stranger Retried, in ALBERT CAMUS 84 (Harold Bloom ed. 1989) (“How could Meursault premeditate murder, since he cannot premeditate a successful career in Paris or marriage with his mistress?”).
about the defendant’s prior relationship with the victim which might indicate a reason to kill (“motive”); and (3) evidence that “the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a ‘preconceived design’.”

As others including Richard Posner have written, there is a great deal of evidence introduced at Meursault’s trial that is irrelevant to his guilt and would never have been permitted in an American trial. Chief among this evidence is Meursault’s failure to cry at his mother’s trial, but there is also the fact that he is not Christian and does not believe in god, as well as his affair with Marie, which began the day after he buried his mother.

Yet there is also significant evidence that bears directly on the question of whether Meursault premeditated the killing. Richard Posner focuses on the fact that Meursault fired once at the Arab and then, after a pause, fired four more shots. Posner states that “those four shots fired after a pause are highly indicative of premeditation.” Posner’s view is perhaps influenced by the examining magistrate in Meursault’s trial, who latches onto the same fact. In the course of their second conversation, the magistrate repeatedly asks Meursault why he fired four additional times after the first shot seemed to have killed the Arab. “‘But why, why did you go on firing at a prostrate man?’” he demands. And then later, “‘I ask you ‘Why?’ I insist on your telling me.’” Meursault’s conduct is certainly peculiar for an existentialist. Yet it is difficult to see how it could be probative of premeditation as Posner suggests. A killer acting in the heat of passion or upon the spur of the moment might easily squeeze the trigger multiple times, even after the first shot seems to have found its mark. Indeed, continuing to fire “at a prostrate man” is more indicative of Meursault having lost his head than of the cold, calculating behavior associated with premeditation. It should come as no surprise that there are legions of cases in which killers have been convicted of murder—but not premeditated murder—despite firing multiple shots at their victims.

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72 KADISH ET AL., at 435 (citing People v. Anderson, 447 P.2d 942 (Cal. 1968)).
73 POSNER, supra note, at 43.
74 Id.
75 Id.
76 CAMUS (Gilbert trans.), at 84.
77 Perhaps Posner believes that Meursault premeditated the killing between the first shot and the remaining four. But that would have been an extraordinarily short time for Meursault to have formed a design of attacking the Arab. It would also require segmenting “the attack” into a first phase (the first shot) and a second (phase), as French law requires that the defendant have formed a design before beginning the attack. And this is not to mention the fact that the Arab most likely dies after the first shot. By the time Meursault squeezes the trigger a second time, there is no murder to premeditate.
To be sure, Meursault’s multiple shots are evidence that the killing was intentional rather than accidental. But that is not the question.

There is other evidence that is far more probative of premeditation, however. The victim had cut Raymond with a knife just hours earlier, in a fight Meursault witnessed but did not participate in. Raymond and Meursault had then come across the same individual again, just a few minutes before the killing. Raymond had contemplated renewing the combat or simply shooting the Arab. Meursault convinced Raymond not to shoot and then persuaded Raymond to hand him his gun. And these are not chance encounters. The victim is the brother of a girl that Raymond had assaulted several days earlier. A confrontation had been brewing ever since. Thus, there is both planning activity and a prior relationship which might indicate motive. On the basis of these facts alone, there is a plausible case for premeditation.

It is impossible to predict with any certainty whether a properly instructed jury would have convicted Meursault of assassination or merely murder. But the difference is largely immaterial. Meursault is guilty of a very serious crime, one that will carry a protracted jail sentence. Even if his trial had been stripped of all discussion of his mother, and Marie, and his lack of Christian faith, he would still have been destined for life at hard labor. Camus succeeds in convincing the reader of Meursault’s essential innocence—victimhood, even—only by leveraging the reader’s unfamiliarity with French criminal law. Camus deploys Marie and the lawyer to smuggle in the idea that Meursault’s homicide was justifiable or at least excusable. But there is little truth in their words.

Camus’s objective in The Stranger was to demonstrate the fundamental illegitimacy of French intolerance for the existentialist ideal. One can hardly indict an entire philosophical movement on the basis of one murder. And yet here at least it is difficult not to side with the French.

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78 This is contra Hudon, supra, who contends that Meursault’s homicide was accidental. Hudon, at 61. That contention is untenable on the facts.
79 Id. at 71.
80 Id. at 51.