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DEATH PENALTY

CRUEL, INHUMAN AND DEGRADING PUNISHMENT

EDITORIAL

NEARLY ALL SOCIETIES HAVE AT SOME POINT IN THEIR history resorted to capital punishment. In Eighteenth century Britain two children were hanged at King's Lyn for the crime of theft. While in many countries capital punishment is usually reserved for the most heinous of crimes, such as premeditated murder, treason and espionage, there are still governments that consider human rights activism or public criticism 'heinous crimes'. Abdullah al-Mansouri, a Dutch-Iranian human rights activist, was allegedly sentenced to death by Iran last Monday, 29 October 2007.

Countries that remain proponents of the death penalty, such as Iran and the US are under continuous pressure to abolish the death penalty by the international community. Currently, more than half of countries in the world have abolished the death penalty, Rwanda the most recent among them.

The only developed countries that practice the death penalty are the United States and Japan. The pressure that the international community exerts in favour of the abolition of capital punishment is evident in the recent United Nations draft resolution on the moratorium on the death penalty. It could be argued that under the auspices of Article V of the Universal Declaration of Human Rights

capital punishment is even illegal as it could amount to «cruel, inhuman or degrading treatment or punishment.»

In fact, this has been the ground to refuse the extradition of certain criminals to the United States and other countries with death penalty.

Ultimately, it boils down to a question of whether it is more important to punish the guilty than protect the wrongly sentenced. Hopefully the wise words of the 12th Century Sephardic legal scholar, Moses Maimonides can provide us with some guidance when he stated: «It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent man to death.»



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CALLING FOR A MORATORIUM ON DEATH PENALTY

A CONVERSATION WITH SERGIO D'ELIA

SAHLAN L. MOMO



Sergio D'Elia is an Italian Radical Member of Parliament, and currently the Secretary General of Hands Off Cain, an international league of citizens and Members of Parliament for a universal moratorium on capital executions, supported by political and cultural personalities at an international level. He founded the league in 1993 together with his partner Mariateresa Di Lascia.

Under his secretaryship, Hands Off Cain has promoted initiatives on emblematic cases, the international marches to St. Peter's Church (Rome, Italy) in 1994, 1995 and 1998, the international conferences in Tunis, Moscow, New York and Geneva. In 1994 he promoted the submission, for the first time, to the General Assembly of the United Nations, of the resolution on the moratorium of executions, which was debated and beaten by a few votes. From 1997 to 2003, he has promoted the submission of the resolution for the moratorium on executions to the Commission for human rights of the United Nations in Geneva, which has approved it in all sessions.

Sergio D'Elia has made visits to death rows in the United States, in the Democratic Republic of Congo and in Kenya. His speeches, actions and interviews have been published by leading Italian and foreign newspapers. As part of his lobbying activity he has promoted and taken part in missions of the Italian Senate and Chamber of Deputies to countries enforcing the death penalty: the Philippines, El Salvador, Guatemala, Cuba, the Caribbean, Kirghizistan, Uzbekistan, Nigeria, the Democratic Republic of Congo, Kenya and Zambia. He has taken part in international forums on the question of the death penalty and has promoted meetings and debates in Italy, also on the more general theme of prisons and punishment, in particular on the situation of "hard prisons". He is currently co-ordinating the international campaign for approval of the resolution for the moratorium of executions on the part of the UN General Assembly.

THE RESOLUTION CALLING FOR A GLOBAL MORATORIUM on executions has been introduced at the 62nd UN General Assembly (UNGA) in October 2007. Proponents expect that it will face opposition from countries such as China and the US who still implement the death penalty. The important EU group is supporting the draft but, as always at the UN, much will depend on the attitude of the most numerous Non-Aligned group, and still there is no uniform view among its members. What are the chances of it getting passed?

United States and China will not establish a counter lobby because in the drafted text only a moratorium – not the abolition – is mentioned. American public opinion is 58 percent in favour of a moratorium. Even China could possibly adopt the moratorium, due to the international pressure in view of the Olympic Games in 2008 and some recent internal directives which limit the number of executions. Regarding the non-Aligned nations, the assent of their leader country, South Africa, to the regional alliance pro-moratorium may encourage other supports from this group of countries.

→ | INTERVIEW

“The abolition of the death penalty contributes to the reinforcement of human dignity and the development of human rights.”

Normally, drafts like this once being presented are sent back to national capitals where they are examined, possible amendments prepared, after which serious negotiations begin. Even though in principle one may expect some watering down of the resolution, what bargaining ground, if any, would be acceptable to proponents?

The co-sponsor nations of the Resolution intend to sustain it in its entirety and to the end. There is a precise commitment asked to a nation at the moment of signing the Resolution: to vote against any kind of amendment. If this co-sponsor block succeeds, all amendments will be rejected, including the most dangerous one from Egypt and Singapore about the 'National Sovereignty', based on a constitutional principle of the United Nations Charter which is upheld similarly in terms of statutory law and thus no resolution of the UN General Assembly could

ever abrogate. Anyway, the proposed Resolution relates to a moratorium on executions and not to an out-right abolition of the death penalty. It is already a compromise between supporters of abolition and supporters of maintaining it.

If approved, what will be the effect of a UN-backed resolution? Being the UNGA not legally binding, will it make a difference for those countries still implementing the death penalty and persuade them to abolish it?

That is true, the UN General Assembly has no power to impose the moratorium on its member States, but the Resolution would have an extraordinary moral and political value, which might affect the policies of those countries who still practice the death penalty. The sole announcement of the presentation of the Resolution at the UN Headquarters made three African states (Gabon, Burundi and Mali) decide to announce the imminent abolition of the death penalty, thus conforming to standards which are regarded as ever increasing on the international arena. The moratorium on executions is the leading way to arrive at the abolition of the death penalty. It is an historical fact: all the former USSR states arrived at the abolition through the moratorium, and the same holds for South Africa and Philippines.

Assuming the resolution is adopted, what should be done next?

The Resolution, as explicitly foreseen in its last provision, shall be presented once more at the next General Assembly, in order to reinforce and consolidate the UN's position. Then it will be necessary to spread it worldwide and monitor the situation within individual states and to make pressure on countries that maintain the penalty, that they may adopt the indication from the UN.

Why does the issue come up now?

It doesn't come out of the blue. This is the result of thirteen-years of work by *Nessuno tocchi Caino* [Hands Off Cain] along with the Italian Radical Party, and the political non-violent campaign they have put forward, particularly during the last year. It has been an excellent campaign for the complexity and the synergy of instruments, forms, fronts and pressure groups that we have involved for our political struggle. First of all, at parliament level, three resolutions have been unanimously approved by the Italian Chamber of Deputies and three others approved with large majority by the European Parliament, the latter committing the governments to submit the Moratorium

at the UN Headquarters. Then, dozens of letters have been sent to the governments of the European Union and its Presidency in charge, in order to denounce mistakes and delays, and to remind them the obligations taken in front of their own parliaments. Moreover thousands of subscriptions have been received from 158 countries to appeal for the Global Moratorium, including those from 55 Nobel Prize Winners. Finally, we remind of Marco Pannella's thirst strike against the execution of Saddam Hussein, subsequently converted to the more general scope of the Moratorium, and the two long hunger strikes of leaders and activists of the Radical Party, who kept the fast for 89 days in the last six months.

More and more countries are abolishing the death penalty. What are the reasons/motivations for this? And what are the factors contributing to this widespread call for abolition?

The increasing awareness that the death penalty is a human rights issue and not limited to penal justice. From

1997 to 2005, for nine consecutive years, the former UN Commission on Human Rights, now the Human Rights Council, constantly approved a resolution stating that «the abolition of the death penalty contributes to the reinforcement of human dignity and the development of human rights», thereby calling for «a moratorium on executions, in view of the complete abolition of the death penalty itself». Moreover, in the last 14 years as many as 48 countries decided to abolish the penalty, either by law or by practice. In those countries, this evolution was fre-

quently accompanied by the advent of democracy, the settlement of a state of law, the promotion and the respect of political rights and civil freedom.

Should there be a worldwide campaign against death penalty, for instance like the Ottawa process to ban land-mines?

The campaign has been in progress for at least 14 years, and has been structured at both national and international level. It gained momentum in 1994, when, for the first time, a resolution was submitted to the UN General Assembly by the Italian government. It was rejected by only eight votes, but it had its ripple effect: since then the involvement of the abolitionist movement has grown and also with visible outcomes worldwide.

Why are some countries still using the death penalty? What are their reasons and motivations for retaining it? Who are the



Lethal Injection Chamber

influential players behind the decision to retain the death penalty in those countries?

In general, in authoritarian countries the death penalty is used for political repression and social control. Particularly in the Muslim countries the death penalty is regarded as mandatory due to a strict interpretation of the Sharia. However the problem is not the Koran itself, since not all Islamic countries apply the death penalty, and not all of them use the Koran as a penal or civil code, or as a fundamental act. The problem is rather the literal translation of that ancient text into norms, prescriptions and punishments applied nowadays by fundamentalist, dictatorial or authoritarian regimes in order to prevent any democratic process. In liberal democratic countries like the United States, where by the way not all States practice the death penalty, the reference to the Old Testament and to the «eye for an eye» logic is still very strong. That simple and primordial rule was the principle of law in the small and solitary world of the pioneers. In the United States the death penalty is used for political and electoral gains, especially during the run-up to the Presidency.

Which countries are passing and carrying out most of the death sentences?

98.8 percent of executions worldwide have occurred in dictatorial, authoritarian or illiberal countries, for an amount of at least 5,564 executions in 2006. China alone has carried out at least 5,000 executions, which represents 89 percent of the total worldwide. Iran has processed at least 215 executions; Pakistan 82; Iraq at least 65; Sudan at least 65, Saudi Arabia 39; Yemen 30; Vietnam at least 14; Kuwait at least 11; Somalia at least 7; Singapore at least 5; Egypt, Bangladesh Jordan, and Malaysia at least 4; Bahrain, North Korea and Byelorussia at least 3; Syria and Uganda at least 2; at least one execution has been recorded un the Arab Emirates and Equatorial Guinea. Unfortunately, since many countries do

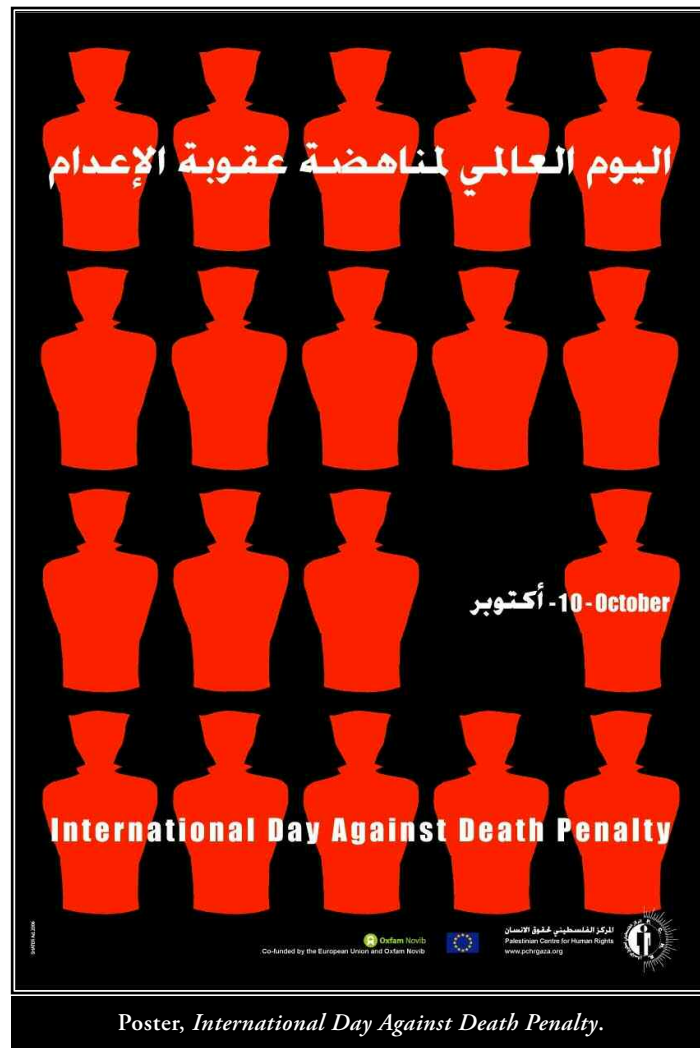
not provide official data about the death penalty, the number of executions could actually be much larger.

In those countries where the death penalty is still retained and who might and will continue to retain it even after a UN resolution is passed, what can be done to persuade or convince them to change their stand and sway towards the abolition?

At a closer look, the ultimate solution for these countries concern the struggle for democracy, freedom and promotion of human rights, rather than the direct fight against the death penalty.

Should there be an NGO campaign against death Penalty? How can one mobilize world public opinion?

As said before, the campaign of *Nessuno tocchi Caino* has been an excellent example of the complexity and the synergy of instruments (first of all, communication), forms of fight (non-violence, thirst and hunger strikes), fronts (the parliament front was fundamental) and pressure groups (e.g. Nobel Prize Winners) that we have involved in our struggle against the death penalty. It might be adopted by other abolitionist organisations at national level, in order to promote the adoption of the Moratorium, in view of the abolition.



Poster, International Day Against Death Penalty.

How to promote the culture of punishment without death sentence?

In front of the most cruel crimes, the legitimate interest of the victims for the punishment of the criminals shall be protected. But the fight against the impunity cannot be solved by means of the death penalty. The real deterrent is not the severity of the penalty, but the certainty that the criminals will be responsible for their actions before a court. Bearing that in mind, the international community has instituted ad-hoc tribunals for the cases of the former Yugoslavia, Rwanda and Sierra Leone. In these tribunals the use of the death penalty is excluded, exactly like in the International Criminal Court which has a global jurisdiction.

The ratification of the Court's statute might be the main deterrent for the dictatorial regimes. Rwanda, with its recent abolition of the death penalty, clearly shows that the absurd cycle of revenge can be halted and the scope of justice and legality can be achieved without recourse to the ultimate penalty.

Why is the death penalty bad? Is it effective?

The deterrent effect of the death penalty has never been demonstrated, since it is scientifically impossible. On the other hand, neither the contrary has been demonstrated. In my opinion the sole serious and fundamental argument against the death penalty is the following: it is a non-human and degrading punishment not only for the one receiving it, but also for whom has to carry it out. The death penalty concerns our deepest values, the quality of our State or Community and shapes our future civilisation and humanity. ■



Andy Warhol (1928-'87), from the series *Electric Chairs*, (1964).
Photo courtesy of the Warhol Museum, Michener Art Museum.



MOVING TOWARDS A DEATH PENALTY-FREE WORLD

LORYBELLE C. CASTILLO

LAST 10 OCTOBER 2007, THE WORLD CELEBRATED THE World Day against the Death Penalty. On its fifth year celebration, the abolitionist advocates focused on the proposed UN General Assembly resolution for a universal moratorium on executions. There is still no official word on when the resolution will come up for a vote but supporters of the resolution are hopeful that the resolution will get passed. They believe that the resolution would be a step closer towards a worldwide abolition of capital punishment.

They have reason to be more optimistic this time around (Italy has been campaigning for 13 years for the UN General Assembly to pass a moratorium on executions) as recent developments show that more and more countries are joining the campaign. As of September 2007, Amnesty International reported that a total of 133 countries have abolished the death penalty in law and in practice. Last 27 July 2007, Rwanda was the latest country to abolish capital punishment in law. In 2006, only 25 countries carried out executions and 91% of all the known executions took place in six countries: China, Iran, Iraq, Pakistan, Sudan and the USA. Back in 1977, only 16 countries had abolished the death penalty for all crimes. Looking at all these figures, it is clear that the campaign against death penalty has gone a long way.

In this article two cases are explored. On the one hand, there is Europe rallying ahead towards abolition of death penalty and managing to make Europe the only region in the world free of death penalty. On the other hand, there is the US, standing firmly on its stand to keep the death penalty in place, not budging amidst widespread calls for its abolition.

EUROPE: COMING STRONG AGAINST THE
DEATH PENALTY

Europe is considered today as the only death penalty-free region in the world. All the EU Member States and candidate countries and the Member States of the Council of Europe no longer enforce the death penalty. The region also emerges to be at the forefront of the campaign towards universal abolition of the death penalty.

In the early 1980s, the Council of Europe took a stand on the issue of death penalty and considered it a grave violation of human rights. Through the Parliamentary Assembly, it gradually persuaded governments to help create a Europe that is rid of the death penalty.

In 1982, the Council of Europe has adopted Protocol No. 6 to the European Convention on Human Rights. It came into force in 1 March 1985 and abolishes the death penalty in peace time. The protocol has been ratified in 46 of the 47 members of the Council, with Russia as the exception but it has made a commitment to ratification.

In 1989, abolition of death penalty became a condition of accession for all new member states. Signing and ratifying Protocol No. 6 then became a requirement when joining the organization. The Council did not stop there. Come 2002, the Council adopted Protocol No. 13 to the European Convention on Human Rights. Enforced on 1 July 2003, the protocol bans the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war. Forty-five members of the Council of Europe

have so far signed Protocol No. 13, with Russia and Azerbaijan yet to sign. Four countries – Italy, Poland, Latvia and Spain – have signed the Protocol but have not yet ratified it. France was the most recent member to ratify the protocol during the international conference held in Lisbon last 9 October 2007. As a result, there has not been any execution in any of the Council of Europe member states for 10 years. Across Europe, only Belarus still implements the capital punishment but it is not a member of the Council of Europe. The European Union has also made the abolition of the death penalty a prerequisite for membership.

ON FOCUS

“ Governments
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BEYOND ITS BORDERS

Europe's stand against the death penalty extends to the countries beyond its borders. In the Council of Europe, the Parliamentary Assembly is trying to persuade the countries enjoying observer status with the Council, such as Japan and the United States. The Council strongly criticizes the US for its continued use of the death penalty and has called

on the US to introduce a moratorium on capital punishment. Until now, the US continues to implement the death penalty in 38 of the 50 states.

Japan also still carries out executions. In 2001, the Parliamentary Assembly of the Council of Europe asked Japan to adopt a moratorium on the death penalty and to abolish it eventually. The Japanese government implemented a moratorium between 2005 and 2006 but resumed executions in 2006. It argued that the people still support death penalty, with a 2005 government poll revealing that 80% of the population was in favour of it.

Early this year, the European Parliament adopted a resolution calling for the universal abolition of the death penalty and to make it one of the fundamental objectives of the EU. Moreover, the foreign ministers of the EU are among the strong proponents of a resolution calling for the universal moratorium on the death penalty in the recent meeting of the General Assembly in the United Nations.

Apart from these, both the Council of Europe and the EU have proposed having a European Day against Death Penalty to be observed on October 10 of each year making it not only the World Day against Death Penalty but also a European day. The Council of Europe forwarded this proposal at an International Conference held at Lisbon on 9 October 2007. This just goes to show how strongly the region supports the promotion of universal abolition of the death penalty.

OTHER ISSUES

While the region seems united in its stand against the death penalty, the EU proposal to have the European Day against Death Penalty faced opposition from Poland. Warsaw insisted that the EU «should approach the subject in a broader way and debate the protection of life,» suggesting that issues such as abortion and euthanasia should also be included. It argued that a special day against the death penalty is unnecessary considering that it is outlawed in the EU. Rather, they prefer to celebrate a «Day in Defence of Life.»

With all these facts, is Europe really serious about its stance regarding the death penalty? It is fact that there are a number of countries who have signed but not yet ratified Protocol No. 6 and No. 13. It is also a fact that Poland opposed the proposed celebration of the European Day against Death Penalty. These things may perhaps be minor issues at this point but the mere existence of such hesitance and opposition weakens Europe's seemingly strong stance on the death penalty issue and their calls for universal abolition of the death penalty.

DEATH PENALTY IN THE US: A SITUATIONER

While the rest of the world has either abandoned or is moving towards abolition of death penalty, the US stands firm on its decision to keep it in place. Time and again,

some of the world's most respected leaders such as Pope John Paul II, Nelson Mandela and UN High Commissioner on Human Rights Mary Robinson have called on the US to abandon the death penalty, but the US continues to ignore these pleas.

The US is among the countries that had the most executions in 2006 along with China, Iran, Pakistan, Iraq and Sudan. It has suspended executions in 1973 but resumed them in 1977 and has since then performed a total of 1,095 executions (as of 4 September 2007).

Thirty-eight of the 50 US states implement the death penalty. Statistics reveal that majority of the executions take place in the southern region. However, looking at figures by state, Texas is on top of the list, performing the most executions compared to any other state in the country.

The capital punishment remains to be a controversial issue in the US. With the international efforts by various countries and international NGOs to rid the world of death penalty and the current proposed resolution in the UN General Assembly to be decided soon, all eyes are on the US, among other

countries, to see if it will change its stand on the issue.

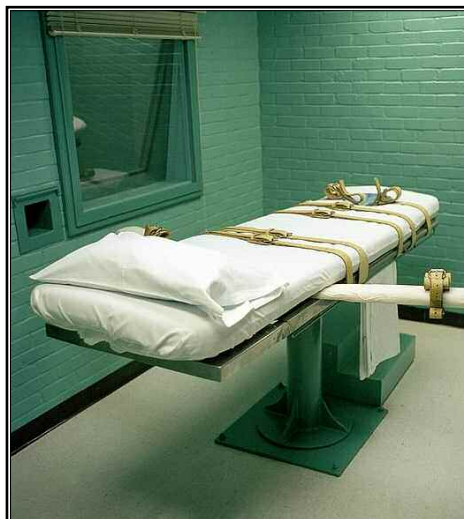
Recent reports, legal activity and public opinion polls reveal that people are increasingly losing its confidence in the death penalty. Early October 2007, it has been reported that Texas, has suspended its executions, and that the Supreme Court is set to review the legality of lethal injections. This is a welcome development as other states (e.g. Missouri, California, North Carolina) have also implemented a moratorium in their states.

In 2004, the New York statute on death penalty was declared unconstitutional. Meanwhile, in 2006, a blue-ribbon committee in New

Jersey was formed to study death penalty in the state. The committee concluded that it should be abolished.

Hundreds of citizen groups, religious organizations, legislators and lawyers have banded together to call for abolition of the death penalty. They put forth several issues. One is cost. The *Dallas Morning News* in 1992 reported that it costs Texas an average of \$3.2 million on a death penalty case, about thrice the cost of imprisoning someone in a single cell at the highest security level for forty years. In another report, this time from the *Los Angeles Times* in 2005, they said that the death penalty system in California costs taxpayers \$114 million per year beyond the costs of keeping convicts in prison for life and that taxpayers have paid more than \$250 million for each state's executions. Now, wouldn't all that money have been better spent on education, health or other social service?

Another issue is racism. Recent studies have observed a pattern of either race-of-victim or race-of-defendant discrimination or both. In a study in North Carolina, Prof. Jack Boger and Dr Isaac Unah, found that the odds of receiving a death sentence rose 3.5 times among those defendants whose



victims were white. In California, a study (Pierce & Radelet, *Santa Clara Law Review*, 2005) revealed that those who killed whites were over three times more likely to be sentenced to death than those who killed blacks and over four times more likely than those who killed Latinos.

Also of increasing concern to the people was the conviction of innocent people. A 2004 Death Penalty Information (DPIC) report focused on the issue of innocence in the death penalty debate. According to the report, there have been 116 total exonerations since 1973, proof that justice is not carried out in a lot of cases that end up with a death sentence.

WHAT THE POLLS SAY

Recent public opinion polls reveal the eroding confidence in the death penalty. In a National Omnibus Poll conducted by RT Strategies for the DPIC in early 2007, 58% of the respondents believed it was time for a moratorium on the death penalty while the process undergoes a critical review. Meanwhile, the May 2006 Gallup Poll found out that the overall support for the death penalty was 65% (down from 80% in 1994). In that same poll, when the respondents were given a choice between life without parole as an alternative to death penalty, slightly more people (48%) chose life without parole over the death penalty (47%). This indicates that more and more people are doubting the effectiveness and use of the death penalty and are welcoming an alternative to it.

After all the debates and discussions, it is really puzzling how a country like the US, who takes pride in its concern over human rights violations in other parts of the world, fail to recognize the violation of human rights, especially in this basic human right to life, in its own backyard.

A STEP FURTHER

And while everybody is busy calling for the universal abolition of the death penalty and a moratorium on executions, perhaps the legislators should also seriously think about alternatives to the death penalty that can effectively deter crime, especially the heinous ones. Part of the reason that other people favor the death penalty is because they see it as the *only* just punishment for people who have committed heinous and seemingly unforgivable crimes such as cold-blooded murders. No alternatives are clearly presented. There is this lack of widespread discussion on the possible alternatives to the death penalty. As mentioned earlier, in the May 2006 Gallup survey, when the respondents were presented with a choice between death penalty and life imprisonment without parole, the respondents were almost split, with slightly more people favoring life imprisonment without parole. This is an indication that the public is open

to alternatives to the death penalty. Thus, this aspect should be better explored.

Moreover, they should also assess and reflect on the whole system of administration of justice. Studies have, time and again, contested the argument that the death penalty deters crime. Plus, with innocent people and juveniles being convicted and sentenced to death, there is obviously a flaw in the system.

Peter Hodgkinson, Director of Centre for Capital Punishment Studies at the Westminster University Law School in London, suggests taking a holistic approach to the replacement of death penalty. He said, «Paradoxically, abolition of the death penalty itself rarely brings about the improvements that one would expect from such a radical step. Our centre has always promoted a holistic approach in preparing for abolition and its aftermath. This approach requires that attention and resources are given to improving legal services, prison and police practices, crime victims' services, humane and proportionate alternatives to the death sentence and a political philosophy that avoids reinforcing the death penalty mythology.» In the end, governments should look beyond abolition if they sincerely want to address the problem of crime and punishment.



Electric chair.

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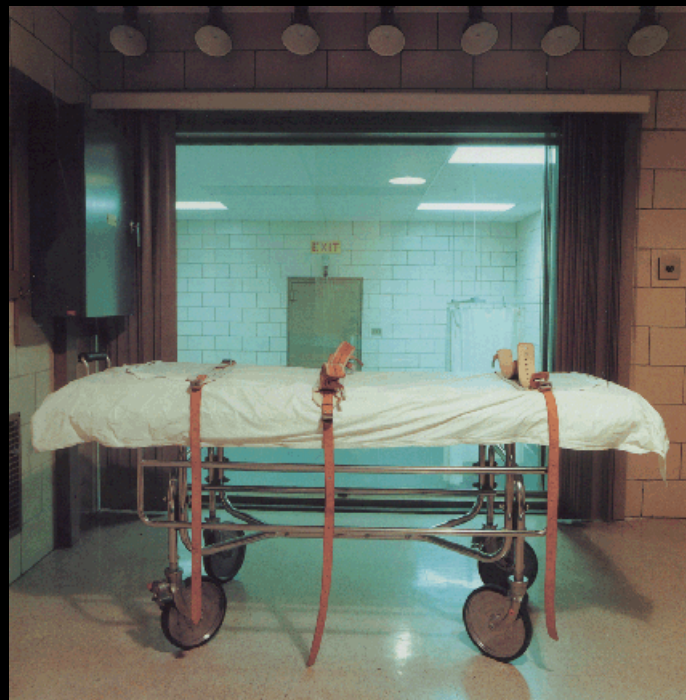
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between \$90 million and \$114 million. Keeping in mind that California, on its own, is the ninth largest economy *in the world* with a GDP of \$1.5 *trillion* as of 2004, this is hardly a large price to pay to ensure that a person has every chance to defend himself.

As for the pain of a person being executed, I would like to argue that execution in the US is visited on those who have, in the most brutal and calculated manner, tortured, raped, and murdered girls, boys, pregnant women, and fathers without distinction. Furthermore, the death penalty is fast – California uses lethal injections, so it is not even painful. Other states, such as Texas, may use harsher methods, but this also means that death comes more quickly. Therefore, the only pain an inmate likely feels is the mental anguish of anticipating his own death. If that is the case, it is inhuman to ask me to sympathize with someone who is dreading their death after having taken the lives of so many others.

I am of course not in favour of capital punishment under all circumstances. In fact, honestly speaking, I am not entirely sure when I *am* in favour of the death penalty. I am extremely opposed to the death penalty as punishment for political disobedience, and where criminals are not allowed an appeal I also feel that capital punishment should not be used. While I could support the death penalty against a person who had tortured and mutilated a child for years, even if that child lives, I would absolutely oppose the death penalty for a carpenter who accidentally dropped a brick on someone's head. The fact remains that there are people in the world who murder in the cruelest and most unusual manner, and through their lack of humanity to their fellow man, they lose their right to their own humanity.

Of course capital punishment should be used in the most circumspect manner, gathering all possible evidence, hearing



Metal bed for lethal injection.

I argue that the state does not punish the family, the criminal punishes his family. Unless the person is mentally unstable (in which case it is unlikely he would be executed in America) they are fully aware that what they are doing is beyond cruel and beyond inhumane, and that they will be punished if caught. Knowing this, and knowing the consequences, they commit the act anyway. The families of the criminal are punished the moment the act is committed, because they have to deal with the fact that their family member killed another human being. It is ridiculous to ask the state to be considerate of the criminal because his mother may be upset.

all possible witness, and executed with the fastest, most painless method. And the fact that innocent people sometimes, if rarely, die gives me great pause. But to me, this does not mean that the death penalty should be abolished.

Oregon, a state which abolished the death penalty in 1964, several years later discovered a killer in their midst who, after murdering a woman, would put on high heels and masturbate, and kept mementos of his victims such as severed breasts or a foot. This in the basement of the home he shared with his wife and children. For people like him, if for no other reason, the death penalty should remain an option.



◉ | NEWSROOM

For the first time since 1878, the US Supreme Court is taking a long look at a method of execution, putting death row on hold.

JUSTICES TO WEIGH LETHAL INJECTION

HOWARD MINTZ

Medianews Staff, Contra Costa Times.
Posted on *The Mercury News* website.

Firing squads. Hanging. The electric chair. The gas chamber.

None of these methods of execution sent the nation's capital-punishment system into as much disarray as lethal injection, the supposedly antiseptic solution to concerns about how best to put condemned killers to death.

A metastasizing legal furor over lethal injection has forced the US Supreme Court to examine a method of execution for the first time since 1878, effectively halting capital punishment across the country. One legal expert has dubbed it a «molasses moment» in death-penalty history.

A confluence of historical, legal and social factors have pushed the show-down over lethal injection onto the high court's docket — a paradox for an institution that never considered whether the hangman's noose or «Old Sparky» were constitutional ways to put someone to death.

With society's view of cruel and unusual punishment shifting dramatically in recent decades, legal experts say the almost universal embrace of one form of execution — a lethal dose of drugs — has made the time right for an unprecedented review of how states end the lives of condemned killers.

Most of the 38 states with the death penalty rely on the same three-drug combination to execute inmates, including California, where a challenge to lethal injection has put executions on hold for nearly two years. The US Supreme Court's recent decision to review Kentucky's lethal injection method has ensured a near-moratorium on executing the more than 3,300 condemned prisoners in

the United States will last until the justices rule next year.

In recent years, the conservative, closely divided Supreme Court has scaled back the death penalty somewhat — barring the execution of juveniles and the mentally retarded. At the same time, the court made sure most death sentences were preserved.

LEGAL CHALLENGES

Legal experts say the justices could not wait any longer to weigh in on lethal injection. Lawyers for death-row inmates, armed with evidence of botched executions in states such as Ohio and Florida, have flooded courts across the country with legal challenges in the past few years.

«I think the court felt absolutely compelled to step in and make some sense of this,» said Michael Laurence, director of California's Habeas Corpus Resource Center, which represents death-row inmates. «There is also the idea that the states need to get it right.»

For all practical purposes, the Supreme Court has never addressed what it takes for states to «get it right» when it comes to executions. There is surprisingly sparse precedent on the subject, and the justices have never outlawed a form of execution.

Most legal experts do not expect the Supreme Court's ultimate ruling in the Kentucky case to end the death penalty. Instead, the consensus is the court will provide guidelines for what states must do to ensure that executions are carried out humanely, whether in the types of drugs they use or in the safeguards put in place during executions.

A number of judges across the country have found serious flaws in state lethal injection methods. Last year, US District Judge Jeremy Fogel in San Jose declared California's process «broken.» Fogel is considering whether to put that legal challenge on hold while the Supreme Court reviews the Kentucky case.

Legal experts predict the Supreme Court will follow the approach used several years ago when ruling that it is unconstitutional to execute mentally retarded inmates —

“ We call for consistency in human rights. We cannot end one human rights violation with another human rights violation, because human rights are inalienable. ”

rather than lay out a rigid protocol, the justices left it to the states and lower courts to set the standards for mental retardation in capital cases.

«They are going to want to make sure executions continue,» said Deborah Denno, a Fordham University law professor and lethal injection expert. «But at the same time, there is going to be some sort of compromise.»

The challenges to lethal injection center on the argument that the combination of drugs, coupled with sloppy procedures and inadequate medical training, create an unnecessary risk that death-row inmates will suffer painful executions. That, lawyers argue, violates the Eighth Amendment ban on cruel and unusual punishment.

Cases tucked in old law books aren't expected to provide much guidance. In 1878, the Supreme Court refused to block the firing-squad execution of a condemned murderer in Utah, but the ruling dealt primarily with whether the states could choose their execution method as long as it wasn't cruel and unusual. Rather than address the pain and suffering that might result from death by gunshot, the justices simply asserted: «The punishment of shooting as a mode of executing the death penalty for the crime of murder in the first degree is not included in that category.»

The Supreme Court later took the same approach in two cases involving the electric chair, including a 1947 ruling that repeated malfunctions of Louisiana's electric chair did not



Francisco Goya, *The Third Day of May 1808*, (1814).

NO PRECEDENT TO FOLLOW

But even the handful of Supreme Court decisions touching on execution methods have not dealt with whether the mechanics of any particular method amounted to cruel and unusual punishment. Legal experts say the lethal-injection issue will put the Supreme Court in uncharted territory.

«There is certainly no case on point,» said Ellen Kreitzberg, a Santa Clara University law professor and death-penalty expert. «There is no case where there is precedent they need to follow.»

subject condemned killer Willie Francis to cruel punishment. Five aborted attempts to execute Francis, the court said, were nothing that «amounts to cruel and unusual punishment in the constitutional sense.»

The Supreme Court has not addressed an execution method in the past six decades, as states continued to hang, shoot, electrocute and use lethal gas to carry out death sentences until the 1990s. At that point, the threat of court fights prompted most states to shift to lethal injection. Two key legal battles in the mid-1990s are likely to be examined as the Supreme Court weighs lethal injection.

In 1994, the San Francisco-based 9th US Circuit Court of Appeals, in a bitterly divided 6-5 ruling, found that Washington's hanging method was constitutional because the state took precautions to ensure a swift and painless death. But two years later, the 9th Circuit concluded that California's gas chamber was unconstitutional because of evidence that inmates had suffered during executions. That ruling spurred the state to switch to lethal injection. But in the past five years, as virtually all states migrated to lethal injection, court battles heated up, producing conflicting rulings in different courts — and a scattershot approach to executing inmates from state to state.

Last month, the Supreme Court decided not to wait any longer to settle the confusion, agreeing to review the appeal of two death-row inmates from Kentucky, where the state Supreme Court rejected a lethal injection challenge last year.

«The Supreme Court realizes it is writing the map,» said Douglas Berman, an Ohio State University law professor whose criminal justice blog is widely read on subjects such as lethal injection. «No matter what they do, they can't make it worse.»



UN

UN RIGHTS CHIEF CALLS ON
AFGHANISTAN TO REINSTATE
MORATORIUM ON EXECUTIONS

9 October 2007 – United Nations High Commissioner for Human Rights Louise Arbour has urged Afghanistan to reinstate a moratorium on the death penalty following the execution of 15 convicted prisoners in Kabul on Sunday.

«I am deeply troubled by this sudden resort to execution after three years of refraining from carrying out the death penalty,» she said in a statement issued today.

Saying the circumstances of the executions may constitute a breach of Afghanistan's obligations under international law, the High Commissioner called on the Government «to reinstate a moratorium on the carrying out of any further executions.»

In a statement issued yesterday, the top UN envoy to Afghanistan also expressed his concern at the use of the death penalty in the war-torn nation. Tom Koenigs called for Afghanistan to «continue working towards attaining highest human rights standards and ensuring that due process of law and the rights of all citizens are respected.»

Meanwhile, Ms. Arbour will begin a four-day visit to Sri Lanka tomorrow, at the invitation of the Government.

The visit to the South Asian nation, which has been embroiled in a decades-long conflict between Government

forces and the Liberation Tigers of Tamil Eelam (LTTE), is part of the High Commissioner's efforts to engage with Member States in the promotion and protection of human rights.

While in Colombo, Ms. Arbour will be meeting with President Mahinda Rajapaksa, senior Government officials, and representatives of political parties, UN agencies, the diplomatic community and civil society, Yvon Edoumou of the Office of the High Commissioner for Human Rights (OHCHR) told reporters in Geneva.

The High Commissioner will also meet with members of the Tamil movement, including Members of Parliament representing the Tamil National Alliance, with whom she will raise issues concerning human rights, Mr. Edoumou added.



GUARDED OPTIMISM FOR MORATORIUM VOTE

ANURADHA KHER

Celebrities, campaigners and leading human rights organisations gathered here to celebrate the World Day Against the Death Penalty on Wednesday expressed cautious optimism about a global moratorium on executions expected to be voted on by the UN General Assembly in the coming weeks.

The mood at their press conference was upbeat, with campaigners and panelists animatedly discussing how, after years of effort, this was the «right time for the resolution».

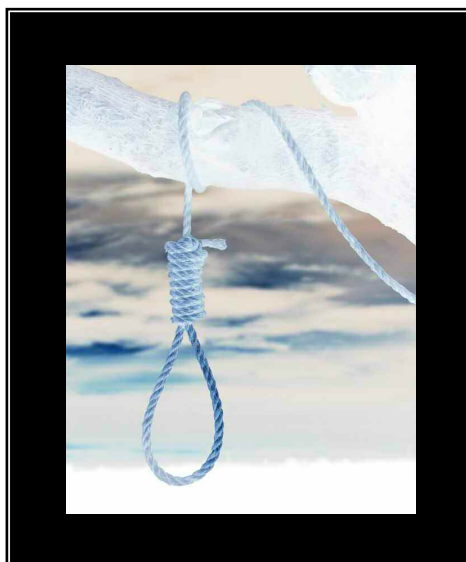
Michel Taube, speaking on behalf of the World Coalition Against the Death Penalty, which represents more than 64 groups working against capital punishment, said, «(The) majority of the world is in our camp

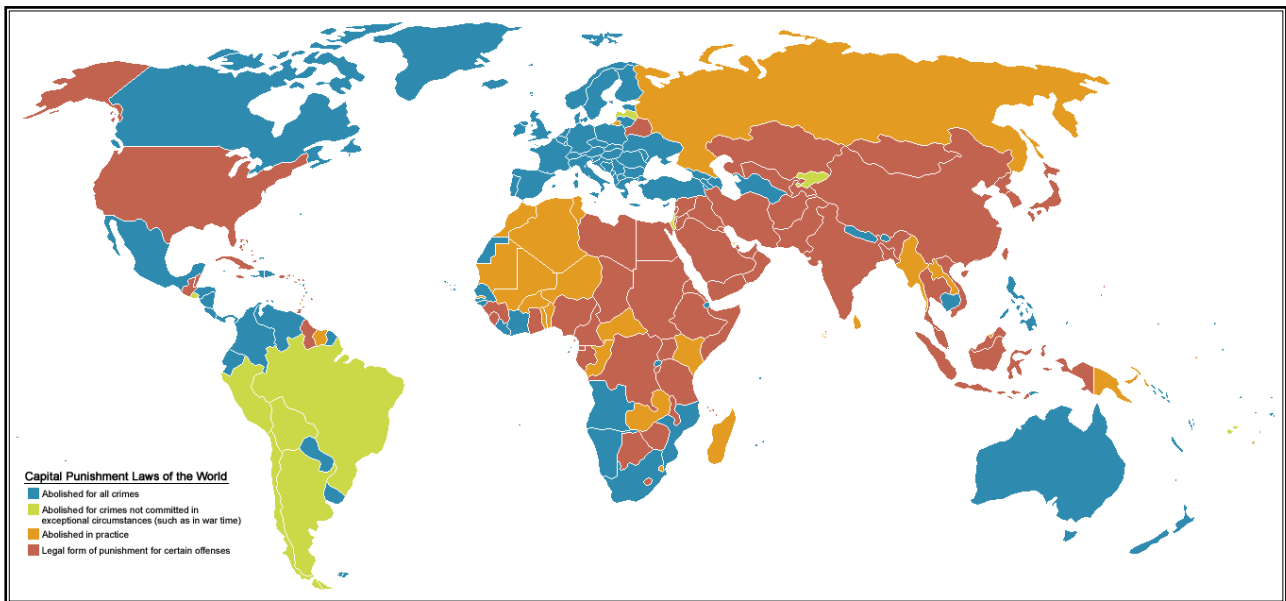
and that is the most decisive case for us. There are many reasons to believe that the General Assembly is ready to pass the resolution. Across continents, the trend is toward abolition. How can the 101 countries that have abolished the (death) penalty not stand in favour of the vote?»

Sister Helen Prejean, author of the best-selling book «Dead Man Walking», and actors Tim Robbins and Mike Farrell, all veteran anti-death penalty campaigners in the US, spoke passionately about the flaws in the capital punishment system.

«We call for consistency in human rights. We cannot end one human rights violation with another human rights violation, because human rights are inalienable,» Sister Prejean said at the meeting.

Robbins emphasised that no state had the right to ask a person to kill another. «The guards who work in prisons, those who actually execute people, face severe trauma. The death penalty retains itself as long it is in the abstract. When you understand the human cost of the death penalty, you can no longer support it,» he said.





Earlier, Yvonne Terlingen, Amnesty International's UN representative, warned that the battle for the UN moratorium was not yet won. «It is still a question as to whether all the countries who have committed (themselves) will stand up for the vote when the time comes. If there are any amendments in the resolution, there is a chance some countries may back down. It's going to be a tough fight. But we have reason to believe that there will be enough votes,» she told IPS. Piers Bannister, a researcher with the death penalty team at Amnesty International, echoed the same guarded sentiment. «It is like predicting a sporting event. So we are cautiously optimistic. It will be problematic for the resolution if instead of being viewed as a human rights issue, it is viewed as a sover-

eignty issue,» he told IPS. But he agreed that the chances for the passing of the resolution had never been better.

Meanwhile, the collective mood of diplomats at the UN has also been fairly optimistic about the final success of the EU-backed cross-regional moratorium initiative.

Three days after the opening of the 62nd UN General Assembly on Sep. 25, diplomats from nearly 100 countries lined up at a ministerial meeting on the moratorium hosted by Italy and Portugal, currently holding the EU presidency.

Their impressive show of numbers was a clear indication that there is increasing support for the moratorium proposal in the 192-member General Assembly. Ninety-five countries represented at the ministerial meeting had already pledged their support for the moratorium

Lethal injection

The drugs used in lethal injection stop blood circulation to the person's brain, and within minutes the person is "brain dead."

What happens as the drugs are administered through an intravenous line:

- 1 LOSS OF**
Sodium pentothal, an anesthetic
Makes brain cells stop reacting to nerve impulses
- 2 RESPIRATORY ARREST**
Pancuronium, a chemical related to curare, which is used on poison arrows in the Amazon
Paralyzes muscles used in breathing; does not paralyze heart
Lungs stop putting oxygen into red blood cells
- 3 CARDIAC ARREST**
Potassium chloride, a simple chemical salt
Blocks electric signals inside the heart; heart slows, then stops
- 4 BRAIN**
Brain's supply of oxygenated blood stops
Within 5 minutes, irreversible damage begins in brain stem, which controls breathing, other basic body functions

Brain stem

initiative in writing. «For the moratorium to be adopted, 96 votes are needed,» Amnesty's Bannister told IPS.

«The death penalty belongs to a culture that should be consigned to the past,» Massimo D'Alema, Italy's minister of foreign affairs, told the meeting. «The time is right, the conditions are right, and now we must set realistic goals which can be achieved quickly. It would be a waste to miss this opportunity.» Italy has been campaigning for 13 years for the UN General Assembly to pass a moratorium on executions.

The Philippines — one of the few countries in Southeast Asia openly supporting the moratorium resolution — was represented at the ministerial meeting by its foreign minister Alberto G. Romulo.

«Much progress has been achieved by human kind and efforts have always been made to improve human life. Yet this barbaric practice of the death penalty remains with us. Therefore, the Philippines will support this resolution. We must change the paradox of making a wrong right by ending life,» Romulo said. The Philippines abolished the death penalty in June last year.

Only 95 countries who signed a declaration of association with the moratorium in December 2006, and those who have abolished the death penalty, were invited to the ministerial meeting.

This meant that India and China, the world's two most populous nations, were conspicuously absent. Both countries retain the death penalty. China is responsible for most of the world's state executions, although the number is said to be falling.

Also absent were representatives from the US, currently with an unofficial moratorium on executions as the US Supreme Court prepares to rule on whether lethal injection, the main method of execution in the US, violates the constitution as «cruel and unusual punishment».

The US, Singapore and several other countries are expected to oppose the moratorium on the grounds that every country has a sovereign right to decide on this issue according to its own criminal justice system.

«The people of the different states that allow the death penalty have chosen to not abolish it through the democratic process,» Rick Grenell, spokesman for the US mission at the UN, told IPS.

Kevin Cheok, deputy permanent representative at Singapore's UN mission, told IPS that even if the resolution was eventually passed, it would make no difference to his country. «We are a sovereign nation and have the right to make the decision for ourselves,» he said.

According to a source in the UN General Assembly, there is no official word on when the moratorium resolution will come up for a vote. «The draft resolution is still on the table,» Amnesty's Terlingen told IPS. But she expected a vote «anytime after October 24». □



To be truly ignorant, be content with your own knowledge.

CHUANG TZU, 300 BC.



GI COLOPHON

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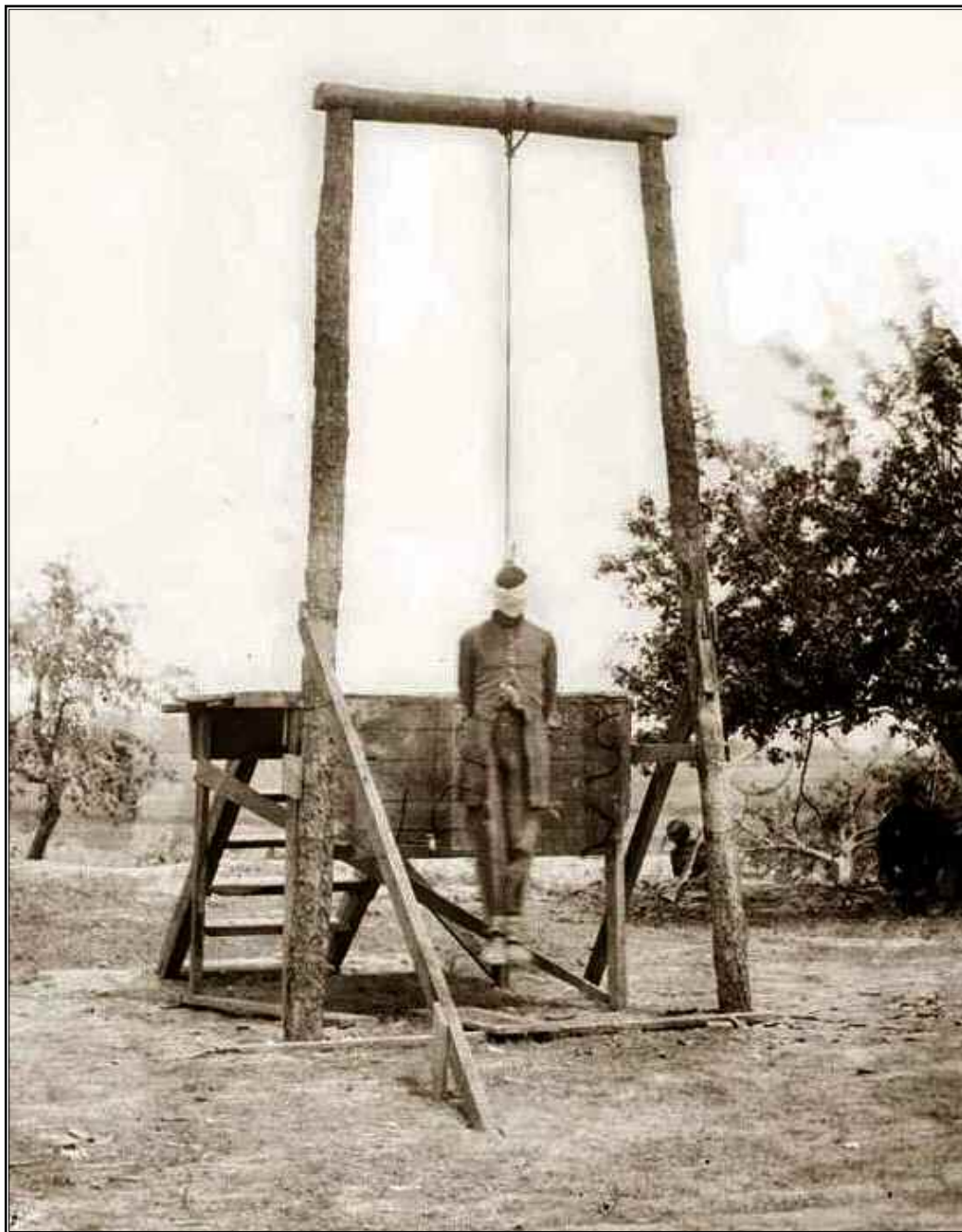
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THE SOFT APPROACH