

Executing Human Rights

The Death Penalty in the United States



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“Perhaps the bleakest fact of all is that the death penalty is imposed not only in a freakish and discriminatory manner, but also in some cases upon defendants who are actually innocent.”—Supreme Court Justice William Brennan Jr., 1994

The administration of the death penalty in the United States has been a failed experiment that stands in stark violation of the right to life unequivocally provided by Article 3 of the Universal Declaration of Human Rights (UDHR), adopted in 1948. The drafters of the UDHR contemplated eventual abolition of the death penalty, but it wasn't until 1991 that the international community, in a complementary treaty to the UDHR, adopted the Second Op-

tional Protocol to the International Covenant on Civil and Political Rights calling for total abolition of capital punishment.

Since 1977, over 1125 people—men, women, children (at the time of the crime), the mentally retarded, and the mentally ill—have been denied their right to life by execution at the hands of the State. The United States' administration of the death penalty, in 36 states, in the federal system and in the

military, continues to violate this basic human right.

Though it presents itself as a beacon of democratic values to the international community, the United States stands alone among its Western neighbors in its continued application of the death penalty. In 2006, 91% of all known executions occurred in six countries: China, Iran, Pakistan, Iraq, Sudan and the United States. As of January 2008, the number of people awaiting execution across the country exceeded 3,300. With approximately 20,000 people under sentence of death across the world, the United States maintains a grossly disproportionate share of the international death row population.

In recent years, the United States has taken some important steps in protecting the right to life by barring the execution of juveniles and the mentally retarded. But until this country extends that right to all persons facing execution, the United States will continue to violate this most fundamental of human rights.

The drafters of the UDHR anticipated that racial discrimination would remain a human rights concern and, in Article 2, prohibited racial bias in the guarantee of all rights and freedoms

that the race of the victim has more of an impact on the decision to impose the death penalty than the race of the perpetrator. A study by the *American*

to choose another method, such as electrocution, if it was legally permitted when the sentence was given. In Tennessee, Daryl Holton, a man who may

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Sociological Review showed that minorities who are convicted of killing white people are more likely to have their death sentences carried out. Co-author of the study and Ohio State University Sociology Professor David Jacobs said, “[w]hite lives are still valued more than black ones when it comes to deciding who gets executed and who does not.”¹

Article 5 of the UDHR states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The very nature of a government putting a person to death before their body fails them is cruel. This is not, however, the only cruelty or torture involved with implementation of the death penalty in the

have been mentally ill, chose to die in the electric chair. The Supreme Court of the State of Nebraska held that use of the electric chair is cruel and unusual punishment.

Although the Supreme Court of the United States recently ruled that the State of Kentucky’s method of lethal injection did not amount to cruel and unusual punishment, there is still significant evidence that death by that method qualifies as torture. The three-drug cocktail which is delivered intravenously must follow a certain order. The first drug, sodium thiopental, renders the inmate unconscious. This is important because the next two drugs are extremely painful. The second drug, pancuronium bromide, causes paralysis. The third drug, potassium chloride, causes cardiac arrest. If the first drug does not result in unconsciousness, the paralytic will prevent the inmate from expressing pain when the second and third drugs are injected—leading to a horrific and inhumane death. In Florida, Angel Diaz was executed by lethal injection. The autopsy showed that there were chemical burns throughout his arms, demonstrating that the IVs went through his soft tissue. In Ohio, Joseph Clark cried out while being executed, “It don’t work!” He also requested to be given something by mouth so the torture would end. The execution of

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set forth in the document. The capital punishment system is plagued with inequities resulting from racial prejudice. According to a 2003 report by Amnesty International, African Americans made up only 12% of the population but accounted for 40% of those on death row in the United States. Statistics show

United States. The very methods used in the death chambers in this country are degrading and inhumane.

The state of Delaware used hanging to execute Billy Bailey as recently as 1996. Lethal injection is the method of execution used by most jurisdictions. However, some states allow a person

Christopher Newton, also in Ohio, took so long that he was given a bathroom break.

Executions carried out in the United States violate Article 5 of the UDHR's prohibition on torture and cruel punishment because they torture the condemned. When holding the electric chair unconstitutional, Nebraska Supreme Court Judge William Connolly stated, "We recognize the temptation to make the prisoner suffer, just as the prisoner made an innocent victim suffer. But it is the hallmark of a civilized society that we punish cruelty without practicing it."

Article 10 of the UDHR entitles all people "in full equality to a fair and public hearing by an independent and impartial tribunal." Juries and judges fail to uphold this right to capital defen-

tal murder trials therefore face not an impartial and independent jury of their peers but a jury biased to vote for death.

Studies of jurors who have actually served on a capital murder trial reveal disturbingly inaccurate perceptions of their duty under the law. United States law is clear that there are no specific circumstances under which the death penalty is required. However, many jurors erroneously believe that the death penalty is required by law if the murder was heinous or if the defendant poses a potential danger in the future. Similarly, many jurors believed the death penalty to be the only acceptable punishment for specific crimes such as the murder of a police officer or multiple victims.

The great majority of death penalty jurisdictions in the United States

These same judges campaign with a "tough on crime" platform. Electoral partisanship has no place in the process of deciding who will live or die and clearly violates Article 10.

The United States legal system does not offer sufficient protections to prevent innocent people from being sentenced to death. During jury selection, in order to serve on a capital jury, jurors are repeatedly asked to affirm their willingness to impose the death penalty should they convict the defendant of murder. Studies of capital jury behavior illustrate that this process itself persuades them that the defendant must be guilty, otherwise the court would not be so concerned with punishment at this initial stage. Consequently, at the outset of the trial, before hearing any evidence, many jurors have already made up their minds that the defendant is guilty. This violates Article 11 of the UDHR which provides the right to presumption of innocence until proven guilty. It is no surprise that since 1973, 130 people in 26 states have been exonerated from death row. Strong evidence suggests that many innocent men have been executed and many more remain on death row across the country.

Philip Alston, the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, recently examined the death penalty system in the United States, concentrating on the states of Texas, with the highest number of executions in the country, and Alabama, with the most death sentences per capita. In those states, Alston noted particularly egregious violations: defendants regularly lack adequate legal counsel, the system of selecting judges through the electoral process is defective, and the states show no sense of urgency in reforming their blatantly flawed criminal justice systems. Alston also noted that procedural barriers in the federal legal

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dants across the country. Any potential juror asked to serve on a capital trial must undergo the process of "death qualification," meaning that they *must* be able to consider death as a punishment. United States Supreme Court jurisprudence provides that any juror who will be substantially impaired in his ability to impose the death penalty may be excluded from service. What results is a systematic exclusion of jurors who oppose the death penalty and a jury stacked towards conviction and death. By virtue of their views on the death penalty, certain religious groups are systematically disenfranchised from service on death penalty trials, and people of color continue to be routinely excluded from service on capital juries for pretextual reasons. Defendants in capi-

fail to uphold the right of capital defendants to an impartial tribunal through the election of its judiciary. In the capital punishment context, this violation manifests most troublingly in states like Alabama and Florida, where the judge has authority to override a jury's recommended sentence of life imprisonment. The increasingly partisan interests in judicial campaigns, in the words of former U.S. Supreme Court Justice Sandra Day O'Connor, "threaten the integrity of judicial selection." The practice of judicial override is particularly troubling in Alabama, where approximately 20% of Alabama's death row inmates were sentenced to death by an elected judge after a jury had recommended—sometimes unanimously—that the defendant be sentenced to life.