

Reconsidering the Death Penalty In Ohio

by Dr. James H. Rutherford, MD

The Columbus Dispatch has recently published several articles which have favored abolishing the death penalty in Ohio. An article by Supreme Court Justice Paul E. Pfeifer is significant because in 1981, as a legislator, he helped draft the death penalty law in Ohio. An article by Terry Collins is significant because he was a warden and a former head of the Division of Rehabilitation and Corrections in Ohio. Ohio's Catholic bishops have also urged state leaders to abolish the death penalty. The most recent article by Jack D'Aurara, an attorney, focused on the enormous costs of the death penalty compared to the the alternative of a sentence to life in prison without parole. None of the recent articles in the Dispatch on abolishing the death penalty, however, have mentioned a global perspective. Two of the major reasons often given for abolishing the death penalty are a respect for human dignity and a rejection of such an elective use of violence. Such ideas and ideals are often as important in foreign affairs as military and economic power.

The most powerful psychological tool of tyrannical or totalitarian governments is the use of the death penalty. This does not even have to be pervasive to be persuasive as a threat. In 2007, 88% of the executions worldwide occurred in China, Iran, Pakistan, Saudi Arabia, and the United States. This is the company that we keep, and they are quick to point to the United States to justify their use of coercive power and the death penalty.

Sixteen states and Washington D.C. have now abolished the death penalty. Internationally 136 out of 195 countries have abolished the death penalty. A country cannot belong to the European Union if it allows the death penalty. New Jersey abolished the death penalty in 2007. Illinois has just abolished the death penalty in 2011 primarily as a result of a series of revelations that 20 people since 1977 in their state had been sent to Death Row who were later exonerated. In the period from 1973 to 2007 there was one Death Row prisoner in the United States who was exonerated for every nine Death Row prisoners who were executed. Mistakes are inevitable and an execution is irreversible. The worst offenders are often not on death row. Justice Pfeifer from his experiences as both a legislator and judge in Ohio gave the opinion that it is very difficult for the death penalty to be administered in a fair and just way.

Revenge and a quest for proportional punishment can understandably be the impulsive response to some of the simply horrendous crimes that make the headlines. One can make a case for the death penalty as retribution. Prosecutors in particular will point to the advantage in solving and resolving cases with the death penalty as a bargaining tool. The issues concerning the death penalty though also depend on the context, the alternatives, and of course public opinion. The circumstances and the pros and cons, however, can change as can public opinion. Concerning public opinion, there have been some misperceptions concerning the issues of cost, deterrence, closure, and the confidence placed in our legal system.

The first misperception is that it is more expensive to sentence someone to life imprisonment without parole compared to giving the death penalty. A death penalty case with all of its delays and appeals, however, is more expensive and often much more expensive. Due to the many appeals and delays we have had occasions where we have executed people in Ohio more than 25 years after the crime and conviction. There are now 41 prisoners on death row who were sentenced more than 20 years ago.

An Urban Institute study found the cost of a death penalty trial to be more \$1.9 million more than a trial not involving the death penalty. The Death Penalty Information Center reports that, in Texas, "a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years." It can cost millions to execute a person in Ohio.

The second apparent misperception is that the death penalty is a significant deterrent. Studies on this have differed or been ambiguous. In general, however, there is not a higher rate of murder in those states and countries that don't have the death penalty. After recently signing the bill that abolished the death penalty in the State of Illinois, Governor Quinn wrote, "I have found no credible evidence that the death penalty has a deterrent effect on the crime of murder and that the enormous sums expended by the state in maintaining a death penalty system would be better spent on preventing crime and assisting victims' families in overcoming their pain and grief." Life imprisonment without parole is a reasonable and effective alternative for keeping our communities safe.

A third possible misperception concerns the matter of closure. Terry Collins wrote that from his experience, "It is emotionally traumatic for the families of victims to be recalled into courts year after year because of so many death-penalty appeals. I observed firsthand the emotions of the victims' families. An increasing number of families ask the state not to pursue the death penalty so that they are not faced with the painful task of attending appeals hearings, and so they can achieve closure." Governor Quinn wrote, "To those who say that we must maintain a death penalty for the sake of the victims' families, I say that it is impossible not to feel the pain of loss that all these families share or to understand the desire for retribution that many may hold. But, as I heard from family members who lost loved ones to murder, maintaining a flawed death penalty system will not bring back their loved ones, will not help them to heal and will not bring closure to their pain. Nothing can do that. We must instead devote our resources toward the prevention of crime and the needs of victims' families, rather than spending more money to preserve a flawed system."

Furthermore some consideration should be given to the lawyers, prosecutors, judges and juries who are involved in obtaining a death penalty conviction and those who are responsible for carrying it out. Many of those involved come from religious traditions which have as a central moral value that one should not only love ones neighbor as one loves oneself, but that one should also love ones enemies. The medical profession, with its primary moral concept of a respect for human dignity and the admonition to "do no harm," has opposed physician participation in executions in its ethical code. The Hippocratic oath states that "I will give no deadly medicine to any one if asked, nor suggest any such course" The American Medical Association's Code of Medical Ethics states that physician participation in executions contradicts the dictates of the medical profession. Furthermore, killing someone in a "humane" way and with certainty has proven to be difficult. The electric chair was abandoned in Florida after an execution was botched and the prisoners head burst into six inch flames. There have been difficulties in Ohio with the IV administration of drugs and with both the kind and the availability of the drugs. Those physicians who do become involved in the process in some states are often provided confidentiality. Participation in the conviction and execution of a person in a death penalty case can be a source of significant stress and conflict for those involved rather than closure.

A fourth concern is a misplaced perception that our legal system always gets it right. Between 1973 and 2008 the number of Death Row exonerations nationally was 128. Governor Quinn also wrote. "...I

have concluded that our system of imposing the death penalty is inherently flawed. The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.”

In Ohio, there has also been no equity even within the state in applying capital punishment, often for financial reasons. Due to the extraordinary costs involved in capital punishment cases, the smaller counties have usually plea bargained these cases. Juries in capital punishment cases are chosen only from a pool of people who are willing to invoke the death penalty. In 2005 the legislature in Ohio passed a law which allowed prosecutors to seek a penalty of life imprisonment without the possibility of parole rather than the death penalty. Since then juries have by a very wide margin chosen a sentence of life imprisonment without parole rather than a death sentence. Judge Pfeifer notes that there remain, however, dozens of prisoners on Death Row (actually about 135) who were convicted before that option was available and there are at least some who will be executed because they were convicted at the wrong time. Similar types of murder cases in our state have simply not been treated the same when considering either place or time.

In addition to the above discussed considerations, one should also keep in mind a global perspective and the importance of ideas and the values behind those ideas. We now live in a pluralistic global community with relatively easy access to weapons of mass destruction. Eliminating the death penalty in Ohio and then eventually in the nation would be a good place to start in addressing the issues related to violence and terrorism in our time.

A major unacknowledged but obvious important conflict in international affairs, for example, is between moderate and radical Muslims, with the radical Muslims being defined as those who are willing to use lethal force based on religion as a means to their ends. This has included stoning women to death for infidelity, honor killings, assassinations for “blasphemy”, executions by the Taliban and al-Qaeda of farmers and journalists for political control, suicide bombings and terrorist attacks. As usual, the ends are used to justify the means. The means, however, define any group as much as the ends, and the means often come to distort the ends. We should do everything we can to focus world opinion on such issues. Abolishing the death penalty in Ohio and then our nation would help to do so. It would also help us understand and convey that the primary moral values in our constitutional democracy include equality understood as a respect for human dignity and our common humanity in addition to freedom.

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