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Death penalty: to be or not to be

Abstract: The moral to Muslims is not a set of subjective (and therefore changeable) notions of good and evil; morality objectively exists and operates an immutable law, given by God, and has practical significance. Sin is an offence against moral law.

The system of punishment in Islamic countries features the death penalty not because the moral level of these people is lower than that of those who have abolished it, but because it is derived from the Quran, which is primarily aimed at protecting the moral principles of the life and behaviour of Muslims in a highly precise way.

The essence of punishment, according to the Quran, is merely part of a far more integrated whole. It is considered an integral part of the concept of justice, where the meaning and function of punishment are determined above all by the notion of the crime. Crucially, punishment as found in the Quran is intended to empower the members of the community with a sense of justice that publicly condemns actions that go beyond the boundaries laid down by Allah.

The uniqueness and singularity exhibited in maintaining the death penalty in Japan also exists in the country-specific national forms of social control still based on traditional community and moral values even though the country has adopted the economic and democratic principles of the West.

Death is still a serious barrier to the offender. Even on the basis of normal common sense, people's fear of death is greater than any other serious punishment.

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We all know, that the system of punishment in Islamic countries features the death penalty not because the moral level of these people is lower than that of those who have abolished it, but because it is derived from the Quran, which is primarily aimed at protecting the moral principles of the life and behaviour of Muslims in a highly precise way. On this basis therefore, punishment in Islam is aimed at protecting the five core values of religion, life, intellect, continuation of progeny and property. This is why sodomy between two adult men earns the death penalty, while drunkenness, which causes significant harm to the human mind and promotes its degradation, earns eighty lashes. The role of punishment is the protection of the moral condition of the Muslims which affects the veil-being of the entire community. Logically this creates large-scale opposition to crimes.

The religion of Islam therefore believes that there should be a harsh punishment for homosexuality since it corrupts the nation. The contemporary Islamic scholar Nadia El-Awady, who analysed statistical data on the connection of pederasty to blood diseases, writes: “Looking at these numbers, you begin to think that the destruction by God of Sodom was a manifestation of his mercy to ill mankind because it is not known what terrible diseases might spread from this city to the whole world. Since at that time the level of medicine was very low, these diseases could have destroyed the entire population of the planet” [5, p. 60]. While E. M. Kleymentov states that: “The counter-criminal potential of Islam is due to the understanding of morality as the moral law. The moral to Muslims is not a set of subjective (and therefore changeable) notions of good and evil; morality objectively exists and operates an immutable law, given by God, and has practical significance. Sin is an offence against moral law.” [4, p. 221].



With a few exceptions, in modern secular Muslim nations penal law, in particular the system of punishments, is not based on the traditional law of Islam. For example, Sudan continues to apply the principle of talion, a tooth for a tooth, while in Iran premeditated murder still involves *qisas* in the form of either the death penalty or compensation according to a prescribed amount where this compensation is present in the legal order. In Saudi Arabia, the system of punishment includes both the death penalty and corporal punishment. At the time of writing Saudi prisons held an estimated 26,000 people, nearly half of them foreigners (46 per cent), and after the introduction in Saudi Arabia in 1987 of the death penalty for drug trafficking, dozens of foreign nationals have been decapitated [7].

There is no doubt that a strict system of punishment including the death penalty remains in countries that possess a strong Islamic tradition. In 2012, Kuwait adopted a criminal law amendment whereby blasphemy and insulting the Prophet Muhammad became punishable by death if the accused admits to this in court and refuses to recant. I recall the headline story of the Sudanese doctor Meriam Yahya Ibrahim, who in 2014 was sentenced to death by hanging for apostasy from Islam, and then pardoned. The essence of punishment therefore, according to the Quran, is merely part of a far more integrated whole. It is considered an integral part of the concept of justice, where the meaning and function of punishment are determined above all by the notion of the crime. Crucially, punishment as found in the Quran is intended to empower the members of the community with a sense of justice that publicly condemns actions that go beyond the boundaries laid down by Allah.

It is difficult to understand the reasons for the existence of the death penalty in Japan without understanding its culture and psychology, which lie in the specific features of the mentality and psychology of the Japanese people and hence are linked inextricably to the centuries-old traditions and customs of the country. No



one can deny the historical attributes of social life in Japan, which is why the death penalty there is also evidence of the preservation of age-old customs and traditions, a chosen way of life, none of which represents a low level of moral and cultural development of the people.

Japan is one of the few remaining countries that has clung for centuries to its own uniqueness and originality and feared European influence like an uncontrollable fire. We should understand that the uniqueness and singularity exhibited in maintaining the death penalty in Japan also exists in the country-specific national forms of social control still based on traditional community and moral values even though the country has adopted the economic and democratic principles of the West. This explains why the proportion of murders in Japan in the structure of crime over the last fifty years does not exceed 0.2 per cent, while the share of violent crime in the total crime for decades has not exceeded 1.5 per cent. Comparative data from the annual reviews of the United Nations reveal the effectiveness of the Japanese system of influence on crime, especially in the category of very serious crimes, which indicate the long-term and generally much more favourable trend in the development of crime.

In their customs and psychological structure, the modern Japanese differ from the Europeans who proudly consider themselves the most morally developed - while forgetting that the concept of morality in every nation has its own evaluation and history. Japan would appear to be one of those nations that has refused to copy Western legislation, in particular criminal law, in terms of the abolition of the death penalty. As V. E. Kvashin, N. A. Morozov and I. B. Te note: "Among such countries, Japan is truly an exception in adopting the economic and democratic experience of the West while the country has not lost its specific national forms of social control where traditional community and moral values predominate." [3, p. 103].



To this we can add that, comparing the mentality and psychology of the Japanese with the Europeans, we must admit that this is not question of simply another morality and culture, or customs and traditions, but an entirely different civilisation with a distinct historical background and philosophical education. In Japan, loyalty, politeness, wisdom, peace, tolerance, faith and a sense of shame for misdeeds are all based on the foundations of Confucianism, the basic principle of which states that “the people should not know the laws but only subject themselves unto them”. And from this there follows the idea that “the uncertainty of future punishment deters criminals more than the exact knowledge of specific penalties”.

There can therefore be no doubt that the ideas of Confucianism concerning the concepts of justice and retribution are the most important factors in the problem of the moral nature of the death penalty in Japan. Nevertheless we should also take into account those principles derived from samurai honour which require that the basis of the national character of Japanese people preserves the death penalty. In his study *The Branch of Sakura*, V. Ovchinnikov made the following observation: “Throughout Japanese history people have cut off people’s heads and ripped open stomachs in the name of *chiri* or the debt of honour. Although samurai with their tradition to commit *seppuku* is now preserved only in the movies, the concept of *chiri* is still invisibly present in the actions of today’s Japanese people. If such a primary virtue for the Japanese such as a debt of gratitude has its roots in ancient Chinese morality, the debt of honour is a purely Japanese concept which has nothing in common with the teachings of Confucius or the Buddha’s teachings . . . *Chiri* is a debt of honour based not on abstract concepts of good and evil but on the strictly enforced regulation of human relationships requiring their appropriate behaviour in their appropriate circumstances.” [6, p. 66-73].

So here it is the philosophy of Confucianism as well as national, specific traditions that oppose the influence of Europe in abolishing the death penalty in Japan.



Unlike the Japanese, the existence of the death penalty in some countries is not related to national traditions but to the crime situation, i.e. the state of homicides in the country. In denying the death penalty from the standpoint of morality, these countries are nevertheless convinced that this punishment has the highest quality of combating crime. Rising crime rates and the character of those crimes added to which are new and efficient methods, tools and instruments of murder which may include a mass effect, increasingly force many to think about the feasibility and usefulness of the conservation of the death penalty as a means of deterrence. B. N. Chicherin wrote that if, for the protection of society the deterrence of criminals is required, then the death penalty acts in the strongest way. This will be the only means that can halt hardened villains who view even a life sentence with indifference. For society it represents the useful pruning of an infected member, since if there are incorrigible criminals in its midst then it is best to get rid of them at once [8, p. 156]. Although the usefulness of the death penalty in terms of achieving this goal is controversial, we should recognise that the fear of death is still a serious barrier to the offender. Even on the basis of normal common sense, people's fear of death is greater than any other serious punishment. For example, in a democratic and socially prosperous developed country such as the United States, this punishment has not been abolished - and even as recently as 2005 it was applied to minors.

The United States is a nation that does not have a true national ancient history in the way found elsewhere as in the likes of China, Japan, Iran and Europe, which over thousands of years have shaped their own traditions, customs, culture and religion. The settlers from Europe brought to America a system of punishment where the death penalty has always occupied a special place, and executions in the life of the early colonial settlements were a common phenomenon. Currently the death penalty is provided in the United States for murder with aggravating circumstances, and there is often a marked racist character indicating racial



inequality in its application. National minorities, primarily black Americans, face a far higher threat of being sentenced to death than white Americans. It is also evident that in the Southern states, as compared to the Midwest, West and North East, the death penalty is used in *o n* often. All this is confirmed by statistics [2; 3] and yet it would be an erroneous and scientifically unjustified assertion to say that the existence of the death penalty in America is aimed specifically at black people, even though in percentage terms they may be convicted of more serious and violent crimes than the white population. Indeed it is a fact that in the Southern states a high proportion of the population is black.

It is a more appropriate assertion to say that the existence of the death penalty in the United States is due to the state of crime. As we know, it is a country that is characterised by relatively high levels of crime, especially violent, and so it is not only the population but also their politicians who are convinced that without such a punishment the nation's crime rate will increase. With this in mind, in 1975 Isaac Ehrlich conducted an analysis of statistical data in the United States for killings and executions and came to the conclusion that every execution has a very high level of efficiency in deterring at least eight potential murderers. We should bear in mind that the death penalty has always been regarded in the United States as an adequate and legitimate response by society to crime. We have only to recall President George W. Bush's statement when campaigning for re-election in 2004: "The death penalty is a part of the war against crime" [1]. Of course, the presidential candidate, in declaring war on crime, took into account the state of public opinion on the death penalty which of course played a role in his victory. And so the Americans, in answering the question 'should the death penalty be or not to be', consider first the state of crime in their country and only then the morality of the death penalty.



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