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THE DEATH PENALTY: AN ENDANGERED SPECIES WORTHY OF EXTINCTION

Rita Montoya*

Imagine you are strapped to a gurney. An IV is inserted into your vein, and a non-medical practitioner injects an anesthetic into the tube which makes you unconscious. A second drug completely paralyzes you. Your respiratory muscles stop. A third drug is injected. You go into cardiac arrest. This is the execution method, developed by a medical examiner with no expertise in anesthesiology or pharmacology, used by 37 death penalty states and the federal government. This is the method facing the 3000+ individuals on death row in the U.S.

If the procedure goes as planned, death can occur from five to eighteen minutes after the first drug is administered. However, if there are any anomalies, the entire procedure can go awry. Prisoners can suffocate or suffer excruciating pain but be unable to communicate their distress due to the paralyzing drug. A prime example of a botched execution is that of Angel Diaz whose lethal injection in December 2006 took twice the amount of time due to the improper insertion of the IV. Since those administering the drugs are typically not medical professionals, the risk of situations like this is all too real. For some, the question then becomes, *why not just have medical professionals present at executions?*

Recently, the American Medical Association publicly reminded its members that participation in lethal injections, from selecting injection sites to declaring death, expressly violates their ethical obligations. The national associations representing emergency medical technicians, nurses, and anesthesiologists also forbid participation in executions by their members. Though these prohibitions are not legally binding, increasing numbers of medical professionals are refusing to participate.

In light of these issues, a number of states are reexamining their current death penalty procedures. The Governor of Tennessee's February 2007 executive order halting executions for 90 days is the most recent example of the steps some states are taking. Judges, prosecutors, law enforcement agents, and even pro-death penalty legislators are among those calling for temporary moratoriums on the death penalty. Some have even gone so far as to recommend complete abolition. Still, others have simply granted stays on upcoming executions. Additionally, countless numbers of local and county governments have passed resolutions calling for immediate moratoriums on executions. Irrespective of the reason, it is clear that the legal community recognizes the need to reevaluate the application of the death penalty in the U.S.

Lawmakers and enforcers are not the only Americans concerned with death penalty practices. According to a 2006 USA Today/Gallup poll, only 65% of those surveyed favor the death penalty for a person convicted of murder, a 15% decrease since 1994. Moreover, when given the option of life without the possibility of parole as a punishment, a nearly equal percentage favored each option. Additionally, between 1996 and 2006, the number of death sentences given by American juries has decreased by 64%. This change in American attitudes may be due in part to the exoneration of 123 individuals from death row since 1973. In 2003 alone, 12 death row inmates were found to

be wrongly convicted, according to a report by the DPIC.

The U.S.' continued use of the death penalty has also elicited international criticism. At least 128 countries have abolished the death penalty either by law or in practice, according to Amnesty International. Still, 2,148 people were executed in 2005 with 94% of them attributed to only four countries: China, Iran, Saudi Arabia, and the U.S. The U.S.' membership in this notorious club has not gone unnoticed by the international community. In fact, numerous international groups and commissions have repeatedly denounced the U.S.' continued use and application of the death penalty. Though the U.S. relies solely on American law in its Constitutional interpretations, the Supreme Court expressly acknowledged international disapproval in two significant cases prohibiting executions of severely mentally disabled and juvenile offenders, *Atkins v. Virginia* and *Roper v. Simmons*, respectively. Nonetheless, even if no consideration is given to international norms, the "evolving national standards of decency" test utilized in *Atkins* and *Roper* provides adequate support for a reexamination of US death penalty procedures.

Twelve states plus the District of Columbia have abolished the death penalty. Five states legally permit the death penalty but have had no executions since 1976. Several states have temporary moratoriums due to court or executive order and several more have issued numerous reprieves. It would appear that the *Atkins* and *Roper* factors apply in full force. At the least, there is sufficient evidence for a temporary moratorium in order to examine the current application of the death penalty as called for by the American Bar Association's most recent resolution.

Since 1979, the ABA, the national representative of the legal community, has adopted several resolutions calling for improvements in the administration of capital cases. These resolutions, and those of countless other organizations, have largely gone ignored. Although the Supreme Court most recently ruled in *Hill v. McDonough* that death row inmates can challenge lethal injection procedures even where all regular appeals have been exhausted, there is no indication that the Court is prepared to rule on the constitutionality of the death penalty as a whole. In which direction, then, is the death penalty headed?

The state of international affairs has placed American human rights practices in the global spotlight. In a world where borders are merely legal boundary lines, it is undeniable that the respect and admiration of the international community is vital to the U.S.' status as a leader in democracy and human rights. With the U.S. currently facing fierce condemnation of their foreign policies, including alleged human rights abuses, perhaps it is time our nation's leaders show the world exactly where the US stands on individual human rights. There's no better place to start than right here at home.

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