WHEN THE STATE KILLS...

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This 1989 report of AMNESTY INTERNATIONAL (AI) is a very moving, very convincing, well documented plea for the abolition of the death penalty and the end of all extra-judicial killings by state-approved death squads. AI examines one hundred and eighty countries, reporting those which have abolished, retained, or reintroduced the death penalty, or restricted or widened its scope, specially concerning the way it is actually carried out.

The report is not only about the death penalty today but about progress towards its worldwide abolition, out of respect for basic human rights. The first sentence tells us that “the time has come to abolish the death penalty worldwide” (p. 1).

AI argues from reason, from basic human rights, from the existential order, from voluminous surveys, from eye witnesses, from officials, from national and international commissions, from the considered opinions of experts of national and international renown. There is no reference to religion, no citing of religious authorities.

CATHOLIC THEOLOGY AND THE DEATH PENALTY

Catholic theologians have been arriving at the same conclusion as AI, arguing also from the new information available concerning the unconscionable abuses connected with the death penalty, and also giving more weight to a deeper understanding of “Jesus’ non-violent message and to his own gentle spirit, as well as to the wit-
ness of his disciples” (Bernard Häring, CSSR, Free and Faithful in Christ [1981] 3:38). Häring, perhaps the most influential Catholic moral theologian in the world, is personally convinced “that the abolition of the death penalty is the better course” (ibid.). Haring questions the right of a state “to uphold the death penalty unless it has done all in its power to give better education and to care for a more just and humane environment” (ibid.).

U.S. CATHOLIC BISHOPS OPPOSE THE DEATH PENALTY

Joseph Cardinal Bernardin, Archbishop of Chicago, in a memorable speech for the Catholic Conference of the American Bishops in 1989, urged a U.S. Senate Committee to reject a bill that would reinstate the death penalty at the national level. The Cardinal reminded the Senators that the U.S. Bishops have declared their opposition to the death penalty many times and are alarmed by the growing acceptance and use of the death penalty. Insisting that the death penalty is not the answer to crime, he asked how could we preserve the dignity of human life and of all human persons, while at the same time ensuring respect for law and the protection of society? The answer to that question will determine the kind of society we choose to be, a society of justice or one of vengeance and violence. The Cardinal expressed the belief that a determined compassionate response to crime that foregoes the violence of the death penalty is more consistent with respect for all human life.

FIRST DETAILED CRITIQUE: FRANCE 1764

A detailed critique of the death penalty in 1764 actually started the modern abolitionist movement when Cesare Beccaria published On Crimes and Punishments in Italy. It was the first systematic, sustained, detailed critique of the death penalty as it was actually carried out. The present AI report is the latest in a long line of such critiques as the numerous references show.

ABSTRACT RIGHT VS. EXISTENTIAL REALITY

Establishing the right of a state to legislate capital punishment is one thing — deductive, abstract, based on lofty ethical and philo-
sophistical arguments concerned with justice and the common welfare. But the arbitrary, illogical, inconsistent, biased, prejudicial, inhumane variations in the way nations around the globe exercise the right should move any reader of this AI Report to endorse immediate abolition of the death penalty.

It is so arbitrary as to be actually capricious in some nations, subject to change with or without notice. It can depend on the change of the party in power, on subjective fears and apprehensions, on cultural and racial bias, on a change in the national mood, etc.

EXAMPLES OF GLARING INJUSTICE IN SOME NATIONS

Some nations presume the accused to be guilty as in China (p. 45), and so he must prove his innocence. Some nations will not allow a lawyer to defend the accused nor will it allow an appeal (Iran, p. 44). In some countries, no witness on behalf of the accused is permitted, nor any evidence that might disprove the charges alleged (ibid.). The criminal charges are often so vague that it would be difficult to disprove them once they are made, e.g., "corruption on earth," "at enmity with God," "religious beliefs," "political opponents expressing their views in a non-violent manner" (p. 150). The presumption of guilt of the accused may result in a "trial" consisting merely of "reading the charge and passing sentence" (ibid.). A few countries (South Africa, Iran, China) account for 60% of all recorded executions (p. 52, note 14). A desire to speed up procedures in connection with a national campaign against crime led to 600 recorded executions in China in three months. The total number was believed to be in the thousands (p. 45).

RACIAL BIAS

The color of a person's skin can often determine the outcome of a court case. Blacks accused of killing whites are more often convicted in the United States and South Africa than whites killing blacks (p. 28). In South Africa the judges are nearly all white.
Poverty can lead to conviction because the accused cannot afford to hire an experienced or clever lawyer. He has to accept the court-appointed, inexperienced, newly graduated lawyer.

LANGUAGE BARRIER

The language used in the court can be unknown to the accused as in South Africa where only English or Afrikaans are allowed in the courts. For the vast majority of the people (the blacks), neither English nor Afrikaans is their first language. They are at the mercy of a court-appointed interpreter (p. 29).

ARBITRARY LEGAL FACTORS

Other arbitrary factors, often with no relevance to innocence or guilt of the accused became decisive, e.g., legal "errors, misunderstandings, different [legal] interpretations of the law, or the different orientations of prosecutors, judges or jury members" can all contribute to an arbitrary decision (p. 30). A clever lawyer can discover a technical error on the part of the police or prosecuting authorities or a judge, and win an acquittal (ibid.). A less talented or less experienced lawyer might not discover such an error and his client is sentenced to death. In some countries the court of appeals refuses to admit new evidence (p. 31).

MARQUIS DE LAFAYETTE: FRANCE: ABOLITIONIST

In 1830 the famous French statesman in a parliamentary debate stated: "I shall ask for the abolition of the death penalty until I have the infallibility of human judgment demonstrated to me" (p. 31). Lafayette was led to this position because of the arbitrary decisions he had witnessed.

ROY JENKINS: ENGLAND: ABOLITIONIST

In 1987 in a similar debate in the British House of Commons, Roy Jenkins, a cabinet member responsible for decisions on the commutation of death sentences, made practically the exact same statement as Lafayette had made 157 years before: "It is my view
that the frailty of human judgment . . . is too great to support the
finality of capital punishment” (p. 32). He had seen two prisoners
hung even though their guilt was doubtful. Only the abolition of
the death penalty in England in 1965 prevented more such execu-
tions (ibid.).

INNOCENT PEOPLE EXECUTED

In the United States a study published in 1987 revealed that
23 innocent people had been executed (p. 31). After execution
juridical reviews or investigations into possible error rarely take
place (ibid.).

DISPARITIES IN LEGAL DECISIONS: INEVITABLE

It has been officially acknowledged by the United States Su-
preme Court that “disparities in sentencing are an inevitable part”
of the criminal justice process and that any system of determining
guilt or punishment “has its weaknesses and potential for mis-
use” (p. 28). One justice (William Brennan) said that study shows
that the risk of racially biased discrimination was “intolerable by
any standards” (p. 28).

THE UNITED NATIONS ON ABOLITION OF DEATH PENALTY

In the light of all the evidence of widespread injustice in the im-
plementation of the death penalty, it should surprise no one that
the United Nations, in 1971, resolved that “in order fully to
guarantee the right to life, provided for in Article 3 of the Uni-
versal Declaration of Human Rights [1948], the main objective to
be pursued is that of progressively restricting the number of
offenses for which the death penalty may be imposed, with a view
to the desirability of abolishing this punishment in all countries”
(p. 37). In 1977 this resolution was reaffirmed by the United
Nations General Assembly (ibid.).

1987 PHILIPPINE CONSTITUTION: DEATH PENALTY ABOLISHED

As is well known, the 1987 Constitution, ratified by an over-
whelming majority of the people in a nationwide referendum, abolished the death penalty (Art. II, Sec. 19[1]). It provides for the possibility of reintroducing it "for compelling reasons involving heinous crimes," depending on the will of Congress (ibid.).

CURRENT MOVE TO REINTRODUCE THE DEATH PENALTY

Currently there is a move in certain circles to reintroduce the death penalty in the Philippines because of the "upsurge in criminality and lawlessness, festering insurgency, and repeated attempts to overthrow the legal government" (The Star, Editorial, December 17, 1989). It is claimed that the military, the police, the members of the judiciary and even the general public endorse the proposal (ibid.). Just as the individual has the right to self-defense, the editorial argues, the state also has a right to protect itself. But there is a lyric leap here from an individual's admitted right to self-defense against an ongoing attack, to the right of the state to kill a guilty party after the attack has ceased. No one questions the right of the state to defend itself. The question concerns the need of the death penalty as the only and necessary means of defense. That is the hard question.

The editorial ends with a use of the Bible, associated pejoratively with the Fundamentalists. One text is used to represent the clear will of God covering all possible cases: "Remember even under God's moral law, the penalty for sin is death" (ibid.). So much theology collapsed into a single text! There is no mention of God's mercy which is his work above all nor of the text which tells us that "God does not wish the death of the sinner but rather that he be converted and live."

To restore the death penalty in the Philippines would be to go against the 1971 resolution of the United Nations mentioned above: "to restrict the number of offenses for which the death penalty may be imposed, with a view to the desirability of abolishing it in all countries." This was seen as a means to protect the right to life provided for in the 1948 Declaration of Universal Human Rights to which the Philippine Government was a proud signatory.

From the theologians' and Bishops' statement cited above, it is clear that there is no support in Catholic circles for any move to
restore the death penalty no matter what the alleged justification.

NATIONAL MOVEMENTS TO REINTRODUCE THE DEATH PENALTY

The AI Report shows that there is no evidence to support the contention that the death penalty acts as a deterrent. After a period of military abuses or a growing drug menace, there has often arisen a growing demand to reintroduce the death penalty. But in country after country, the calls for the death penalty died down and the issue was never brought to a vote (p. 86). When it is said that the general public clamor for the death penalty to be restored (as The Star editorial claims), one may ask when and where that poll approving the reintroduction was taken. If there was such a poll, the AI Report shows how such polls are usually based on a lack of understanding of the relevant facts and ignorance of the reasons favoring abolition (p. 22). Publicity and education on the details and examples contained in this AI Report would make any reasonable person question the morality of reintroducing the death penalty. The British example might be typical. In a 1983 move to reintroduce the death penalty, members of parliament “changed their minds, often because they had never had to listen to the arguments [against the death penalty] before... It is only when you take part in the debate that the case against hanging becomes overwhelmingly obvious” (p. 86).

WESTERN EUROPEAN CONSENSUS

Speaking as President of the European Parliament (European Community) Piet Dankert, wrote to the Prime Minister of the United Kingdom saying that “a vote to restore the death penalty would be ‘an extraordinary and terrible decision’, with ‘negative consequences’ for the country’s stance on human rights” (pp. 88-89). The motion to restore the penalty was defeated by a larger majority than was expected (p. 89). In subsequent debates motions to restore the death penalty in England were defeated by large margins in 1987 and 1988 (ibid.). The emerging consensus in Western Europe is definitely against the death penalty.
CANADIAN OPPOSITION TO THE DEATH PENALTY

In 1984 the new Prime Minister of Canada, Brian Mahoney, pledged to allow a vote on the issue of reintroducing the death penalty which had been abolished in 1976. A Canadian Coalition was formed to enlighten the people on the issues. Made up of the Canadian Council of Churches, the Canadian Conference of Catholic Bishops, the Canadian Civil Liberties Union, and the Criminal Lawyers’ Association, the coalition took their case to the people through the mass media. They showed the cruelty and arbitrary use of the death penalty in Canada, and especially in the U.S.A. When the issue came to a vote in 1987, the move to restore was overwhelmingly defeated by a larger majority than in the original vote to abolish it in 1976 (p. 90).

PAPUA, NEW GUINEA: ABOLITIONIST

In the 1980 parliamentary debate in Papua, New Guinea, Prime Minister Sir Julius Chan said: “I am strongly of the view that hanging, or for that matter, any form of extinction of human life, is no deterrent to murder... Execution or taking a man’s life is an act which brutalizes both the executioner, and the community at large” (p. 90).

ROMANIA: POST LIBERATION JAN. 3, 1990: ABOLITIONIST

Jon Iliescu, the new leader of Romania, has abolished the death penalty. He said that such an action would “underscore the popular and humanist character of the revolution” (The Star, January 3, 1990, p. 1). The cruel, abusive regime of Ceausescu had paid lip service to restricting the scope of the death penalty, but in practice there were many secret abuses, e.g., “in 1983 at least 13 death sentences were passed, five for stealing large quantities of meat... On 28 March 1986 Florentin Scaletche was reportedly sentenced to death by the Bucharest Military Court for treason and other offenses, after having tried to sail to Turkey without authorization” (p. 195).
ANDREI SAKHAROV: RUSSIAN PATRIOT

Recently deceased, a man whose death caused a great outpouring of condolence and admiration worldwide, was strongly opposed to the death penalty, "a savage and immoral institution which undermines the moral and legal foundations of a society" was his carefully considered judgment (p. 75). A state enforcing the death penalty "cannot expect an improvement of the moral atmosphere in its country," he insisted (ibid.). Sakharov rejected "the notion that the death penalty has any essential deterrent effect on potential offenders. I am convinced that the contrary is true — that savagery begets only savagery" (ibid.). Strong words from a man who suffered so much under communist dictators. His belief that the death penalty does not deter potential criminals is supported by many surveys.

DETERRENT EFFECT OF DEATH PENALTY

"The fact that no clear evidence that the death penalty has a unique deterrent effect has emerged from the many studies made, and the methodological difficulties inherent in all such studies, point to the futility of relying on the deterrence hypothesis as a basis for public policy on the death penalty" (p. 14).

CONCLUSION

The many voices raised around the world in favor of abolition represent many different cultures, religions and nationalities. They are agreed on a basic principle: "respect for human rights and human life must be the basis of state policy. The death penalty — the premeditated killing of a person by the state — cannot be reconciled with such respect" (p. 90). Catholic bishops and theologians who have spoken out on the issue are also strongly opposed to the death penalty in any situation. The Amnesty International Report with its convincing evidence and persuasive arguments is in harmony with the most highly respected authorities in our modern world; so satiated with death, so sick and tired of violence and killing whether from the left or the right. Traditional arguments have been weighed and found wanting. Whoever argues for the
restoration of the death penalty in the Philippines will find no support in the countless surveys presented in this AI Report, and will find himself opposing the United Nations, the Christian Churches, and outstanding spokesmen of the modern world. Restoring the death penalty would be taking a step backward to the law of the jungle.

POSTSCRIPT

As reported in the Hong Kong Sunday Examiner for December 1, 1989, Amnesty International ran a full page advertisement in the New York Times, criticizing the human rights record of President Corazon C. Aquino, saying it had deteriorated since she came to power in 1986. The advertisement was said to be "intended to embarrass the president during her November 4-12 visit to the United States and Canada." The ad in the New York Times was estimated to cost between US $35,000-50,000.

This claim in the advertisement of AI contradicts the highly respected public opinion polls taken by the Jesuit Ateneo de Manila University in Quezon City, showing the people are "more satisfied" than in previous polls in February and August 1988 with government efforts for peace and order, stopping political killings, and human rights protection" (Public Opinion Survey: August 1988). The percent satisfied rose from 63 in February 1988 to 69 percent in August 1988, and to 73 percent in the latest poll. Likewise the majority of Catholic bishops, stationed throughout the Philippines, affirmed in another poll during their semi-annual meeting in July that the peace and order situation has improved in their own dioceses and also said that the military's 'behavior' had improved. However the government forces still commit as many abuses as the communist-led New People's Army guerillas.

Any unprejudiced person living here in the Philippines will realize how little control over the military is actually exercised by the President, especially outside the main urban centers. The most recent coup d'état should prove the point showing how the President's very life was in danger from the military rebel force. Only a biased or uninformed person can blame the President for military abuses. The fact that the killers of her husband are still unidentified almost four years after she took office shows how the military
operates here.

Since the communist-led forces (NPA) have the most to gain by casting President Aquino in a bad light for military human rights abuses, it seems clear who influenced AI in its campaign to discredit this government. AI seems to have been coopted by the Filipino communists living in self-imposed exile in Holland.


Why then spend so much money on an ad in the New York Times to embarrass the President of the Philippines during her recent trip? Who convinced the AI to violate its own basic policy by publishing an embarrassing attack which is refuted by very reliable surveys taken by people living here? Why prefer the communist opinion at the very time when most of the world is abandoning that ideology which has brought only suffering and misery to every country where it gained control, by force? The latest revelations about Romania and the blood flowing in Tienanmen Square have shown the world the depths to which communism has sunk. Why does AI endanger its credibility by listening to the pitiful remnants of communism whether here or abroad? These questions deserve answers lest a noble organization be discredited.

As we go to press, the 1990 Amnesty International Report arrived. The Report notes, with satisfaction, that the legislation introduced in the Philippine Senate to restore the death penalty had not been passed by the end of the year (p. 194).

Appendix IX of the Report reproduces a resolution of the United Nations General Assembly of December 15, 1989 wherein legislative action was taken "aiming at the abolition of the death penalty." It consists in a "Second Optional Protocol to the International Covenant on Civil and Political Rights." "

Affirming their conviction that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights," the Protocol recalls the original United Nations Declaration of Human Rights of December 10, 1948 and
the additional International Covenant on Civil and Political Rights adopted on December 16, 1966. The latter "refers to abolition of the death penalty in terms which strongly suggest that abolition is desirable." To make efficacious their international commitment to abolish the death penalty, the States have agreed as follows: "Article 1. 1. No one within the jurisdiction of a State party to the present Optional Protocol shall be executed. 2. Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction" (1990 AI Report, p. 293).

The remainder of the Protocol is concerned with the details of implementation. There is one very restricted exception in the Protocol, allowing execution "in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime" (ibid.).

The past year saw thousands of people imprisoned, tortured, killed by their own governments, seeking to control or repress ethnic and national tensions. Thousands more were killed in pocket wars that still plague our globe, and terrorist bombings took their own merciless toll. "Killing Fields" were unearthed in lands newly freed from the curse of totalitarian governments. We seem unable to find the peace lost in World War II. Amnesty International suggests as a first step that all nations agree on the abolition of the death penalty as a contribution to "the enhancement of human dignity and [the] progressive development of human rights" (ibid.).