

A Vote Against The Death Penalty

Exequiel B. Javier*

The idea of the sacredness of human life is central in any civilized society; therefore, no matter how vile a criminal may be, there is within him a spark of human dignity that is worth preserving. There is within him a kernel of goodness that is worth saving. There exists, consequently, a moral imperative to argue against any effort geared towards the restoration of the death penalty.

The punishments imposed by the legal system for crimes committed serve a threefold purpose. First, rehabilitation. Second, retribution. Third, deterrence. Death, as a form of punishment for serious crimes, does not serve any of these purposes.

Death is final and irrevocable. As Shakespeare in his immortal play *Hamlet* said "it is the undiscovered country from whose bourn no traveler returns". Thus, death makes rehabilitation of the criminal impossible.

The death penalty for the sake of retribution for serious crimes committed has no place in civilized society. As Justice Thurgood Marshall of the Supreme Court of the United States said in the case of *Furman vs. Georgia*,¹

Punishment as retribution has been condemned by scholars for centuries and the eighth amendment itself was adopted to prevent punishment from becoming synonymous with vengeance.²

Punishment, must be measured by the "evolving standards of decency

*Congressman, Lone District, Province of Antique; Professor of Law, Ateneo de Manila College of Law; Partner, Romulo, Mabanta, Buenaventura, Sayoc & de los Angeles; Features Editor, Ateneo Law Journal, (1971).

¹33 L. Ed. 2D 346. [hereinafter cited as *Furman*] In this case, each of the three petitioners was a Negro convicted of rape or murder in the State Court and sentenced to death after trial by jury. These cases were raised to the Supreme Court and in a per curiam opinion, the Supreme Court held that the imposition and carrying out of the death sentence in the present case constituted cruel and unusual punishment in violation of the eighth amendment. Chief Justice Burger, joined by Blackmun, Powell and Rehnquist dissented on the grounds that the constitutional prohibition against cruel and unusual punishment could not be construed as to bar the imposition of the death penalty. That the authority for action abolishing such a penalty should not be taken over by the Judiciary in order to avoid encroaching on the powers conferred upon state and federal legislatures.

²*Ibid.*, at 409.

that mark the progress of a maturing society".³ As the U.S. Supreme Court said in *Trop v. Dulles*,

"The basic concept underlying the eighth amendment is nothing less than the dignity of man. While the State has the power to punish, the amendment stands to assure that this power be exercised within the limits of civilized standards."

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The amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."⁴

Thus, death as a punishment has lost its relevance in a civilized society for which the dignity of the individual is the supreme value. As Justice Brennan of the U.S. Supreme Court said:

Death is truly an awesome punishment. The calculated killing of human being by the State involves, by its very nature, denial of the executed person's humanity.⁵

For us, however, to realize why the death penalty strikes at the very essence of human dignity, allow me to compare it with the expatriation of a citizen as a penalty for desertion in time of war. In *Trop v. Dulles, supra*, a war deserter was expatriated, that is stripped of his American citizenship pursuant to a law which provides for expatriation, as a penalty for desertion in time of war. The U.S. Supreme Court struck down the law as unconstitutional for it imposed a punishment that did not comport with human dignity. Thus, the Court said:

³*Trop v. Dulles*, 2 L. Ed. 2D, 630 [hereinafter cited as *Trop*]. In this case, a private in the US army was denied a passport on the ground that under §401 (q) of the Nationality Act of 1940, he had lost his citizenship by reason of his court-martial conviction and dishonorable discharge for wartime desertion. In reversing said denial, the Court ruled that citizenship is not subject to the general powers of the national government and it therefore cannot be divested in the exercise of those powers. Frankfurter registered his dissent on the ground that one of the principal purposes in establishing the Constitution was to "provide for the common defense." And that the statute was within the power of Congress to enact due to the fact that although the Federal Constitution did not specifically enumerate every factor relevant to the power to conduct war, there was no limitation upon it other than what the due process clause prescribed.

⁴*Ibid.*, at 642.

⁵*Furman v. Georgia*, p. 378.

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We believe, as did Chief Judge Clerk in the Court below, that use of denationalization as a punishment is barred by the eighth amendment. Although there may be involved no physical mistreatment, no primitive torture, there is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights, and presumably as long as he remained in this country he would enjoy the limited rights of an alien, no country need do so because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of deportation. In short, the expatriate has lost the right to have rights.

This punishment is offensive to cardinal principles for which the constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not that discriminations may be established against him. What proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies. It is no answer to suggest that all the disastrous consequences of this fate may not be brought to bear on a stateless person. The threat makes the punishment obnoxious.

The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime. It is true that several countries prescribe expatriation in the event that their nationals engage in conduct in derogation of native allegiance. Even statutes of this sort are generally applicable primarily to naturalized citizens. But use of denationalization as punishment for a crime is an entirely different matter. The United Nations' survey of the nationality laws of eighty-four nations of the world reveals that only two countries, Philippines and Turkey, impose denationalization as a penalty for desertion. In this country, the eighth amendment forbids this to be done.⁶

⁶Trop, *supra* note 4, at 642-643.

Death as a punishment is certainly a fate worse than expatriation. As Justice Brennan again said:

Although death, like expatriation, destroys the individual's 'political existence' and his 'status in organized society' it does more, for unlike expatriation, death also destroys 'his very existence. There is, too, at least the possibility that the expatriate will in the future regain 'the right to have rights'. Death forecloses even that possibility.⁷

Thus, the the death penalty, for the purpose of retribution has become an irrelevance in a maturing society as it tends to lower our respect for life and brutalize our values.

It is argued that the death penalty serves as an effective deterrent to the commission of serious offenses. However, experience shows that the presence of the death penalty in the statute books does not deter the commission of crimes.

In the olden days in England, in order to deter stealing, pickpocketing was made punishable with public hanging. People would gather from far and wide to witness the hanging of a convicted pickpocket. While they were busy watching the execution, pickpockets would be busy plying their trade on that very occasion.

A study, made by the United Nations in 1980 and submitted to "The Sixth United Nations Congress on The Prevention of Crime and the Treatment of Offenders," concluded that despite much more advanced research, and efforts mounted to determine the deterrent values of the death penalty, no conclusive evidence has been obtained on its efficacy.

Our own experience in the Philippines shows that the death penalty does not effectively deter the commission of serious offenses. The Dangerous Drugs Act imposes the death penalty upon the seller of prohibited drugs if the buyer dies because of his use of the prohibited drug. Former President Ferdinand Marcos even had a certain drug trafficker named Lim Seng executed by a firing squad, yet, the incidence of sale of prohibited drugs increased after the enactment of the Dangerous Drugs Act.

To cow the people into submission, former President Ferdinand Marcos issued several draconian Presidential Decrees imposing the death penalty; however, this failed to quell the insurgency movement. Instead, the insurgency movement intensified. Neither did his draconian Presidential Decrees imposing the death penalty on rebellion or sedition cow the people into submission. Rather, they rose up to topple him from office.

⁷Furman, *supra* note 2, at 378.

Why does the presence of the death penalty in the statute books not deter the commission of serious offenses? First of all, when a criminal contemplates the commission of a crime, death is far from his mind. He plans how to cover his tracks. He is confident that he will not be caught because he has formulated a well-conceived plan. In the case of crimes of passion, the criminal is simply overwhelmed by emotions such as hatred or jealousy, and thus, he simply becomes impervious to the consequences of his acts.

Thus, what will deter the commission of serious crimes is not the degree of the penalty imposed for such crimes but the effectiveness of law enforcement. Even if we restore the death penalty, if a would-be criminal is convinced that the possibility that he will be sentenced to death is quite remote and that the odds against his being executed are high, the existence of the death penalty will not deter him from committing the crime. Our own experience shows that it is usually the poor who are sentenced to death. The rich and the influential do not get sentenced to death.

Why do people continue to commit serious crimes? It is not because the death penalty has been abolished. As I have pointed out, such a penalty has no deterrent value. People commit crimes because of social and economic conditions, like poverty and unemployment. Additionally, the erosion of moral values also affects the outlook of people.

Thus, if we were to restore the death penalty, we would be destroying human life in the vain hope that others will be deterred from committing crimes; In fact what is needed is effective law enforcement and educational reform.

However, it is argued that there are some crimes which are so heinous that they call for the imposition of the death penalty. It is for purposes of retribution that the blood of the criminal must be spilled.

Since 1976, until 1987 when it was abolished, we had in our criminal statute books a death penalty for certain heinous crimes. However, it failed to serve its purpose as an effective deterrent to the commission of those hateful crimes during that period. The reason was that it was not imposed, with sufficient frequency, hence, it ceased to be a credible deterrent to the commission of those heinous crimes. The death penalty, if sought to be restored, will inevitably suffer the same fate, unless of course we are so bloodthirsty that we have to have executions with increasing recurrence to prove its deterrent effect.

The appropriate question then is whether the penalty of life imprisonment, as presently mandated by the Constitution, would be an adequate alternative to serve the purposes of criminal justice.

Life imprisonment, unlike death penalty is not final and irrevocable. As previously pointed out, there is still in the criminal, no matter how depraved he may be, a spark of human dignity worth preserving, a kernel of goodness that is worth saving. With life imprisonment, there is a chance

of rehabilitating the criminal and turning him once again into a useful member of society.

Life imprisonment is likewise consistent with the need to correct the imperfections in the administration of criminal justice. Unlike the death penalty, it affords the state the opportunity to rectify the punishment inflicted upon the innocent.

Punishment short of death is more in keeping with the evolving standards of decency that mark the progress of a maturing society.

Life imprisonment does not strike at a person's humanity. As Justice Brennan wrote:

An individual in prison does not lose 'the right to have rights'. A prisoner retains, for example, the constitutional rights to the free exercise of religion, to be free of cruel and unusual punishments and to treatment as a 'person for purposes of due process of law and the equal protection of the laws. A prisoner remains a member of the human family. Moreover, he retains the right of access to court.⁸

Finally, life imprisonment may not be said to be a less effective deterrent to crime than the death penalty. As Justice Brennan pointed out:

Whatever might be the case where all or substantially all eligible criminals are quickly put to death, unverifiable possibilities are an insufficient basis upon which to conclude that the threat of death today has any greater deterrent efficacy than the threat of imprisonment.⁹

The severity of life imprisonment is an effective deterrent to the commission of serious crimes. Its imposition means thirty (30) years in jail for the convict. For more than ten thousand days he will be forced to live in drab surroundings in the company of fellow criminals, deprived of the comfort of his home and the warm company of his family and his friends, and restricted in his movement. In short, he will be deprived of the principal pleasures and excitement of human existence.

The remarks of Sir Samuel Romilly, an English criminal law reformer, delivered before the House of Commons during the debate on the bill to abolish disembowelment as a penalty for high treason, are worth recalling:

⁸ *Ibid.*, at 378-379.

⁹ *Ibid.*, at 385-386.

I call upon you to remember that criminal punishments have an inevitable tendency to produce cruelty in the people. It is not by the destruction of tenderness, it is not by exacting revenge, that we can hope to generate virtuous conduct in those who are confided to our care. You may cut out the heart of a sufferer and hold it up to the view of the populace, and you may imagine that you serve the community, but the real effect of such a scene is to torture the compassionate and to harden the obdurate. In times of tranquility, you will not diminish offenses by rendering guilt callous, — by teaching the subjects to look with indifference upon human suffering; and in times of turbulence, fury will retaliate the cruelties it has been accustomed to behold.

Therefore, the restoration of the death penalty serves no redeeming social value. It likewise does not serve any purpose in a maturing society.