

THE DEATH PENALTY AND DETERRENCE: AN OMANI PERSPECTIVE

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ABSTRACT

Some philosophers have confused the objectives of punishment with its nature, or defined punishment at least partially in terms of its supposed aims. This can be misleading; by including in its definition those aims of which one approves, one can refuse to allow the behaviour that has another aim to be called punishment, even though such behaviour is quite generally considered to be a form of punishment. Therefore, it is better to consider the aims of punishment separately from its nature (Hood, 1996).

This paper begins with a critical examination of the justification of punishment and moral philosophical arguments for and against the death penalty, including the concept of deterrence. The paper then explores in depth the history of the death penalty, with particular emphasis on its developments not only in Western countries but also in other countries world-wide, including Oman. It afterwards presents an analytical investigation of recent drugs offences statistics in Oman. Finally, it proposes a number of recommendations concerning the law enforcement which are deemed necessary in Oman regarding the death penalty, hoping that these recommendations would be considered in future review of the law.

1- JUSTIFICATION OF PUNISHMENT

Throughout the history of mankind, punishment has always existed as a sanction for wrongdoing. The Bible and the Quran are replete with instances of the imposition of punishment for wrongdoing by the Almighty Himself (Hyman, 1979). Traditionally society's punishment has always existed in various forms as sanction for breaches of accepted

rules of conduct. Any argument today as to whether society has a right to impose punishment on one of its members would be unrewarding. A relevant question is why is punishment inflicted at all (Cavadino and Dignan. 1997).

According to Bottomley (1973). the major purposes of punishment historically are retribution. expiation. deterrence. reformation. and social defence. Thus. the aims of punishment have traditionally fallen into the following categories:

- 1- The protection of society from the depredations of those considered as dangerous persons.
- 2- The reform of the offender.
- 3- Deterring the offender and others from future violation.
- 4- Vengeance. retribution. or righting the scales of justice.
- 5- Deterring persons other than the offender.

In the deterrence theory the goal of punishment is to prevent certain types of conduct. However. there are two types of deterrence; general deterrence (society) is usually seen as more fundamental than specific (individual). The concern is more with the welfare of society than with the welfare of the individual. So theories are usually consequential or utilitarian. and so relativist. There are strong debates whether the deterrence effect is limited to reduce offences in general or to reduce re-offending. There are several reasons for this. First. most people most of

the time obey the law out of moral considerations rather than for selfish instrumental reasons (Tyler, 1990). Secondly, people are more likely to be deterred by the likely moral reactions of those close to them than by the threat of formal punishment. Again, potential offenders may well be ignorant of the likely penalty, or believe they will never get caught, or commit the crime while in a thoughtless, angry or drunken state (Bennett and Wright, 1984).

2- THE DEATH PENALTY

2:1 - HISTORY OF THE DEATH PENALTY

Before starting to trace the concept of the death penalty related offences, there is a need to understand the meaning of the death penalty. According to the International Encyclopaedia of Social Sciences, “death penalty” means “the officially authorised execution of the death penalty on persons determined by appropriate legal procedures to have committed a criminal offence” (IESS, 1968: 290). The death penalty is one of the oldest punishments in the penal system, and the debate over the justness and efficacy of the death penalty is almost as old as the death penalty itself.

One cannot accurately point out when the crusade against the death penalty started, although most historians agree that the logical starting point may be the year 1763 when Cesare Beccaria, a tireless antagonist of the death penalty wrote an essay, “On Crime and Punishment” (Bedau, 1997).

In the latter part of the 18th century more offences had been made punishable by the death penalty in England, yet Beccaria maintained



that since man was not his own creator, he did not have the right to destroy human life, either individually or collectively. Through two British parliamentarians, Bentham and Romily, Beccaria's ideas gradually influenced English thought, as evident in the latter part of the 18th century when Bentham began to proffer arguments against the death penalty, similar to those of Beccaria. Bentham, however, agreed that the death penalty produces a greater impression on the public mind, than any other mode of punishment (Bedau, 1997). Pressure to restrict the death penalty to only the gravest crimes began to increase in Britain, America, and several European states. Pennsylvania (in 1794) was the first American state to abolish the death penalty for all crimes except first degree murder and by 1861 it had for all practical purposes been restricted in England to murder (Hood, 2002).



By the end of the first quarter of the twentieth century several European countries, Portugal, San Marino, the Netherlands, Norway, Sweden, as well as Italy, Romania, Austria, and Switzerland had abolished the death penalty for crimes committed in peacetime (Bedau, 1997). However, according to Hood, the abolition in these countries was not always lasting. The death penalty was reinstated and expanded by various authoritarian regimes during the twentieth century in Europe. It was reintroduced in Italy by Mussolini's Fascist regime in 1927 and was expanded in Germany beyond all bounds by the Nazis, where it was transformed from an instrument of penal policy into a tool of racial and political engineering. . . not merely as a matter of retribution but also of eugenics policy. Under the Third Reich, some 16,500 death sentences were passed (Hood, 2002).

By 1965, there were only 25 abolitionist countries. Eleven had completely abolished the penalty and a further 14 countries had abolished it for “ordinary” crimes in peacetime, plus the Australian state of New South Wales (Pojman and Reiman, 1998).

In the 20th century the United Nations General Assembly passed Resolution 2857(XXVI) in 1971 which stated that:

In order to guarantee fully the right of life, provided for in Article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which death penalty may be imposed, with a view to the desirability of abolishing this punishment in all countries (United Nations, 1986:39).

Like many other United Nations resolutions, this resolution is not acceptable to all nations:

Some members of the United Nations have shown a sustained interest in abolishing the death penalty; others will not abide by the Resolution and consequently, they have not abolished the death penalty, and some other members wish to retain and use the death penalty only for very serious crimes (United Nations, 1986:40).

Since 1971, the United Nations has had published periodical reports about the countries that use or do not use the death penalty. Accordingly, the United Nations has classified countries into two major groups: Retentionist and Abolitionist. The first group refers to countries that retain and use the death penalty for ordinary crimes such as murder, rape, robbery, drug trafficking, or embezzlement of very large sums of money. Certainly the list of capital crimes in some countries is short (cases of murder and drug trafficking), while in others it is long,



as in China where it is used for some 60 crimes including economic offences (Amnesty International. 2007 and Hood. 2002).

The second group, Abolitionist. can be classified into three categories:

- 1- Abolitionist for all crimes, which means the countries whose law. does not provide for the death penalty for any kind of crimes. such as UK.
- 2- Abolitionist for ordinary crimes only. which means countries whose law provides for the death penalty only for exceptional crimes such as crimes committed under military law. or crimes committed in exceptional circumstances. such as wartime.
- 3- Abolitionist de facto, which means countries which retain the death penalty for ordinary crimes. but have not executed anyone during the last 10 years or more (Hood. 2002).

Over the last forty six years (up to December 2007) the number of abolitionist countries has grown from 16 in 1977 to 135 countries. Since 1965. 119 countries. have changed their status from Retentionist to Abolitionist: 92 of them absolutely for all crimes, 10 of them for ordinary crimes. and 33 had been abolitionist de facto (for more details see Table 1).

Amnesty International (AI). the Nobel prize-winning human rights organisation. keeps information on the death penalty around the world. According to its the latest report the numbers of

abolitionist and retentionist countries as of the end of December, 2007 were:

- ◆ Abolitionist for all crimes: 92 countries
- ◆ Abolitionist for ordinary crimes only: 10 countries
- ◆ Abolitionist de facto: 33 countries

Retentionist Countries: 62 countries

In summary, out of 195 countries reviewed over half (135) either by decree or by practice do not use the death penalty (Amnesty International, 2007).

Table 1 shows by way of comparison the number of abolitionist and retentionist countries in December 1988, December 1995, December 2001, December 2002 and December 2007. Roughly, third of the countries in the world still retain and use the death penalty to a greater or lesser extent. The death penalty is most common in the Far and Middle East, and is used in some African countries. Under Sharia law, as practised in most Moslem countries, death is the penalty for murder, drug trafficking, adultery, rape and apostasy (Amnesty International, 2007).



Table 1: Number of Abolitionist and Retentionist Countries

Year	Abolitionist for all crimes	Abolitionist for ordinary offences	Abolitionist defacto	Retentionist
1988	35	17	27	128
1995	60	13	29	119
2001	75	14	34	105
2002	76	15	20	84
2007	92	10	33	62

Source: Amnesty International reports.



The death penalty is used in most of Asia and the Middle East countries. Some of them, such as Oman, implement it optionally in related drug offences but most of them implement it as a mandatory penalty. It is also worth mentioning here that some countries, such as Bahrain have had the death penalty in drug related offences for years but have never implemented it, whereas others, such as Iran, Saudi Arabia, and China, use it extensively. The later is the most aggressive of all in the implementation of the death penalty and it introduced the death penalty for drug-related offences in April 1982. China does not have a separate law for drug-related crimes, but instead, it is included within the criminal code of the country (Amnesty International, 2007).

According to Amnesty International, the number of executions in China has increased sharply from 20 in 1985 to 8000 in 2007. Amnesty international stated, in its report on the effect of the death penalty, that China is characterised by a disregard for the international norms for a

fair trial. Those who suffer most as a result are the poor and less educated, who are often unaware of their rights and of legislations which lead to their execution (Amnesty International, 2007).

The question from the utilitarian point of view is always whether the use of the death penalty really leads to a reduction in the world demand for drugs. The answer is clear; neither in China, nor anywhere else, has the death penalty made a great difference in terms of seizures or number of addicts. In fact, the figures seem to show that the demand for illegal drugs is growing.

Iran has had the death penalty for drug-related offences longer than any other country in the Gulf region. It was first introduced in 1959 and this punishment was applied during the regime of the Shah of Iran and hundreds of people were executed for the offence. For example on 14th July 1974, the Government of Iran announced that 239 drug smugglers and peddlers had been put to death (Al-Harthy, 1999). In addition, according to Amnesty International, the total number of executions carried out in Iran for drug-related offences in 2001 was 139 (Amnesty International, 2002).

Amnesty International has accused Iran of violating international Human Rights standards. However, the Iranian Government, which believes that it is the duty of the government to maintain the state's security and the sanity of the population, totally disagrees with Amnesty International's accusation..

In recent time, there have been thousands of executions for drug-related offences in Iran and the question asked is whether Iran has fewer drug addicts than before and whether less drugs are available than



before. The fact is that Iran, according to the International Control Board, still remains a route for transporting heroin from Afghanistan and Pakistan to Europe and North America (United Nations, 2001). In addition, according to the Royal Oman Police Drug Report 1999, most of the drugs transported to Oman by sea came through Iran (Royal Oman Police, 1999b).

2:2 - MISSION OF THE DEATH PENALTY

It is a plausible historical interpretation, as Scott (1977) has suggested, that the death penalty first began as a retaliatory measure of the state on behalf of its citizens, and came to be accepted as a deterrent. As civilizations developed, so did the notion that the death penalty was not justifiable if it was used for revenge; its justification, if there was one, was in its deterrent effect.



According to Scott:

Penological reform started with the repeal of torture as an additional punishment, and continued with the repeal of capital punishment for petty crimes, eventually leaving murder as the most outstanding of the few crimes involving the death penalty. Murder, it is contended, ranks as the crime for which society must demand the judgment of death; this demand, it is held, is in accord with justice; with necessity, as envisaged in the safety of the public; and with the policy of atonement (Scott, 1977:7).

As mentioned earlier, a pioneer in the reformist movement was Cesare Beccaria, who in 1763 produced a treatise that became the seminal work on classical criminology and deterrence. Reforms proposed in the treatise were readily acceptable to a citizenry with a growing awareness

of human rights and a growing dissatisfaction with their capricious, arbitrary, and abusive legal system. Ideas expressed in Beccaria's work were similar to those of other Enlightenment thinkers (Bedau, 1997).

Beccaria argued that the death penalty, i.e. the state's right to execute its citizens, could not be part of a social contract, because no citizen would surrender to society the right and freedom to take his or her life. In addition, Beccaria goes on to say that "there are only two possible motives for believing that the death of a citizen is necessary" (Masur, 1989:109). The first is national security. Beccaria, then, indicates that in a democratic state and peaceful conditions, there is no need for the death penalty in order to maintain national security; the only remaining justification becomes general deterrence (Masur, 1989).

Aside from other objections to the death penalty, there has always been a question of whether capital punishment is fulfilling its mission as a deterrent and above all whether its mission is really deterrence. Different perceptions in this respect have been associated with differences in the conditions under which executions are carried out, in particular, whether they are performed in public or in private. This is the subject of discussion in the next section.

3 -PRIVACY OF EXECUTION

At one time, executions were carried out in public to reinforce the message of deterrence, to allow opportunity for the condemned to repent and to provide a popular form of entertainment meant actually to prolong the time needed to a later absorption of the message.



The condemned long ago were housed in locations away from the execution site, to which they would often be ceremoniously driven on the execution date, with the cart making various stops along the way at church for prayers and at pubs for drinks, which would often be shared with friends, who were also allowed to run alongside the cart and converse. The public were witnesses (with different social strata commanding different observation sites), and the executioner, the clergy, and the condemned prisoner played active and public roles in the ritual, interacting with the other principals and with the audience. The condemned was allowed to make statements and to vocally interact with the crowd and the clergy, and would usually express remorse and make strongly penitent statements. The execution, then, was not held in sterile conditions away from sounds, smells, and sites, but outside, at times when crowds could most conveniently attend. The event was treated as a national holiday (Lofland, 1977) but it was a period for remorse.



In general, today's condemned inmate awaits death in semi-solitude, does not have a great deal of interaction with others prior to his death, and is confined in the institution away from other inmates. He or she is housed as near as possible to the death chamber, to which he or she will be quickly, quietly, and officially escorted immediately before an execution at the hands of an anonymous, concealed executioner- an event that will be witnessed by official witnesses carefully selected for the occasion.

In Oman for example, the execution rite is solemn and as antiseptic as possible. It takes place indoors, usually in a room devoid of outside windows, with removal of as many sounds as possible. The execution is held at an hour that is somewhat remote, sometimes in an effort to cause

as little disturbance as possible among the institution's other inmates. and sometimes to comply with some statute or another of obscure origin. Moreover, the executions are held at 4 a.m. on working days in the main prison.¹

The motivation to make executions less public was in part for crowd control and in part for penal reform (to allow the inmate some dignity). Some thought at the time that private executions such as this were one step along the way to abolition of the death penalty (Masur, 1989).

While executions were moved from the public square to within institution walls, not all spectators were excluded. Executions became occasions to which privileged classes and politically favoured individuals received invitations and at which they often sat in specially constructed spectator areas. One may ask if such an audience really needs the message of deterrence:



According to Masur,

In principle, private executions were supposed to protect the sensibilities of all citizens, eliminate a scene of public chaos and confusion, and permit the prisoner to die quietly penitent; in practice they became a theatrical event for an assembly of elite men who attended the execution by invitation while the community at large was excluded (Masur, 1989:111).

Furthermore, the public would continue to gather outside institutions on execution days, jockeying for vantage points, from which hangings could still sometimes be witnessed. This was always an oversight; there were those institutions that constructed their gallows in such a way as

1 1- The author obtained this information from his experience during his job as Prosecution officer.

to allow public view (Masur, 1989). In time, executions assumed the level of privacy we know today, with exclusion of the general public and inclusion of official witnesses who meet the criteria of the executing jurisdiction.

In Oman the information received by the public is limited. Newspapers give only minimal details about the crime, sentence and the date of execution (AL-Harthy, 1999).

4 -MORAL ARGUMENTS FOR AND AGAINST THE DEATH PENALTY

Over the years, in many jurisdictions, there have been debates as to the desirability of the death penalty. The outcome of these debates in the various jurisdictions has influenced legislation on the matter. As we see above, in many countries in Europe the death penalty has been abolished completely. In the United States, the death penalty exists only in a few states.

The moral and philosophical argument for and against the death penalty could be traced back to ancient regimes a highly controversial topic that has caught many people's attention for years and still continues to be debated. Although the arguments continue, the answers do not appear to be near-by: is it, or is it, not right to kill someone who has killed another human being? Does this type of punishment act as a deterrent to other would-be killers? Or are we telling this to ourselves to justify the revenge we get out of teaching these killers a lesson, or one we trying to avoid paying the cost of reformation?

Both sides make valid points and have strong arguments in opposition to their opponents' views, and both continue to argue their points and try to make the courts hear their voices. This section attempts to outline these arguments from a neutral standpoint. The researcher will start the discussion by introducing the argument for the death penalty. After that, the arguments against the death penalty will be presented.

I-Arguments in favour of the Death Penalty

There are a number of arguments put forward in support of the death penalty. These are divided into five categories:

- 1- Some people refer to the Old Testament principle of “an eye for an eye”. They say that a crime is an act of aggression which is to be met with counter- aggression or punishment of same type. They argue that if someone kills someone else, he should be killed in return. This argument is based on the belief that society must protect itself against those who disregard the life of others (Lunden, 1967).
- 2- Retentionists argue that as some murderers leave prison on parole they may kill again; even if they are imprisoned for life, they may kill in prison. Thus, it is argued, the death penalty is the only way to ensure that a murderer will not kill again.
- 3- Currently, the major argument in favour of the death penalty is the utilitarian argument, that the death penalty has a deterrent effect, based on the belief that fear of death will keep people from committing serious crimes (Sellin, 1959). A common definition of deterrence is “the preventive effect which actual or threatened punishment of offenders has upon potential offenders” (Fattah, 1976:9).



- 4- Retentionists argue that one of the serious dangers of abolishing the death penalty is that it could well lead to retaliatory attacks by frustrated relatives and friends of the victim. They say that this seeking of revenge and retaliation could further lead to faction fights and gang warfare, which would result in murder and mayhem on a far greater scale. This, in turn, could result in the total breakdown of law and order (Hood, 2002) and (Bedau, 1997).
- 5- Finally, Retentionists believe that in those countries where the death penalty is still in operation the crime rate, especially murder, is distinctively low, in comparison to countries where death penalty has been discarded. For instance, Ehrlich claims that the states in the United States that employ the death penalty generally have lower murder rates than states that do not (Ehrlich, 1975).



II- Arguments against the Death Penalty

- 1- The Abolitionists hold the view that every human life has dignity and worth. Hence, abolitionists argue, the death penalty is morally unacceptable in today's world. Many religious opponents of the death penalty focus on the morality. They argue that although different religions feel differently about the issue, most tend to agree that the taking of a human life, even that of a person who has taken the life of another, is not justifiable and punishment can be made without the use of death.
- 2- Some (criminologists) think that the criminal is a sick person and should be treated. For example, neurologists found in the brain the cell that causes the impulse to rape, and in the U.S if a condemned rapist agreed to remove this cell, he is freed (there are serious side

effects which he has to suffer afterwards). By analogy they say the same about murder except that the cell responsible for the urge to murder is not found yet. They argue that execution should be postponed in the hope that the cell will be discovered. (a reason for de facto abolitionists). They are hopeful that the advance of science can reform the criminal. Therefore, the abolitionists believe that the death penalty is irreversible and the errors of justice cannot be rectified. Further, they claim that, at least at present, it is virtually impossible to apply death sentences fairly. In practice, the death penalty is attended by the tragic fact that innocent people are sometimes executed. The main point in this argument is that eliminating the death penalty will not only prevent the wrongful execution of innocent people, but also give them more time to clear their names and return to society (Olen & Barry, 1996). Miscarriage of justice is irreversible if it leads to the execution of an innocent person. One of the most important cases leading to the abolition of the death penalty was that of Timothy Evans, who was executed in 1950 for a crime he did not commit, the murder of his daughter. After years of campaigning, the courts agreed in 1966 to cancel the guilty decision and grant a posthumous (after-death) pardon. This was because of unreliable evidence, some of which had been given by Evans's landlord, Reginald Christie. It was later discovered that Christie had killed at least four women at the same address. By then, of course, it was too late to help Evans's (Todd, 2002).



The greatest argument against the death penalty is that it has no more deterrent effect than imprisonment. A murder that is committed is evidence that the death penalty has failed as a deterrent. Most murders

are crimes of passion or some other strong emotion and the criminal does not weigh the consequences of the crime. The abolition of the death penalty in some countries has not led to an increase in homicide in those countries (Hood. (1998).

Abolitionists believe that the death penalty is wrong because it deprives offenders of their chances of reformation. From this perspective, the only way to destroy a criminal is by reforming him, not by destroying his bodily life, which is nothing but a stupid blunder (Bedau. 1997).

Abolitionists argue that the death penalty can, in some cases, lead to more murders, since a murderer may kill his victims and witnesses rather than risk being caught and executed (Hood. 2002).



The vast preponderance of evidence shows that the death penalty is no more effective than imprisonment in deterring murder and that it may even be an encouragement to criminal violence. According to Bedau the death penalty is a useless weapon in the so-called “war on drugs”. The attempt to reduce murders in the drug trade by threat of severe punishment ignores the fact that anyone trafficking in illegal drugs is already risking his life in violent competition with other dealers. It is irrational to think that the death penalty – a remote threat at best – will avert murders committed in drug turf wars or by street-level dealers (Bedau. 1997). Finally Bedau concludes that if severe punishment can deter crime, then long-term imprisonment is severe enough to deter any rational person from committing a violent crime.

1- One final argument against the death penalty is the discrimination claims especially in the USA and European countries. Many abolitionists feel that the death penalty is “imposed with class and

racial bias” (Olen & Barry, 1996: 272). They claim that the poor, the underprivileged, and members of minority groups, are more likely to be executed than rich, white criminals. They further believe that the death penalty is more likely to be imposed when the victims are white than when they are minority members. Dovidio, Smith, Donnell, & Gaertner (1997) conducted a study to investigate this issue.

In weighing the arguments for and against the death penalty, it can be seen that each side has answers to counter the arguments of the other side. For example the abolitionist argument that the death penalty has no deterrent value because it has not reduced the rate of murder (or other capital offences) is answered by saying that while every murder may be counted as an indication of the failure of the death penalty deterrent, it is impossible to count its successes. No one will ever know the number of persons who would have committed murder or other capital offences, had it not been for the death penalty.

It is quite difficult to accept any sweeping statement that the death penalty has no deterrent effect. Punishment of any kind, if it causes fear, pain or severe discomfort, has some deterrent effect. When we chastise our children, when a school teacher chastises his pupil, it is not for revenge. It is to deter them and others from the kind of wrongdoing which has earned that chastisement. In addition, if a punishment less than death has a deterrent effect then a fortiori, the more severe the punishment the greater the deterrent effect. It would of course be wrong on this premise to say that it would be possible to stamp out crime by prescribing the penalty of death. The experience of history is to the contrary. However, so far, severe deterrent punishment is the practical tool to check the upsurge in crime. The real issue should be whether any deterrent effect which the death penalty may have is not outweighed by its disadvantages.



5 - DEATH PENALTY RELATED DRUG OFFENCES AND DETERRENCE

There are three standard methods by which the deterrent effect of the death penalty may be tested. Firstly, the commission of a capital crime, such as murder, may be measured in a given jurisdiction before and after the abolition or reintroduction of death penalty. Secondly, the rate of crime of two or more similar jurisdictions when at least one has abolished the death penalty may be compared. Thirdly, the commission of a crime, such as murder, within a single jurisdiction may be measured before and after widely publicised execution of murderers (Hood, 1998). In recent times, two main methods have been used in order to test the deterrence effect of execution upon homicides. The first one is the time-series method which analyses the fluctuations over time in the rates of execution and homicides or other capital crimes. The second is the cross-sectional method, which analyses the variation in homicide rates between states with and without executions over various time periods (Hood, 2002).

In Saudi Arabia, Al-Khayyat (1988) in his study, "The Addict, Myself: A Tour in the World of Drug Addiction and Traffickers" examined the drug related offences data for the years 1987 and 1988 (one year after the issue of the death penalty for drug related offences). The study found that the severity of this punishment led to a considerable reduction (46%) in the number of drug-related offences in the two years following the new legislation. However, drug-related offences started to increase after that period.

Another study was carried out in Saudi Arabia by Al-Gofaly (1990). Al-Gofaly compares the rate of drug offences before and after introducing the death penalty. The study found that the death penalty had a strong deterrent effect on drug-related offences in first two years after implementation of the death penalty. It is important to mention that both Al-Kaiyat and Al-Gofaly obtained these result from drug statistics before and after the introduction of the death penalty. However, the criminal statistics do not necessarily portray the whole picture, as recording methods may affect them as will police bias (Bottomley and Pease, 1986, Coleman and Norris, 2000). On the other hand, Al-Harthy (1999) after 14 years found a different result: the death penalty in Saudi Arabia had no deterrent effect, since after the introduction of the death penalty, the number of drug traffickers arrested increased and the users displaced the use of cannabis in favour of the use of heroin.

Al-Turki (2000), in his thesis, "Death penalty for Drug Offences in Islam and its Application in the Kingdom of Saudi Arabia", used a descriptive method to study the texts and rulings of Islamic law, principles and legal opinion. The study found that the application of death penalty against some drug offences was considered to have been successful and, on the whole, accepted.

In Oman the death penalty for drug-related crimes was introduced on 6th March 1999 by decree No. 17/99, when drug abuse was seen by many as becoming a threat to the social stability of the conservative Omani society. It was the last country in the Gulf States to implement the death penalty for drug related offences. However, according to the Oman Daily, only one execution for drug-related trafficking was carried out under the new Omani drug law and that was on 30 January,



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2001 (Oman Daily Newspaper, 2001). In Oman, the method of execution is usually shooting by firing squad and is attended by government officials (The Omani Legislation Newsletter, 1999b).

It should be noted that in Oman there are no sufficient studies of drug offences, due primarily to the difficulty of accessing information about the drug offences from the government authorities as well as from the society itself. This is because drug offences are regarded as a sensitive issue, and therefore the Omani authorities normally hesitate to give any information about drugs to any researcher. Furthermore, drug addiction in Oman carries a social stigma. Thus far, no study has been conducted to investigate the effect of the death penalty in Oman as far as drug offences are concerned, except for one conducted in 1999 by Dr Abdullah Al-Harthy. It was entitled 'Drug Abuse in the Gulf States/ Oman: An Evaluation of the Death Penalty as a Deterrent.



The study was mainly concerned with the effect of the death penalty provided by the Criminal Law, No. 4/74, which was replaced by the Drug Law No.17/99, which came into force on April 1999. It is worth noting that this study investigated the old law, when the death penalty had not yet been introduced for drug offences. In his study, Al-Harthy used official statistics for the years from 1995 to 1999, and interviews with policy makers in several Arab countries. Al-Harthy found in his study that there was no evidence to support the deterrence theory with regard to drug-related offences in the Gulf States (not including Oman, which did not have the death penalty at that time). He concluded:

The deterrent effect of the death penalty for drug-related offences has proved to be ineffective as those working in the drug law enforcement agencies and even drug-traffickers agreed. There is no evidence found to support the deterrent theory with regard to drug-related offences. Despite the application of the death penalty for more than ten years, the illegal drug trade in the Gulf States is growing faster than any other economy in the world (Al-Harthy, 1999: 274).

Al-Harthy suggested valuable recommendations about overcoming drug problems in Oman, for example, through drug legislation. He urged the Omani authorities to upgrade its law in order to make it suitable for the present drug situation. This would include increasing punishment for drug smuggling, trafficking, money laundering and the illegal use of chemicals used in drug production.

One of the reasons for introducing the death penalty in Oman is the argument that the death penalty will deter traffickers. The death penalty in Oman is now mandatory for trafficking, offering to traffic, and doing or offering to do any act preparatory to, or for the purpose of, trafficking in dangerous drugs. However, in my view there is a huge gap between theory and practice in the field of drug prevention in Oman.

Royal Oman Police Statistics Reports, as summarised in Table 1.2 below, show that since the issuance of the new drug law, the number of drugs-related offences has increased rapidly. The government's statistics recorded an increase in registered drug related offences from 212 in 1999 to 345 in 2007.



Table 2 Number of Drug-related Offences and Number of Accused From 1991 to 2007

Years	Offences	Offenders
1991	13	81
1992	27	65
1993	37	87
1994	44	99
1995	72	182
1996	83	199
1997	107	229
1998	134	288
1999	212	443
2000	253	513
2001	318	561
2002	247	473
2003	251	407
2004	287	525
2005	289	524
2006	347	537
2007	345	549

Source: Criminal Statistics Drug Combating Department. Various years.

Therefore, the urgent question now is: can capital punishment deter criminals from committing trafficking and smuggling in drugs? The

main objective of this current paper is to investigate the impact of the drugs law on drug offences in Oman?

The deterrent effect of the death penalty were examined, by comparing the incidence on trafficking offences in two periods of equal duration, before and after introducing the death penalty.

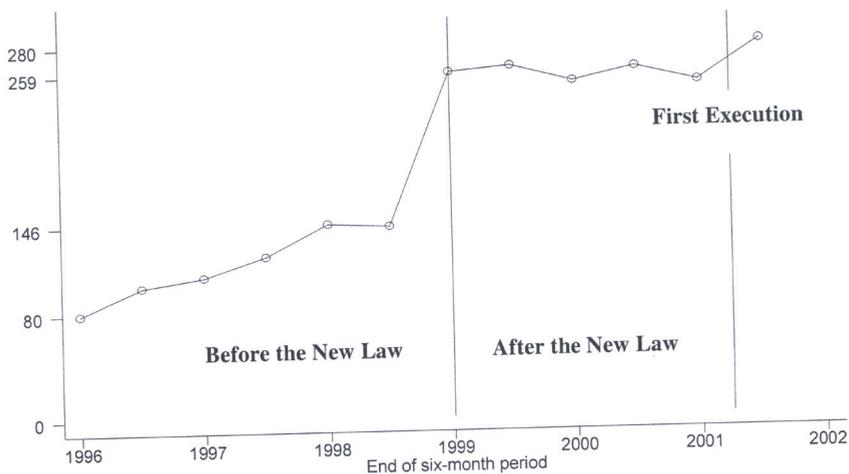
Regarding the incidence on drug trafficking offences, the present paper has compared the number of offences during 1996-1999, when there was no death penalty against drug trafficking offences, with the number between 1999-2002, a period during which the death penalty against drug trafficking offences existed.

Figure 1 shows that in the first period, there were 71 drug trafficking cases, whereas in the second period, the number of drug trafficking incidents increased to 89, an increase of 39% for the same period of time.



Figure 1: 1 Arrests before and after Introducing the Death Penalty

Arrests for drug offences in Oman: April/October starts of periods



Source: Police Files (April 1996 to May 2002).

Notes: 1. The first vertical line is when the present legislation was issued.

2. The second line is when the first execution carryout.

Figure 1:1 also shows that the number of people accused of drug related offences has more than doubled since the introduction of the death penalty as a punishment for drug trafficking. According to the official statistics, a similar increase is noted in all drug offences since the imposition of the death penalty in Oman.

Immediately following the introduction of the death penalty, there was a slight decrease in drug offences in the first six months (a short-term effect). However, the trend (long-run) drug offences started increasing and, moreover, the increase in drug offences was not affected by the execution of three drug traffickers on 18 July 2001.

One of the reasons for this increase in trafficking is that the increase of illegal immigration to Oman led to an increase in both the number of drug arrests and the quantities of drugs, as most of the infiltrators brought drugs with them, in particular, those who came from Pakistan, Afghanistan and Iran (Royal Oman Police, 2002).

According to the Royal Oman Police, the incidence of drug-related trafficking offences in the year 2001 has increased by 25%. This indicates that introducing the death penalty has not prevented drug-related trafficking offences. Therefore, the present legislation statistically has had no long-run effect on the rate of drug crimes.

As a result, this finding does not support the effectiveness of tough sentencing policies for persons convicted of drug offences as a major strategy for the war on drugs. Moreover, as figure 1:1 shows, after the first

execution of three drug traffickers. the rate of drug trafficking offences has increased. This means there was no deterrent effect for execution against drug trafficking offences.

In contrast to Saudi Arabia and Oman. Lebanon does not have the death penalty for drug-related offences. despite the fact that it produces both opium and cannabis. During the civil war. Lebanon's drug situation became very serious. Most of the region was affected by the increasing production of heroin and cannabis. Drug dealers and users considered Lebanese cannabis as the best in terms of quality. However. with the help of the United Nations. Lebanon managed to achieve success in drug eradication. without the use of the death penalty. The Lebanese authorities always opposed the use of death penalty as a means of social control. at least in relation to drug-related offence. Despite the pressure from neighbouring countries to introduce the death penalty. its position remained firm on this issue and there is still no death penalty for drug-related offences.

According to the Arab Office of the Minister of Interior. 2005. the drug problem in Lebanon has remained on the same level. while in other countries it has increased. At the same time. Lebanon has many economical problems. and many of those who depended on drug cultivation for a living have complained of the lack of financial support. Lebanese officials in many conferences have threatened that unless the international community supports Lebanon in its efforts to eliminate drug cultivation. the drug situation which existed before the 1980s will return.



CONCLUSION

Retentionists state that biases, as unjust as they may be, are not relevant to the morality of the death penalty. They agree that comparable crimes should bring the same punishment. They are quoted as saying “whether the death penalty is justified for the worst of crimes, is one issue. Whether it is currently implemented in a justifiable way, is another” (Olen & Barry, 1996: 272).

Criminologists, however, find it very difficult to find any conclusive evidence on the effectiveness of the general deterrence effects of death penalty on murder crime. There are many studies which have explored the relationship between the death penalty and deterrence, and they found opposing conclusions. Most of these studies were carried out in the United States of America.

The effect of the death penalty against drug-related offences in recent time has been explored in some countries, although little empirical work has investigated the impact of the death penalty or executions on the incidence of drug-related offences. The findings of these studies are inconclusive.

The moral arguments for and against the death penalty have been reviewed. As presented above, the arguments for and against death penalty are both very strong. Each side has several valid points that must be considered by states when deciding to enforce the death penalty laws. However, while some justifications for the death penalty are clearly a matter of belief and not amenable to empirical proof, the issue of deterrence is an empirical matter and this paper aimed to contribute

to this debate.

This paper examined the effect of the death penalty on drug-related offences in Oman. the findings of the paper indicates that the introduction of the death penalty in Oman does not deter the drug offender from involvement in drug related offences in general and drug trafficking offences in particular. The evidence as a whole still gives no positive support to the deterrence hypothesis.

RECOMMENDATIONS

The Omani government should do more to find other solutions for drug trafficking other than punishment. An approach is needed which emphasises demand reduction as well as supply reduction. Drug trafficking is driven by the demand for drugs, and reducing demand to the extent that is feasible will have a greater effect on the drug-crime connection than reducing supply (Walker, 2001).



In the following points I will suggest a number of recommendations which might help governmental and non-governmental organisations to create appropriate policies and strategies for combating drug related offences in Oman.

As regards the supply reduction policies, the present legislation has been found not to achieve its objectives and in some respect has created additional problems. Therefore, the legal awareness of the public should be enhanced by explaining drug legislation and applicable punishments. Publication in the official gazette only is insufficient. Lack of knowledge about the punishments makes young people easy victims of drug dealers. Therefore, the following measures are recommended:



- 1- The death penalty for drug trafficking should be abolished and replaced with imprisonment, such as life imprisonment with or without parole. The death penalty has not had a deterrent effect, and has resulted in offenders committing increasingly frequent and serious violence to evade arrest. A custodial sentence would serve the same purpose as the death penalty, in preventing the offenders from perpetrating further drug offences, and is likely to reduce the violence per offender in the attempt to escape arrest, since the offender's life will no longer be at stake.
- 2- Punishment should be differentiated according to the quantities of drug involved. Where the penalty is the same irrespective of quantity, as at present, drug traffickers will have an incentive to maximise the amount of drug carried, since they can obtain higher profits without increased risk. This view is supported by findings regarding the recent increases in size of drug cargoes seized, and the trend to smuggling by sea which facilitates smuggling larger loads
- 3- Punishment should be differentiated according to the type of drug involved. It has been shown that under the present situation, there is a greater incentive to smuggle hard drugs, such as heroin, which are more lucrative. Not only are these drugs more harmful in their immediate effects than, for example, qat or hashish, but they also, because of their method of administration (injection), bring increased risk of secondary problems such as AIDS and hepatitis. Greater differentiation of penalties would remove the incentive to concentrate on hard drugs.

- 4- It is necessary that the international society cooperates in order to mitigate drug trafficking through exchange of expertise and police cooperation. especially as Oman in particular and Gulf countries in general, are considered to be a transit area from East Asian countries to other parts of the world.
- 5- Training programmes are needed for drug-fighting staff to make them well aware of the nature of these substances and how to detect them. and the primary elements that form manufactured drugs. as well as to raise their awareness of the tricks used in drug smuggling. Lack of such training. as suggested by respondents in this study. undermines the effectiveness of the police and, coastguards efforts to combat drug smuggling.



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Additional Sources

New resources, books, and law review and journal articles links on the Death Penalty Information Centre's Web site at <http://deathpenaltyinfo.org/>. last Visited September, 29,2008].

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