



Capital punishment is the process in which the criminal justice system terminates the life of a guilty party. Though the world is moving towards an abolitionist approach accentuated in the United Nations resolutions and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, capital punishment is still in practice.

Countries which still have the death penalty cite reasons of deterrence, retribution, obtaining justice, closure for the victim and oddly, "rehabilitation". Of course, the death penalty does not rehabilitate the guilty party and return them back to society, but this argument rests on Thomas Aquinas' theory that the guilty party could escape punishment in the afterlife.¹

As empirical evidence has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment, then why is it still implemented?

Religious beliefs can also influence whether a country enforces the death penalty. Iran practices a system of religious law which is a strict interpretation of Sharia law where two main kinds of crimes are punishable by death.

A Culture of Life

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The first is murder and the second *fasad*, meaning to spread mischief or undermine the authority of the state. Though *fasad* has been predominantly used to punish rapists, adulterers and drug mules; parliament has introduced a bill to punish bloggers that encourage corruption, prostitution or conversion from Islam².

In addition, in Iran capital punishment is applicable to homosexual behaviour even if the acts were consensual. Consequently if a rape occurred between two people of the same sex will often go unreported as the death penalty applies to both parties. Hence, there is an issue of miscarriage of justice as the offender gets away with the crime.

Countries with the death penalty will also argue that they have the right to state sovereignty which is enshrined in the UN Charter; "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."³ It is no wonder countries for example Malaysia is concerned with attempts by more powerful member states who question the national laws of the country and the administration of justice under these laws.⁴ Thus there is a clear tension between having to respect local laws, customs and sovereign rights reaffirmed in the United Nations Charter and protecting in the sanctity of life.

The international community has taken important steps to protect those headed toward the death penalty. The safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the

than 18 years of age at the time of the offence, is particularly important as minors might not have the mental capacity to fully comprehend their actions and they are likely to rehabilitate.

These safeguards do not condone the death penalty but recognises that all countries are not going to abolish the death penalty and ensures something is done to respect human rights particularly for the vulnerable.

Problems start to arise as not all countries are transparent in reporting their capital punishment practices. More unsettling, is when the reports do come out about the thirteen year old girl from Somalia who "allowed herself" to be gang raped and was stoned to death in a stadium of a thousand people⁵. Or how in April of this year in Sudan, judicial authority allowed the execution of nine people who were innocent and whose guilty pleas were obtained under torture. Wrongful executions are a serious miscarriage of justice. It is suggested that police have high pressure to clear the books and in turn use their discretion to provide falsified evidence. This is particularly problematical in weak or corrupt countries. Sadly it appears that these practices of unfair trials and cruel executions disproportionately affect the poor, least educated and most vulnerable members of society.

Western countries are also not immune to flaws in the justice system. The United States believes that valuable safeguards are implemented for example, if the punishment was disproportionate to the severity of the underlying offence, it could be challenged under the 8th Amendment

unusual punishment. The United States believes that the death penalty is not a cruel and unusual punishment if it is applied non-arbitrarily and non-discriminatorily, yet racial discrimination blatantly plagues the system. In 2001 a Justice Department report found 75 percent involved minority defendants.⁶ Of this 75 percent, over half were black.⁷ In addition, geographical discrimination exists where the district (either retentionist or abolitionist) in which the trial takes place directly affects the trial's outcome. In addition, most Americans on death row are financially disadvantaged and use public defenders who are arguably less experienced in capital punishment cases.⁸ In saying that, what are the Australian government's obligations to those facing the death penalty overseas? The Australian government has made it clear that they oppose the death penalty and will provide diplomatic representation to those

people, without appearing to be prying in the Nation's internal affairs. Again there is a clear tension as the Australian government cannot protest about individual executions of say, Indonesian citizens in Indonesia¹⁰. However, as a neighbour it can work quietly in encouraging the application of the rule of law and human rights.

To conclude, I echo Cameron Murphy's view that "Capital punishment is not a cultural difference... It is not a right that applies to some human beings but not others simply because of their race, where they happen to live or what crime they have committed." Life is universal and should be respected regardless of cultural norms or religious authority. When States take a life of a human being, it contributes to a societal culture of violence. After all, how can a culture of life be built when it is bound by the paradox of 'righting a wrong' by taking another life?



[1]http://www.bbc.co.uk/ethics/capital_punishment/for_3.shtml

[2]www.bbc.co.uk/religion/religions/islam/islamethics/capitalpunishment.shtml

[3]<http://www.globalpolicy.org/component/content/article/154/26073.html>

[4]http://www.un.int/malaysia/Recent%20Statement/GA_main.htm

[5]www.amnesty.org/en/formedia/press-releases/somalia-girl-was-child-13-20081031

[6]<http://www.deathpenaltyinfo.org/race-and-death-penalty>

[7] "Pervasive Disparities Found in the Federal Death Penalty," "New York Times, Sept. 11, 2000

[8]<http://www.wcl.american.edu/hrbrief/spring98/html/death.html>

[9]<http://www.canberratimes.com.au/news/opinion/editorial/general/apathy-is-not-an-option/1350903.aspx>

[10] *Ibid*