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JUDICIAL PUNISHMENT

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Introduction

In the context of this encyclopedia, judicial punishment refers to physical punishment, including corporal punishment and/or capital punishment. Judicial punishment has long been, and will likely continue to be, a topic of heated debates. The intention here is to give a historical perspective on judicial punishment as it applies to capital punishment, rather than expound one view or another. As part of this historical perspective, this article is an overview of the stance taken by the three Abrahamic faiths: Judaism, Christianity, and Islam. The underlying justification for this approach is that even societies that proclaim themselves secular, or even atheistic, are informed in their conduct and views by their heritage and that of their forebears. An American may not of necessity be a churchgoer to be influenced by Judeo-Christian tradition. Furthermore, in recent years religion has become a major part of the debate, as witnessed by several national and international conferences such as the series *A Call for Reckoning: Religion and the Death Penalty*, sponsored by the Pew Forum on Religion and Public Life.

Judicial Punishment in the Torah and in Contemporary Judaism

The Tanach or Tanakh is the Hebrew acronym for the Jewish Bible. This name is derived from the initial letters of its three main sections: the Torah, Neviim, and Ketuvim. The Protestant Old Testament consists only of the Tanach, although the arrangement is not identical and there are some differences in text. For example, the Old Testament includes some books that have extra paragraphs that do not exist in the Jewish version. The Catholic and Orthodox Old Testaments are more extensive than the Tanach, by six books.

Rabbinical Judaism holds that the books of the Tanach, the written law, were transmitted in parallel with an oral tradition. This came to be known as the “oral law.” They point to the text of the Torah, Pentateuch, or first five books of the Old Testament, where many words are left undefined, and to procedures that are not elaborated on with detailed instructions. The assumption is that the reader should refer to oral sources. Initially, it was forbidden to write this oral law. This restriction was lifted when it became apparent that it was the only way to ensure that the law could be preserved. Rabbi Judah HaNasi reduced oral tradition to written form around 200 CE in what became known as the Mishnah (Repetition). Interestingly, the Mishnah shows a lack of citation of a scriptural basis for its laws. However, the link between Tanach and Mishnah is drawn from the commentaries of rabbis, over the next four centuries, on the Mishnah that were edited together into the compilations known as the Talmud (550 CE). Halakha (Jewish law and custom) is therefore not based on a literal reading of the Tanach, or Revelation, but on the combined oral and written tradition of the rabbis. Jewish law, therefore, developed in its written form 130–480 years after the fall of the Jerusalem Temple at the hands of Rome.

The Torah required the death penalty for at least 37 different transgressions, some religious, and others civil. The first of these is murder: “Whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man (Genesis 9:6).” However, the Talmud argues that the burden of proof was so stringent, including two eyewitnesses, that it was rarely carried out. *Ratsach* (in Hebrew) and *phoneuo* (in Greek) refer to premeditated murder, with the penalty being death (Leviticus 24:17; 24:21; Numbers 35:16; Deuteronomy 17:6).

The Biblical texts of Exodus, Leviticus, Numbers, and Deuteronomy promulgate another 613 laws, and expand the range of crimes punishable by death other than murder.

Religious Grounds

Religious grounds applied to Israelites and non-Israelites and included apostasy (Exodus 22:20; Numbers 25:1–15), a stranger entering the temple (Numbers 1:51; 3:10; 18:7; and 17:13), non-Israelite missionaries (Deuteronomy 13:1–10), communication with the dead through mediums (Leviticus 20:27), and for black magic (Exodus 22:18).

Sexual Grounds

Sexual grounds included adultery, and applied to the two parties (Leviticus 20:10; Deuteronomy 22:22), incest (Leviticus 20:11–17), temple prostitution, possibly pagan homosexual behavior (Leviticus 20:13; Deuteronomy 22:24), bestiality – the sentence applied to both human and beast (Leviticus 20:15; Exodus 22:19), premarital sex, applied only to the woman (Deuteronomy 22:13–21), *ménage à trois* with another woman and one's mother (Deuteronomy 20:14), infidelity to a woman's fiancé (Deuteronomy 22: 23–24), rape of an engaged woman, where the male is punished (Deuteronomy 22:25) (if the victim was single, he is required to marry her and pay a dowry), and for prostitution by a priest's daughter (Leviticus 21:9).

Other Crimes

For killing a male or female slave, no specific punishment is given. However, for kidnapping with the intention of selling someone into slavery, death is the penalty (Exodus 21:16; Deuteronomy 24:7). Sacrificing one's children to a pagan god (Leviticus 20:2–5), cursing or shaming one's parents (Exodus 21:17; Leviticus 20:9), abusing one's parents (Exodus 21:15), deaths caused by one's livestock (Exodus 21:29), where the offending animal is also put to death, blasphemy in the Lord's name (Leviticus 24:16), working on the sabbath (Exodus 35:2), ignoring the judgment of a priest or judge (Deuteronomy 17:12), perjury (Deuteronomy 19:15–21), death of a pregnant woman during an altercation (Exodus 21:22–23), an uncircumcised male (Genesis 17:14), ritual animal sacrifice other than at the temple (Leviticus 17:1–9), gluttony and excessive drinking (Deuteronomy 21:20), and going to temple in an unclean state (Numbers 19:13) could all earn one the death penalty.

Capital punishment according to the Torah could be carried out by burning (Genesis 38:24; Leviticus 20:14; 21:9), stoning (Leviticus 20:2, 27; 24:14; Numbers 14:10; 15: 33–36; Deuteronomy 13:10; 17:5; 22:21, 24), hanging (Genesis 40:22; Deuteronomy 21:22–23), and sword or spear (Exodus 19:13). The convicted could be executed by witnesses

(Deuteronomy 13:9; 17:7) or by the congregation (Numbers 15:35–36; Deuteronomy 13:9), and it was done speedily (Leviticus 10:1–2).

In contrast to the Torah, Rabbinical Judaism relies heavily on Talmudic teaching and has abrogated for itself the right to determine when and how the law of punishment should be implemented. The underlying reason often given for this is the absence of a functioning temple and a standing priesthood to administer the Mosaic law since the fall of the Temple in 68–70 CE at Roman hands. In practice this refers to the absence of Jewish governance and authority since the diaspora, although historical records indicate enclaves of Judaism that applied some form of Mosaic law in the Near East up to the eighth century and in Spain as late as the fourteenth century.

Rabbinical Judaism, not scripture, indicates that the death penalty was only to be used in extremely rare cases. Two witnesses were required to the crime. Furthermore, the witnesses must establish that they verbally warned the person that he/she would be liable for the death penalty, and that the perpetrator had to acknowledge that he/she was warned, but went ahead and committed the sin regardless. However, the individual was not allowed to testify against him/herself. Therefore, the death penalty was effectively legislated out of existence, since meeting the conditions of guilt and conviction were rendered impractical and untenable. This Talmudic opinion is expressed in the Sanhedrin tractate.

Nevertheless, *Halakha* as voiced by orthodox rabbis recognizes the possible need for the death penalty. In the same Sanhedrin tractate, the murderer was to be imprisoned, even if all the rules of evidence were not satisfied, and their death should be hastened through malnutrition. The great Spanish Jewish Rabbi Maimonides further codified this view in the Law of Murderers. Discussing the responsibilities and obligations of the court, Maimonides says: "It is forbidden for the court to take pity on the murderer, for they should not say. 'One has already been killed, what purpose is there in killing this one?' and they will become derelict in their duty to execute him." This suggests that showing compassion to a murderer is in itself cruelty to society for failing to eliminate a potential danger or providing a deterrent.

The Rashba (Rabbi Shlomo Ben Adret, the Rabbi of Spain in the fourteenth century) permitted the handing-over of Jews to non-Jewish authorities, which was generally forbidden, to face the justice of the land if it was to protect the lives of others. The Talmud (Makkot tractate) states that a criminal guilty of a capital crime is put to death, even if he/she repents, since repentance is between the criminal

and God, and not between the criminal and society. This is what distinguishes divine justice (paying the debt to God) from human justice, which is based on past actions where repentance cannot undo what has been done. True repentance of the perpetrator can only be achieved when forgiven by the victim, and the victim cannot forgive in this lifetime.

In contrast, conservative Judaism, as exemplified by the Rabbinical Assembly, argues against the death penalty is based on the fallibility of humanity and replaces the punishment with imprisonment without parole. Those among conservative and reformed Judaism quote the Mishnah, where it says: "A Sanhedrin that executes once in seven years is called murderous." Rabbi Eleazer ben Azaryah pronounces harsher judgment by saying: "once in seventy years," and Rabbis Tarfon and Akibah are even harsher: "Were we in the Sanhedrin, no one would have ever been executed." Rabbi Simon ben Gamliel's retort to this in the same Mishnah, "they too increase shedders of blood in Israel," is ignored.

At a recent conference on religion and the death penalty, D Novak, J Richard, and D Shiff Chair of Jewish Studies at the University of Toronto, summed it up as follows:

Rashba wrote in a response, 'it seems to me that this is for the preservation of society (mequyyam ha'olam), because it bases everything on the laws collected in the Torah, and only does what the Torah prescribes as punishment in these and similar offenses, then society will be destroyed, for we require witnesses and hatra'ah. It is as the rabbis said that Jerusalem was destroyed only because they based their judgment on the law of the Torah'.

This radical interpretation of Rashba is based on two rabbinic precedents. The first is that the Mishnah expresses the principle of the "maintenance of society (tiqqun ha'olam)" as a ground for changing earlier laws, which if allowed to remain unchanged would lead to social breakdown in one way or another. The second precedent is an aggadic passage indicating that at times the needs of society require one to go "beyond the boundaries of the Law (lifnim me-shurat ha-din)." "Now this concept is usually interpreted to mean that a more lenient ruling is called for in place of the strict letter of the law. Rashba, on the other hand, takes the destruction of Jerusalem as a paradigm of the breakdown of society in general, and he attributes this to the fact that the authorities, by sticking to the letter of the law of capital punishment, contributed to the breakdown of law and order. They should have seen the danger to society in such permissiveness and been harsher, which he sees as the spirit of the law. Apparently, laxity in applying the law removed its deterrent intention.

In the USA, Judaism, regardless of its sectarian differences, is fairly united in supporting a moratorium on the death penalty since it does disproportionately target the poor and racial minorities, and in many instances unjustly, through skewed jury selection.

Judicial Punishment in Christianity

Christianity, as reflected in the four canonical gospels, does not bring new laws to the capital punishment debate. Many contemporary Christian denominations claim that Jesus abrogated the support or need for a death penalty when he is reported to have said: "Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: But I say unto you that ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other cheek also" (Matthew 5:38–39). This is apparently an invitation for forgiveness and not an invitation to murder. However, it is also reported that Jesus said: "Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil. For verily I say unto you, Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled. Whosoever therefore shall break one of these least commandments, and shall teach men so, he shall be called the least in the kingdom of heaven: but whosoever shall do and teach them, the same shall be called great in the kingdom of heaven" (Matthew 17–19).

Arguably, in Pauline Christology, it is the death penalty that provides the opportunity for vicarious atonement per Deuteronomy 21:23: "for he that is hanged is accursed of God" as Jesus was convicted by the Sanhedrin for blasphemy. Paul extols this in Galatians 3:13: "Christ has redeemed us from the curse of the law, being made a curse for us: for it is written, Cursed is everyone that hangeth on a tree." Yet it is Paul who in Romans 13:1–7 preaches to his followers that they need to obey the secular rulers since all power comes from God, and since these rulers are in power, therefore, they must be sanctioned by God.

The Church has defended the right of the state to impose capital punishment for certain crimes. In the late second and third centuries, Tertullian and Lactantius, respectively, affirmed that, in the case of murder, divine law consistently required a life for a life. The Council of Ephesus (431 CE) in settling the Nestorian controversy enacted a legal code specifying capital crimes. While Augustine, among others, acknowledged the role of the state in mediating capital sanctions, various councils from the seventh (Elevanth Council of Toledo) to the thirteenth century (Fourth Lateran Council) followed the lead of Leo

the Great (fifth century) in seeking to forbid clerics from engagement in matters of capital justice, but to leave it to the temporal authorities. In general, the Church recognized capital punishment. This is bolstered by the opinion of theologians such as Thomas Aquinas who wrote: "The common good is better than the good of the individual . . . The life of certain pestilent fellows is a hindrance to the common good, that is, to the concord of human society. Such persons therefore are to be withdrawn by death from the society of men." In point of fact, when the Church was the secular state, for all intents and purposes, making or unmaking kings, it often labeled dissenters as heretics or apostates and used its power in the temporal world to exterminate groups such as the Cathars and even its once-beloved Knights Templar. It also extended to the literal "witch hunts" which were mirrored in Protestant Puritan New England of the American colonies.

The Protestant Reformation also endorsed the death penalty. The Schleithem Confession (1527) and Lutheran Formula of Concord (1580) are but two examples. Protestantism is where much of contemporary opposition to capital punishment originates. Penal excesses did result in opposition during the age of Enlightenment. This included figures such as Benjamin Franklin, Thomas Paine, Voltaire, and Jean Jacques Rousseau. However, this was secular humanist opposition, and not religious. Even in the American Constitution, it is argued that when the Eighth Amendment was enacted in 1791, the death penalty in America was already in place, and so could not be considered "unusual." Therefore, this Amendment on "cruel and unusual punishment" is not intended to apply to capital punishment *per se*.

In addressing Italian Catholic jurists in 1952, Pope Pius XII reaffirmed the Church's historic recognition of retribution and therapeutic penology, noting that: "the state does not dispose of the individual's right to live. Rather, it is reserved to the public authority to deprive the criminal of the benefit of life, when already, by his crime, he has deprived himself of the right to live." Referring to Romans 13:4, the Pontiff also noted "in conformity with what sources of revelation and traditional doctrine teach regarding the coercive power of legitimate human authority."

Recently, the current Pontiff, John Paul II, while not excluding the death penalty in *Evangelium Vitae* (1995), restricted it to unusual extreme cases, and advised that bloodless means were always to be preferred if they could sufficiently protect society against the criminal. In accordance with these statements, the Catholic Catechism was revised. Many Catholics, including prominent bishops, face the dilemma of

reconciling this new stand with their adherence to the traditions of the early Church fathers. The argument is made that this declaration is in response to the use of the death penalty that is often disproportionate in the populations that are targeted or to the crime that is being punished.

Judicial Punishment in Sharii'ah and Islam

Islam draws its laws from the Quran, for the Muslim the verbatim Word of God, and the *Sunnah*, the authenticated sayings (*Hadith*) or actions of the Messenger Mohammed. The authority of these sources is dealt with in Sharii'ah Law in this encyclopedia. Because these sources of Sharii'ah are also the vehicle of worship in Islam, all Muslims are aware of the consequences of their actions. Ignorance cannot be claimed. The purpose of Sharii'ah is to preserve life, family, society, belief, and intellect. Those crimes subject to judicial punishment are, therefore, those that tear at the fabric of the sanctity of life, family, society, belief, and intellect.

Islam sees itself as a continuation of the revelations received by Moses, the Israelite prophets, and Jesus. As such, in matters of judicial punishment it combines the strictness of the Torah with the compassion of the Gospel. The Quran, the Muslim scripture, states: "And We ordained therein [in the Torah] for them: 'Life for life, eye for eye, nose for nose, tooth for tooth, and wounds for equal wounds.' But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whoever does not judge by that which God has revealed, such are the wrong doers" (Quran 5:45).

Judicial punishment in Islam falls under a category known as Haddud (plural of Hadd), meaning limits. The author of these limits and the punishments for transgression are the realm of God alone. Haddud crimes are not exclusively crimes that involve capital punishment, but may include instances of corporal punishment or exile. Those crimes carrying a penalty of death include murder, adultery (by married individuals), and open rebellion against the Muslim community (a meaning not communicated by the word apostasy). This latter case refers to open incitement against the Islamic community. It is equated with treason, since Islam does not recognize a dichotomy of sacred and secular in a nation where Muslims are in the majority. Other Haddud crimes, not carrying the death penalty, are slandering women, theft, robbery, and public intoxication. Here we deal with the death penalty in the case of murder and punishment in the case of theft, since these are often what grab the headlines in the international media. It is important to make a distinction that what will be

outlined here is what Islamic doctrine, as per its sources, teaches, and not what states defined internationally as Islamic do. Much of the laws found in these countries are derived from Napoleonic law and not Sharii'ah.

The standard of proof in Hadd crimes is quite stringent (known in Arabic as Taghleedh). The Islamic judge cannot enforce the prescribed Hadd punishment unless the person gives an uncoerced confession, or if there are sufficient witnesses to the crime. Often the witnesses are the subject of great scrutiny to determine impartiality and soundness of reputation. In point of fact, a person who slanders a woman as to her moral conduct, without providing four other witnesses to that conduct, is himself punished, and his testimony is never accepted again (Quran 24:4). In an Islamic court there is no such concept as plea-bargaining or immunity for testimony. For most Hadd crimes two witnesses are required, and in the case of adultery, four (this is an example of Taghleedh, suggesting that repentance is better than confession and punishment). Furthermore, it is incumbent on the judge to seek higher proof of the crime as to motive, particularly in capital offenses.

Premeditated or Intentional Murder

Murder is the ultimate crime since it is a denial of life, which is the sole property of God: "And do not kill the soul which God has forbidden, except in justice. If one is killed wrongfully [premeditated], We have given their heir authority, but he is not to seek excess. He will surely find a champion [in the Law]" (Quran 17:33). The meaning of "We have given their heir authority" is elaborated on in what is known as Qesas (law of equity in punishment): "O you who believe! Al-Qesas has been ordained for you in the case of murder: the free for the free; the servant for the servant, the female for the female [this heralds back to the Mosaic code]. But if the killer is forgiven by the brother [family of the victim] and requests reparation (diya) in fairness let it be given in fairness. This is an alleviation [of the burden of taking a life] and a mercy from your Lord. Whoever transgresses after this [member of victim's family] he shall have a painful torment [in the hereafter]. There is [the saving of] life for you in Qesas O people of understanding. Perhaps you will be heedful" (Quran 2:178-179). Therefore, there is punishment and closure if that is the desire of the victim's family. However, unlike other systems of justice, commuting the sentence does not rely on exhausting appeals to higher courts until the twelfth hour and after 30 years of incarceration. Commuting the sentence relies on the victim's family, which may request reparations

(diya). This diya is often translated as blood money, which is erroneous. It is restitution for harm done to the victim's family, which may include young children – and is in lieu of the perpetrator's life, not in addition – and for depriving the family of their loved one. This is why the verse says: "There is [the saving of] life for you in Qesas O people of understanding." It is ironic that in the notorious OJ Simpson case of the 1990s, Simpson was acquitted in the criminal court for murder, but held liable for the deaths of both his wife and R Goldman in the civil court and responsible for compensation (diya) of 8.5 million dollars to R Goldman's family. No one considered this blood money.

The position of Sharii'ah on punishment for murder is also exemplified in a Hadith of the Messenger Mohammed. A man came to the Messenger Mohammed dragging another man by a strap, and announcing: "This man killed my brother!" The Messenger Mohammed asked, "Did you kill him?" Whereupon the accused said, "Yes. He and I were cutting down the leaves of the trees, he abused me and enraged me, and so I hit him with my axe." The Messenger Mohammed asked, "Do you have anything to pay in compensation?" On receiving a negative, he then asked, "What of your family or tribe?" The man answered: "I am more insignificant to my tribe than this axe." So the Messenger Mohammed gave the strap back to the victim's brother and said, "He is yours [i.e., yours to punish]." After the man left, Mohammed turned to his companions and said "If he kills him, he is no better than he is." Whereupon one of the companions rushed after the man and informed him of this. The victim's brother returned to the Messenger and said, "I heard that you said that if I killed him, I am no better than him." The Messenger Mohammed asked, "Would it not be better for you that he carry your sin and that of your brother?" And he set the man free.

Islam also provides compensation for injury or harm, as exemplified by the Hadith: "If a relative is killed or suffers injury, you may choose retaliation, forgiveness, or compensation. If anyone desires more, then suppress him/her. Anyone who exceeds these limits will have a grave penalty."

These references are an invitation to clemency where clemency is warranted, since it is not likely that such a perpetrator would commit this crime again. This, however, may not always be the case. Crimes such as serial murder, rape, and pedophilia do not leave room for forgiveness.

In the USA we often hear criticism of the death penalty being applied to juveniles, the mentally retarded, or insane (not referring to those who trot out expert witnesses for a single documentation of

insanity). In 2004 the Juvenile Justice Center of the American Bar Association (ABA), reported that there are 73 persons on death row who were juveniles (aged 16–17) at the time of their crime. Twenty-two have been executed since reinstatement of the death penalty in 1976. The state of Texas holds the record for 13 executions of juvenile offenders and was the only jurisdiction to carry it out in 2002. However, 22 states have provisions for juvenile executions in their laws. According to the ABA only the USA and Iran formally recognize the practice. It is refreshing to see that this concern has been anticipated in Islam. The Messenger Mohammed said: “There are three whose actions are not recorded [not held responsible for]: a sleeper till they awake, the mentally deranged till they are restored to reason, and the child until they attain puberty.” The Muslim jurist Malik comments: “It is generally agreed that in our way there is no retaliation against children. Their intention is accidental. The Haddud are not obliged for them if they have not reached puberty.” What may pose a challenge for some Islamic jurists is choosing the definition of puberty as mental rather than biological maturity.

Punishment for Theft

Contrary to the popular image many have of Islam, it is no cavalier affair to pass judgment for the intentional severing of a person’s hand. In fact those most eligible, according to Shari’ah, are more likely to be those dealing in depreciated mutual funds, or intentional fraud, rather than the homeless and hungry. Seven conditions must be met in order for an Islamic jurist to pass such a judgment. These include: (1) two reputable witnesses, with no contradiction or error in their testimonies; (2) the value of stolen goods must exceed the equivalent buying value (in today’s society) of a quarter dinar (4.25 g of gold); (3) it must be stolen from a secure place (i.e., this shows intention and effort on the part of the thief, as in breaking and entering); (4) it cannot be food; (5) it cannot be from one’s family; (6) there should be no doubt as to the provenance of the goods (i.e., whether or not it may be the thief’s property or disputed property between the thief and another); and (7) it must not be something that is prohibited under Islamic law (i.e., not drugs or intoxicants, which changes the nature of the crime). The Quranic injunction is: “As for the male thief and female thief, cut their hand as recompense for their deed, an example from God [deterrent], and God is All-Powerful, All-Wise. But whosoever repents after his crime and does right, then God accepts his/her repentance. God is Oft-Forgiving, Most Merciful” (Quran 5:38–39).

Capital Judicial Punishment in Contemporary Society

Hanging was practiced in many countries until the beginning of the 1960s. The last hanging in Scotland was in 1963, and in England in 1964. The death penalty was abolished in England in 1965 and this abolition was confirmed in 1969. However, it was reserved for the crimes of treason, piracy with violence, and arson until 1998, when these ceased to be capital crimes. Hanging continues to be used in several countries, including Egypt, Iran, Japan, Jordan, Kuwait, Malaysia, Nigeria, Pakistan, Singapore, and Zimbabwe.

Beheading, by guillotining, was also popular in several countries, in addition to France. It was exported to Algeria, Belgium, Germany, Greece, Switzerland, Sweden, and Vietnam. What became West Germany abolished the death penalty in 1951 and had its last guillotining in 1949. In France, the death penalty was finally abolished in 1981. Beheading by sword is currently only practiced in Saudi Arabia, although the Congo and Arab Emirates do have it in their criminal law.

Execution by shooting is carried out in China, Kazakhstan, occupied Palestine, Thailand, Uganda, Vietnam, and Yemen. Execution by shooting is prevalent in 70 countries.

The USA is the only major country that uses lethal injection and the electric chair. Lapidation (stoning), although legal in six countries, was not used in 2002.

A summary of executions, based on data primarily from Amnesty International, is presented in **Table 1**. On record, only seven countries practice the death penalty for those committing crimes as juveniles (i.e., under the age of 18), although only applied in the USA and Iran. These countries include Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the USA, and Yemen. In 2003, China, Pakistan and Yemen raised

Table 1 Numbers executed worldwide from 1998 to 2003 (data summarized from Amnesty International Reports)

Year	1998	1999	2000	2001	2002	2003
Number of executions	2258	1813	1457	3048 ^a	1526 ^b	1146 ^c
Number of countries	37	31	28	31	31	28

^a2468 in China; 139 in Iran; 79 in Saudi Arabia; 66 in the USA.

^b1060 in China; 113 in Iran; 71 in the USA (33 in Texas alone, the remainder in 12 states, although 38 states have the death penalty), 47 in Saudi Arabia.

^c726 in China; 108 in Iran; 65 in the USA (the 900th execution since 1977 was in March 2004); 64 in Vietnam.

the minimum age to 18, in their legal code, and Iran is in the process of doing so. Nearly all executions of individuals who were juveniles at the time of their crime take place in the USA. All countries, except the USA and Somalia, subscribe to the United Nations Convention on the Rights of the Child, forbidding capital punishment for juveniles. In 2002, two perpetrators convicted as juveniles were executed by lethal injection in the state of Texas. The US Supreme Court recently refused to ban the execution of juveniles.

In the 1990s, in the USA there was a vigorous drive for a moratorium on the death penalty by both secular and religious leaders. This drive stemmed from the belief that three factors influence the sentencing for capital punishment: (1) geography; (2) race; and (3) income. The geographical argument is that the death penalty in the USA is a product of southern culture. For example, 62 of the 71 executions in 2002 occurred south of the Mason–Dixie line. Outside the south only California and Ohio executed anyone. Since 1976, when the death penalty was resumed, two out of three executions took place in only five states: Florida, Missouri, Oklahoma, Texas, and Virginia. In late 2003, Amnesty International was campaigning to stay the execution of Kevin Zimmerman on December 10 in Texas; Charles Singleton on January 6, 2004 in Arkansas (he was believed to suffer from mental illness); and Hung Thanh Le, a Vietnamese, on January 6, 2004 in Oklahoma. All three executions took place in 2004, although the last was postponed until March.

Another reason for the call for a moratorium is spurred by Governor George Ryan of Illinois, traditionally a death-penalty supporter, who declared a moratorium in his state. This was in response to the exoneration of 13 convicted murderers since 1985, based on new evidence and/or DNA testing, and fear of executing an innocent person. Further impetus for the moratorium was provided by a Columbia University (New York) study reporting a 68% error in sentencing based on a survey of capital cases. PG Cassell, a University of Utah law professor, points out that what the Columbia University study neglects to mention is that they failed to find a single case where an innocent person was executed. Therefore, the rate of mistaken execution was zero. Supporters of the death penalty argue that exoneration of some on death row proves that the system works. An interesting caveat to all of this is the question raised by some as to what makes an average incarceration of 25 years followed by execution or life imprisonment more humane than the death penalty?

Opponents of the death penalty point out that racial minorities, particularly blacks, are disproportionately represented in the prison system, probably as a

result of racial profiling. According to statistics from the US Census Bureau, Bureau of Justice and Statistics, and the Federal Bureau of Investigation, 42% of those on death row nationwide are black, compared to 56% white, and 2% of other ethnic groups. Blacks comprise only 13% of the US population.

The third argument offered for a moratorium is the disparity in representation for low-income defendants. These lack the resources to engage an experienced defense attorney, and therefore must rely on the overworked, understaffed, and underpaid public defenders office.

Worldwide, 76 countries have abolished the death penalty. This includes almost all European countries, since this is a condition of being a member of the European Union. The Council of Europe has also made this a condition, although it does accept a moratorium as a temporary measure. Russia is one such country that has declared a moratorium, although it has the death penalty on the books. Belarus is not a Council member and retains the death penalty. Australia, Canada, and most South American countries have also abolished the death penalty. Taiwan has abolished the death penalty for kidnapping, gang robbery, and other violent crimes short of murder. There are 15 countries that maintain it for exceptional circumstances, and 21 countries that have lapsed in its application. The death penalty is maintained in both law and practice by 83 countries.

It is important to insert a word of caution here. These statistics are based on reports available to international organizations, such as Amnesty International. They do not include data on political and religious persecution. They do not include data for state-sanctioned killing, justified by security, or capital murder in the form of genocide. They also do not include data on wrongful death that may result from abuse of power by the authorities. These are often forms of extrajudicial punishment.

Conclusion

Judicial punishment, in the form of capital punishment, remains, and will likely remain, a controversial sphere. Although Judeo-Christian scripture sanctions capital punishment for over 30 different transgressions, adherents of the represented faiths have denominational and sectarian differences. Judaism, with its emphasis on Talmudic tradition, the absence of a temple or temple priesthood, is of two minds: those who uphold the sanctity of the law, and those who believe it no longer applies under current conditions. As for Christianity, while preaching forgiveness, the Church, particularly Catholicism (although not exclusively), recognizes secular authority, as it

also recognizes that authority's excesses. Islam, despite its detractors, limits the scope of the death penalty to three transgressions; paramount among these is murder. Islam provides a system of clemency to the perpetrator and reparation for the victim's family. Common secular law finds itself in a quandary, torn between its perception of justice and the fallibility of human conduct, and possible excesses, in practice. Common law, as much as it claims to be divorced from the religious, is informed by individuals' religious background. Regardless of religious or secular law, we often preach what we do not practice, much to the loss of the individual, society, and humanity as a whole.

See Also

Court Systems: Sharii'ah Law; Law, China; Law, Japan; Law, United Kingdom; Law, United States of America

Further Reading

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