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(Death Penalty: what keeps it alive and why it should be abolished)

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1. Abstract

The death penalty has been widely practiced by most civilizations in recorded human history. Its practice, nonetheless, has stirred considerable controversy. An increasing number of developed and developing countries has abolished the death penalty either in law or practice. However, there are still countries that vigorously enforce the death penalty, with one of them being the US. With the US being developed and part of the West, it raises the question why the death penalty still persists in parts of the US while it is no longer practiced in other parts of the world. This thesis reveals that the persistence of the death penalty in the US should be attributed to America's susceptibility to "degradation", racism and vigilante justice-which is one of the two answers the thesis aims to answer.

The fact that the US holds the reins in lawful executions and stands alone among Western nations in its use of the death penalty raises the additional question of whether the US should abolish the death penalty. Research has shown that the death penalty is flawed, discriminatory and unable to deter crime. Yet, in the 21st century, the arguments mostly used against the death penalty are not the above-mentioned. Instead, it is supported that the death penalty should be abolished because it unjustifiably infringes fundamental human rights. Furthermore, it is claimed that as part of the civilizing process, in the Western societies the sensibilities of the individuals have increased and the infliction of pain leaves everyone uncomfortable and therefore the death penalty (which undeniably causes physical and mental pain) should be abolished. Finally, the emergence of the concept of human rights is also intrinsically linked to the new standard of civilization. In order for a State to qualify as "civilized", it needs to embrace the concept of human rights and comply with the international human rights law. The prohibition of the death penalty has been asked for in the human rights treaties. All in all, the thesis shows that irrespective of what keeps the death penalty alive in the US, it should undeniably be abolished because it violates basic human rights and acts against the new standard of the civilizing process.

2. Introduction

The practice of the death penalty has been firmly entrenched and widely accepted by an overwhelming majority of cultures from the ancient times until the end of the eighteenth century (Johnson, 2006). In recorded human history, its brutality has extensively been greeted with

enthusiasm and zeal and has widely been recognized as a sufficient and suitable form of punishment for people that do not abide by the community's norms and rules. In most countries in the seventeenth and eighteenth centuries death penalty was the form of punishment most commonly used to deter and punish people for breaking the law (Radzinowicz, 1948). In Britain, during the eighteenth century, at least two hundred crimes were eligible for the death penalty. Cutting down a tree was one of the crimes for which death would be prescribed (Johnson, 2011). The methods of execution were horrendous and would take place in public in order to create fear and put across to the audience the detrimental effect of committing a crime (Banner, 2002). In Europe, people found guilty underwent extremely painful executions where they would be boiled in oil or drowned and quartered (Gatrell, 1994). In the US, hanging or burning would be the most common methods of execution for people declared responsible for crimes punishable by death (Wilson, 2013).

However, the practice of the death penalty has significantly decreased the last decades and its influence has lost ground in 142 countries that have abolished the death penalty either in law or practice (europarl, 2019). Importantly, between 2017 to 2018, a 31% decline in global executions was observed with the death penalty having vanished in Europe (except for Belarus) and a significant number of countries acting similarly in Central Asia and Africa (Amnesty International, 2019). The Enlightenment that spread its wings in Europe at the end of the 18th century as well as the emanation of the post-World War II human rights movement have drastically contributed to the curtailment of the use of the death penalty in most of the countries (Hood and Hoyle, 2009). The emergence of a “new dynamic” that condemns the use of the death penalty as an abuse to the universal human rights and the recognition that the death penalty subjects individuals to torture and inhuman or degrading treatment have led to the development of international human rights treaties that have included in their Articles the elimination of the death penalty as one of their objectives (Hood and Hoyle, 2009).

Even though the international law does not exclusively prohibit the practice of the death penalty, the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) is a crucial treaty ratified by the United Nations General Assembly in 1989 having as an objective the abolition of the death penalty. So far, it is the single most essential and influential international treaty that aims at the abolition of the death penalty (Neumayer, 2008). The European Union has espoused the Protocol “as a strongly held policy view and an integral objective of its

human rights policy” (europa, 2009, n.p). While the significance of the Second Protocol to the ICCPR is undeniable, the adoption of Protocol No 6 to the European Convention on Human Rights (ECHR) in 1982 was the first instrument that legally obligated the contracting States to abolish the death penalty in peacetime. All members (except for Russia) of the Council of Europe have ratified this Protocol in realization that the death penalty violates fundamental human rights, that it is usually enforced in an arbitrary manner that does not ensure the due process and that it is inhumane and degrading (Zamfir, 2019). The International Covenant on Civil and Political Rights (ICCPR) ratified before the previously mentioned Protocols in 1966 has been the first international human rights treaty that has indirectly indicated its opposition against the death penalty by stating in Article 6 that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” (UN General Assembly, 1966).

The development of the international human rights law in general and the ratification of Protocols aiming at the abolition of the death penalty could be viewed “as tangible manifestations of civilizing trends” (Taïeb, 2014, p. 44). The principled position that is embraced on European soil against the death penalty could be seen as an immediate consequence of the civilizing process in the West. Norbert Elias has importantly paid attention to historical sociology and has analytically explained how the Western sensibilities have altered throughout the years. In his quintessential piece of work *The Civilizing Process* published in 1939, Elias focused on how culture and society have crucially affected the psychic organization of the human beings in the West by delving deeper into the changes of our behavior that have taken place throughout the centuries (Garland, 1990). Pratt (2011) argues that as part of the civilizing process an important change has been observed in our attitude towards cruel punishments supporting that our sensibilities have indisputably shaped our modern penal practice by giving the example of the death penalty.

People “no longer regard it as a Sunday entertainment to see people hanged, quartered, broken on the wheel” (Elias, 1979, p. 4). Apparently,

“the civilizing process is embodied in the periodic requests to have capital punishment abolished. It is also demonstrated (and this is less known) in the rejection of a visible death penalty, in what we referred to as an execution 'depublicizing process' nourished by an empathy toward the doomed, as a

sign of a society where the individual prevails...All these phenomena demonstrate the existence of a capital punishment civilization” (Taïeb, 2014, p. 44).

Pratt (2011) suggests that this capital punishment civilization in the Western countries is evident with most countries usually opting for more humane methods of punishment such as life imprisonment. When referring to the civilizing process, it is imperative that we do not omit out of our discussion the decivilizing process. One should bear in mind that the Western societies have not always been sensitive or humane (coconsidering the atrocities we committed in the Dark Ages our sensibilities have increased in the West). Yet, if any unprecedented changes occur in our “civilized” society, then the civilizing process will be disrupted and consequently our sensibilities will decrease. However, it is difficult for the decivilizing process to take place unless a nuclear war occurs which will “totally reverse the centuries old civilizing process, both as regards penal development and more generally” (Pratt, 2000, p. 186). So far, the civilizing process of our modern penal practice does not seem to be disrupted. In the case of Europe, we have seen one European country after the other banning the death penalty (europa, 2019). The fact that the death penalty is losing support can also be realized by public opinion polls that reveal that “support for the death penalty is currently near historic lows after peaking in 1994 and declining over the last 25 years” (DPIC, 2019, n.p.).

Even though the abolition of the death penalty has been embraced by an increasing number of countries, there are still 56 countries that retain the death penalty with China, Iran, Saudi Arabia, Viet Nam, Iraq and the US holding the reins as the world's leading executioners (Olivero, 2013). What is really striking is that the US is among the retentionist countries while it claims to be a civilized, liberal and democratic country; its stance on the death penalty if anything else it shows us the opposite. So, how can one explain the fact that the death penalty still prevails in parts of the US but not in Europe when both Europe and the US seem to endorse democracy and be a part of the Western world? This question has generated an ongoing discussion on what is keeping the death penalty alive in the US while it has been scorned and condemned in Europe. Put differently, what has led to the great divergence between the US and Europe when it comes to the death penalty? This question will be one of the focal points in this dissertation.

Many reasons have been presented on why the death penalty should come to an end and while they are powerful enough to consider its abolition, a relatively new argument has emerged the

last decades. The arguments are no longer focused on whether the death penalty can deter crime but on human rights. The significance of the international human rights treaties has recently increased with Europe abolishing the death penalty in the light of the recognition of human rights as all countries seem to have done in the Western world besides the US. After all the West is “the hallmark of a civilized society that we punish cruelty without practicing it” (Windell, 2015, p. 22). But isn't the US being cruel by executing its citizens? Evidence suggests that the death penalty brings emotional and physical torture. The undeniably dreadful situation one has to go through when they receive the death penalty as punishment and the experience of death row have been proven to be torturous, harsh and inhuman (Hood and Hoyle, 2009). 29 US states still have the death penalty using it as a punishment primarily for murder cases and other capital crimes (CNN, 2019). For these States to retain the death penalty, it means that they torture their convicted citizens. For them to torture, it means that they adamantly resist the civilizing process. Nietzsche once said that in the past “pain did not hurt as much as it does today” (1956, pp. 199-200). Reiman argues that

“the truth in this puzzling remark is that progress in civilization is characterized by a lower tolerance for one's own pain and that suffered by others. And this is appropriate, since, via growth in knowledge, civilization brings increased power to prevent or reduce pain and, via growth in the ability to communicate and interact with more and more people, civilization extends the circle of people with whom we emphathize” (1985, p. 135).

So, how does the US justify the pain and suffering it causes to its convicted citizens when it claims it is a civilized society? Does that essentially mean that it should not consider itself civilized? The “standard of civilization in international society” which rose into prominence in the 18th and 19th centuries by anthropologists was used as an instrument in international law to dictate whether a State was civilized or barbaric. In order for a State to be considered civilized, “(1) basic institutions of government and public bureaucracy; (2) the organizational capacity for self-defense; (3) a published legal code and adherence to the rule of law; (4) the capacity to honor contracts in commerce and capital exchange; and (5) recognition of international law and norms, including the laws of war” were required (Hall and Jackson, 2007, p. 123). Provided that a State could satisfy those preconditions, it was usually regarded a legitimate sovereign state in the international arena (Hall and Jackson, 2007). In the 21st century, the attempt of the Western States to encourage the promotion of democracy and

to protect universal human rights showcase “how the 'standard of civilisation' survives in the contemporary era in tandem with the long-standing conviction that the modern Western state remains the key to a 'civilised' existence” (Linklater, 2016, n.p.).

Given the fact that the death penalty is now widely considered a human rights violation and that some American States continue to execute people violating their rights (therefore the US does not meet all the requirements for it to be considered civilized), one can easily understand that it is problematic to legitimately regard the US a civilized country-at least that's what I will endeavor to argue in the second part of my dissertation. My focal point will be to explain that the main reason why the US should abolish the death penalty is because by enforcing it, it violates basic human rights. The reason I chose to focus on the death penalty is because even though it is a highly charged issue that will continue to deeply divide the international community, I believe that its total abolition is crucial from a human rights perspective in a world where human rights have gathered momentum and have been codified in an internationally recognized regime of conventions.

Recently I read an article written about the Norway Terror Attacks that occurred in 2011. The two attacks killed 77 people in total with the atrocity being committed by one single individual- Anders Behring Breivik. The places that he committed the crimes were surrounded by individuals whose age ranged from 16 to 22. So, in total he deprived 77 young people of their lives and 77 families mourned their loved children (BBC, 2012). Some would argue that Anders Breivik should not be executed because he may be mentally ill just like the 43% of the prisoners that received the death penalty from 2000 until 2015 (Baumgartner and Neill, 2017). But he is not. Psychiatric experts revealed their findings and argued that Breivik was perfectly sane when he committed the crimes (CNN, 2019). He could be one of the blacks that is executed due to racial discrimination as it has been happening from 1976 where 35% of those receiving the death penalty have been black despite the fact that blacks make up for only 12% of the prison population (ACLU, 1999). He could be one of the 4% of inmates that are sentenced to death even though they are innocent (Pilkington, 2014). Yet, he was neither black or innocent. If Breivik received the death penalty, he would not fall prey to discrimination or a wrongful conviction. There is no doubt that he was the perpetrator.

Considering that the US is divided into states that are in favor and states that are against the death penalty, it would be hard to guess what their stance would be on this specific case. Based on its

policies and how it has been reacting to mass shootings, the US would probably support his death penalty. Europe would also probably have some supporting his execution but generally with the European Union and the Council of Europe embracing a common position against the use of the death penalty, it would condemn his execution. So, which party would act in the right way? Could it be Europe that denies executing a person that coldly executed 77 people in the name of human rights and civilization? Or could it be the US that seems intolerant to unlawful executions by lawfully executing those found guilty? Throughout the dissertation I will endeavor to show that no matter what is keeping the death penalty alive in the US, “in an increasingly global society where transnational law evolves, protecting people from the death penalty is a crucial human rights consideration” (Truskett, 2004, p. 128).

3. Literature Review

3.1 What is keeping the death penalty alive in the US

There has been extensive research on the death penalty in the US and what it's keeping it alive with a variety of academic articles, newspapers and books delving deeper into long-term structures that put forward persuasive arguments. The death penalty can be traced back to colonial times and its prevalence is intertwined with enslavement, discrimination and social reform movements (DPIC, 2018). The intensity of the use of the death penalty in the US has been undeniable between the 17th century and 20th century. This intensity has considerably decreased the last 25 years. The number of people sentenced to death has evidently dropped and the number of executions has declined as well (DCIP, 2018). Yet, despite the fact that the death penalty is on the decline in America, it has received backlash for still executing its offenders in a time where contemporary international human rights law is seeking to restrict the violation of human rights (Hood and Hoyle, 2009). In fact, the death penalty “has today become a dominant and legitimate feature among the issues of international human rights” (Bae, 2011, p. 41) and its abolition a global trend (Amnesty International, 2018). Europe (except for Belarus) has prohibited the use of the death penalty and has been striving to make the resistance against it a pan-European value. Other countries have also

followed the example of Europe by eliminating the death penalty either in law or practice. The progress that has been made is impressive; in 1970, a total of 21 countries had abolished the death penalty (Bae, 2011). As of 2019, 142 countries are considered abolitionist (europalm, 2019). Since the end of WW2, the world has attempted to unify its powers in order to eliminate the violation of human rights with the death penalty being one of the issues that has concerned the international political arena. However, the US has not amplified its voice and has not joined the efforts of other developed nations to abolish the death penalty (Geraghty, 2003). This unwillingness of the US to abolish the death penalty while the rest of the developed democracies have abandoned it has raised many authors' interest to determine why America is still imposing it and has become a long discussion among historians, sociologists and legal scholars, some of which have written compelling accounts of the death penalty, its intimate relationship with the US and the reasons behind this relationship. James Whitman argues (2003) that the widening divide between Europe and the US could be attributed to America's susceptibility to "degradation". In order to amplify his argument, Whitman mainly focuses on the American and European history and culture. Specifically, high-status inmates received a more benign treatment while the low-status inmates received inhumane and degrading treatment. Whitman (2003) points out that the reason why Europe and the US followed opposite paths in regard to the death penalty is because Europe (giving the example of France and Germany) decided to punish all offenders (regardless of their status) in an equal way; the status of the offenders did no longer affect the severity of their punishment-only the severity of their crime affected their punishment. The egalitarianism in the US, on the other hand, led to the removal of high-status punishments. As a result, Whitman (2003) argues all forms of punishments in the US "leveled down" with all offenders receiving harsh, inhumane and degrading treatment.

His argument still holds true with over 60,000 US offenders caged for 22 to 24 hours. Prisoners sometimes are in solitary confinement for years and most of the time they present signs of mental health issues. Hallucinations and attempted suicides are some of the few consequences of the solitary confinement. Nonetheless, an estimated 2 million regular prisoners that do not undergo solitary confinement are suspected to be mentally ill with most of them being denied medical care. Besides that, almost 25,000 prisoners are believed to be sexually harassed in the US. This dehumanization is hard to be seen because it is removed from the public eye. Prisoners are no longer

considered citizens but property of the prison; they are not allowed to vote and are constantly denied their rights as humans (Lackey, 2019). Nelson Mandela once said that “no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones” (UNODC, n.d., n.p.). If that is the case, then the US is failing. From the above-mentioned it seems fair to argue that the US does not concern itself with treating its prisoners with dignity and respect. Instead, they are turned into living animals with no vote, voice, medical care or rights. On the other hand, continental Europe treats its prisoners with dignity having as a sole aim to rehabilitate them (Whitman, 2005). Having said that, one should not be taken aback by the fact that it has been easier for the US to hold tightly to the practice of the death penalty than it has been for its close allies. Therefore, so far Europe has taken a more humane approach towards its prison population whereas the US turns a blind eye on human rights violations and consistently turns its back to the civilizing process (a topic that will be extensively explored later on).

Alexis de Tocqueville in his analysis of the American society in the 19th century suggested that the US is a weak society and he attributed the weakness to America's Achilles heel; its susceptibility to public opinion (Mayer and Lerner, 1966). This notion is endorsed by Whitman, who even though mainly focuses on his “degradation” thesis, he enriches his thesis by putting forward an additional argument about the different role the public opinion plays in continental Europe in comparison to the US. Whitman (2005) explains that public opinion essentially signifies one of the crucial differences between Europe and the US; the European Elites were capable of achieving the abolition of the death penalty even though it was still eagerly embraced by the European community because the public opinion is harder to influence the actions of the elites. However, in the US the decisions taken by the elites are profoundly shaped by the public opinion. Consequently, Whitman suggests that “a relatively weak state, like the American one, is much more prey to a harsh retributive politics than these [French and German] continental states are, and less able to forbid acts without branding them as evil” (2005, p. 201). Besides this, the US has a complex system where judges and lawyers are also responsible for making decisions. This greatly affects their freedom to make choices that diverge considerably from the public opinion since they do not want to be criticized for being too soft on crime (Hazelyp, 2012).

Franklin Zimring, on the other hand, illustrates different reasons behind this divergence between the US and Europe. In *The Contradictions of American Capital Punishment*, Zimring (2003) asserts that the application of the death penalty in the US is conflicting and inconsistent in the sense that the death penalty hands the state absolute control over US citizens while simultaneously the US citizens oppose to the idea of the government holding such influential power. This mainly explains why the death penalty is perceived as justice served for the community. Zimring argues that the death penalty has experienced a significant metamorphosis bearing in mind that “[its] proponents... have engineered a symbolic transformation... we now tell ourselves that an executing government is acting in the interest of victims and communities rather than in a display of governmental power and dominance” (2003, p. 10). Finally, Zimring (2003) pinpoints another reason for the prevalence of the death penalty in all parts of the US; race. He admits that racism is noticeable especially in the South and that this may explain the prevalence of the death penalty in the South. Zimring is not alone in the “race” argument. In fact, there is ample research evidence to suggest that the death penalty is carried out in racially prejudiced lines (Beckett and Sasson, 2000). Steiker and Steiker argue that racial discrimination has always been an issue in the American criminal justice and that “blacks suffered a lengthy era in which lynchings were common, followed by an era of so-called legal lynchings in the South, in which legal protections were minimal at best” (2015, p. 243).

David Garland-one of the world's leading sociologists of crime and punishment-offers a profoundly influential scholarly work *In Peculiar Institution: America's Death Penalty in an Age of Abolition* focusing on the shadow of lynchings which “has long haunted the American legal system and played a crucial role in shaping the reinvented death penalty that emerged at the end of the twentieth century” (2010, p. 33). Garland (2010) also insists that even though the forms of the death penalty have changed, “many of the forces, functions and structures that shaped public torture lynching continue to influence the death penalty today” (Johnson, 2011, p. 1039).

In order to explain the widening divide between the US and Europe, Garland identified three different death penalty eras that took place throughout the Western history. At the beginning of the modern period, the death penalty was principally “an exercise of state power that legitimized government authority, controlled crime, and protected the commercial interests of particular groups and individuals” (Johnson, 2011, p. 1039). Executions were a public spectacle and while offenders

were considered sinners, they were not degraded or treated as non-humans. Garland (2010) divulges that “that came later, when a widespread commitment to the 'sanctity of the individual' and the 'dignity of man' rendered it more problematic to put human beings to death” (Garland, 2010, p. 85). The modern death penalty emanated in the European justice system where the methods of punishments changed and became more humane with imprisonment substituting the death penalty. The late-modern death penalty in the West emerged in the 1960s and was profoundly influenced by democracy and liberalism which made the death penalty look as outdated and improper. In this specific time the abolition of the death penalty is inevitable with the application of it considered as an abuse of liberal humanism (Johnson, 2011). The differences mentioned above showcase “the institutional structures and social divisions that have shaped America's capital punishment complex in the past as well as in the present” (Garland, 2010, p. 122).

The US as well as other nations that are part of the West since the 19th century have continuously curbed the use of the death penalty or changed its modes for various reasons, many of which are similar (Schabas, 1997). However, there are several significant differences. Most importantly, the US still retains the death penalty years after the rest of the Western nations have abolished it (Devienne, 2010). Moreover, the policies and laws regarding the death penalty are predominantly governed at a state level whereas in Europe where delocalization prevails the situation is very different. Third, in the US illegal executions persisted in the 20th century and were usually discriminatory occurring mainly in the South (Garland, 2010). Additional factors that have led to the divergence between the US and Europe are the operation of state institutions as well as the culture and politics. Countries in the West have been largely influenced by democracy, humanitarianism, liberalism and civilization (Fischer and Pratt, 2006). When one looks at Europe and USA separately, they can realize that the latter is “more fragmented, less bureaucratic, and less powerful” (Johnson, 2011, p. 1040).

3.2 Why should the US abolish the death penalty

A thorough review of the literature review revealed the various and complex reasons why the US is an outlier among the Western countries (having Europe in mind when referring to the West) still retaining the death penalty, putting forward socio-cultural arguments. The reasons why these “lawful

executions” should be abandoned are even more (Bandes, 2008). Yet, there are two contemporary reasons (which will be my main focus) why the death penalty should be abolished that are worth considering. First, the US retaining the death penalty violates some of the basic human rights which are protected and considered of significant importance worldwide; the right to life and freedom from torture and inhuman or degrading treatment. This fact has indisputably raised concern over the anomalous relationship of the US with human rights; a fact that seems peculiar when one bears in mind that the US likes to support that it is the leading country that respects and ensures the protection of human rights (Bentele, 1993). All Western nations (in our case Europe) have abolished the death penalty as an abhorrent, dehumanizing and degrading practice that has no place in the 21st century; a century marked by increasing poverty, inequality and social unrest but also a century marked by a growing number of NGOs aiming at eliminating the widespread human rights violations. The West no longer lives in the Dark Ages where human life had no value. In fact, the importance of human life has led to the establishment of various human rights organizations and the development of the international human rights law. The second reason why the death penalty should be abolished can be summed up in two sentences. As Franklin Zimring and Gordon Hawkins observed: “The pattern is so simple it is stunning. Every Western industrial nation has stopped executing criminals, except the United States” (1986, p. 3). Some decades later after this statement, the US has yet to abolish the death penalty remaining to be the only “civilized”, Western democracy that still embraces institutional killings (Galliher, Koch and Wark, 2012). Consequently, not only should the US abolish the degrading practice of the death penalty because we live in a world where human rights have become increasingly important but also because it is not following part of the mission of the civilizing states which is to abolish the death penalty.

The first time the death penalty was greeted with dismay was with the publication of *An Essay on Crimes and Punishments* published in 1767 by the acclaimed Italian philosopher Cesare Beccaria. The particular book is considered one of the most important books written in the 18th century efficaciously altering the perceptions that were strongly held about the death penalty and its use and propriety both in America and Europe. Beccaria (1767) fervently opposed the death penalty and greatly supported the elimination of torture and the complete abolition of the death penalty. At that time many nations started getting rid of the death penalty with the question arising being not whether

the death penalty can effectively deter crime but whether by imposing the death penalty the State violates the rights of the individual (Langbein, 2006).

While Beccaria's remarkable book stresses that the death penalty should be barred because it is tortuous, as John Bessler argues (2018) the need to put an end to the death penalty primarily came from the recognition of universal human rights. The right to life, human dignity and freedom from torture and cruel, inhuman or degrading treatment or punishment stirred the death penalty debate internationally and the question of whether the state violates fundamental human rights by taking away the lives of offenders was vigorously raised. The first declaration that extensively focused on the rights and freedoms of all individuals was the Universal Declaration of Human Rights (UDHR). Although not legally binding it has strong moral force and it is the foundation of the international human rights law (Hannum, 1996). The UDHR recognizes that all human beings have rights irrespective of their origin, sex, race, nationality etc. Articles 3 ("Everyone has the right to life, liberty and security of person") and Article 5 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment") are of paramount importance because the recognition of them automatically meant the disapproval of the death penalty and its violation of basic human rights (UN General Assembly, 1948). Nonetheless, the US still retains the controversial practice of the death penalty even though human life has been increasingly reaffirmed as a crucial principle of the IHRL (Fatamura and Bernaz, 2013). The EU, on the other hand, has actively attempted to defend human rights and has ceaselessly engaged in the fight against the death penalty. Christian Behrmann and Jon Yorke (2013) acknowledge the endeavors that the European Union (EU) has made throughout the years in order to decrease and ultimately abolish the death penalty. The EU has held a firm position against the death penalty having as a main objective to "create" a world where the death penalty will be banned and the human rights will be respected and has set an example for the majority of the countries that have followed its lead and have abolished the death penalty either in law or practice.

While the number of countries that have followed the example of the EU has increased remarkably, the US vehemently refuses to set the death penalty aside and strictly disregards essential treaties of the IHRL. However, it should reconsider and reevaluate its position. A starting point would be the ICCPR. The ICCPR, adopted in 1966 by the United Nations General Assembly, is an

international treaty that has received universal support and has as a main objective to protect the civil and political rights of all individuals. The US eventually ratified the ICCPR in 1992, however the reservations, understandings and declarations it attached makes it almost impossible to have domestic effect (Ash, 2005). As a result, the US has been accused of cherry-picking human rights and has been criticized as hypocritical for denying to sign such an important human rights treaty while at the same time it prides itself to be the leader in the fight against the violation of human rights (Ash, 2005). And it is not surprising to call the US hypocritical especially when some provisions it made reservations to were on capital punishment, juveniles and cruel, inhumane or degrading treatment (Ash, 2005). When a country is willing to lawfully kill its citizens because they killed a fellow citizen (even those under the age of 18) or when it does not hesitate to treat its citizens brutally, mercilessly and in a humiliating way even though international human rights treaties state that all human beings are born equal in dignity, then something is fundamentally wrong with the country and its relationship with the human rights is problematic.

Scholarly work on the living conditions and the length of confinement for the incarcerated that have been sentenced to death in the US has raised serious questions about whether human dignity and human rights are respected (Truskett, 2004). The death row phenomenon has received unequivocal rejection and has widely been condemned for violating human rights by various international tribunals (Harrison and Tamony, 2010). Pertinently defined as a prison within a prison, owing to the draconian security and the tenuous freedom, death row is perceived as an institutionalized place of torment. There is research supporting the ordeal of the death row is a never-ending ordeal and many stories from death row inmates accurately describe the prisoner's metamorphosis from human being to an incarcerated animal (Hudson, 2000; Toch, Acker and Bonventre, 2018). The prisoner is confined to a place where all he can think about is his approaching institutionalized death. These ferocious conditions can undoubtedly result in physical and mental deterioration. As one judge claimed "[the prisoner] must, by now, be more a vegetable than a person and hanging a vegetable is not death penalty" (Schabas, 1996, p. 99).

The US Tortures Before it Kills: An Examination of the Death Row Experience from a Human Rights Perspective which investigated the life of the prisoners on death row concluded that prisoners are subjected to torture under international human rights law. The Convention Against Torture (CAT),

a treaty that has also been ratified by the US, defines torture as “any act by which severe pain or suffering, whether physical or mental, is inflicted on a person for such purposes as [...] punishing him for an act he [...] has committed or is suspected of having committed” (UN General Assembly, 1984). As Hudson asserts: “executing such persons is inconsistent with the purposes of the death penalty, as the prescribed punishment was death, not torture followed by death” (2000, p. 836). Hudson (2000) argues that the death row phenomenon which results in excessive psychological and physical exhaustion not only does it abuse fundamental human rights but that it also tortures prisoners which by itself is unlawful under the international human rights law. Conclusively, he insists that these should be enough for the US to consider its position on the death penalty from a human rights perspective.

The fact that the US diminishes the humanity of the individuals it executes and by extend it violates their fundamental human rights is not the only reason why the US should permanently end its use. The US is the only Western country that has not abandoned the practice of the death penalty. This, alone, is concerning. The reason Western countries have embraced more humane practices, as Garland argues, lies within our increased sensibilities which “have attuned to abhor physical violence and bodily suffering” (1991, p. 149). The Western society seems to perceive violence and suffering as distasteful and degrading acts that have no place in today's civilization. The West as civilized

“saw the development of an extensive body of international human rights law that recaptured, in a substantially purified form, the morally appealing idea of adherence to shared standards of justice as a condition for full membership in international society. The link to the classic standard of civilization was to the underlying idea of universal rights rather than extraterritorial discrimination in favour of aliens. The preliminary efforts of the interwar minorities regime to bring the standard of civilization back home were dramatically expanded in substance and applied universally” (Donnelly, 1998, p. 14). Brett Bowden (2016) highlights that the countries that are part of the “West” seem to follow the same line of thought when it comes to punishment, democracy, economic liberalism, globalization and human rights. So, why does the US-which is part of the “West”-seem so reluctant to act accordingly when it comes to the human rights and its universality? Should its support for the death penalty disqualify the US from being considered a “civilized” state?

Norms about violence have displayed an inclination to become progressively restricted in civilized societies. For instance, to punish a human body by torturing it has become distasteful and unacceptable. Consequently, torture and execution-which are both forms of violence-have become increasingly restricted. The methods a society chooses to punish its criminals have become an indicator of whether the society can be considered civilized (Pratt, 2011). If this is really the case, then the US miserably fails to fall under the category of "civilized". One of the main sources that will essentially help me to prove the "civilized" argument will be Norbert Elias's *Civilizing process* where he focused on "the centuries-long and very encompassing process entailing changes in behavioral orientation and cultural values in the West" (Leavy, 2014, p. 56). However, because Elias himself did not pay particular attention to punishment and how it has been affected by the civilizing process, Spierenburg, Garland and Pratt are particularly useful because they analyzed how the increased sensibilities of people due to the civilizing process have resulted in more humane methods of punishment where the criminals are no longer tortured and executed for the public's satisfaction.

Vaughan argues that owing to the civilizing process "we have recourse to less brutal forms of punishment because we perceive an enthusiasm for public bloodletting or beatings as the mark of a lower, less-refined order of people" (2000, p. 78). Spierenburg (2008)-one of the few criminologists that has aptly explained how our punishment methods have become more civilized-refers to how from the 16th century until these days violence has experience a sharp decline because of our propriety and niceness which "loaded with a wide range of evaluative connotations expressing the West's sense of superiority" (Goudsblom & Mennell, 1997, p. 30). As a result, with the rates of violence dropping dramatically and with our civility increasing, executions in the civilized West have been abandoned and life imprisonment has become a more humane and acceptable form of punishment in our modern penal system (Pratt, 2011).

While it is not obligatory for the US (or for any other state as a matter of fact) to follow the civilizing process, it does raise serious questions about whether the US should be regarded a civilized nation where human rights are protected when its offenders are tortured and executed and its punishment methods so largely deviate from the ones the rest of the civilized world has adopted. Jeffrey Reiman in *Justice, Civilization and the Death Penalty: Answering van den Haag* recognizing that a.) the death penalty results in violence and torture, b.) that violence and torture are considerably

less acceptable in the Western world and c.) that violence and torture violate internationally recognized human rights whose respect is a prerequisite in order for a government to be entitled to full membership in our international society, concludes that the “abolition of the death penalty is part of the civilizing mission of modern states” (1985, p. 115). With the US refusing to abolish the death penalty, its civility and sensibility are unequivocally questioned.

4. Findings

4.1 What is keeping the death penalty alive

While many people condemn the death penalty, there are also many others who are fervent supporters of it. These supporters usually rest their arguments on the deterrence effect, on the objectivity and impartiality of the criminal justice system (Burke, 2005), or on the satisfaction it provides to the family members of the murdered victims (Burton, 2012). However, on the basis of the evidence currently available, it seems fair to suggest that the death penalty does not work and that all of the above mentioned arguments are invalid.

A study, *Do Executions Lower Homicide Rates? The views of Leading Criminologists* conducted in 2009 by Professor Michael Radelet and Traci Lacoock suggests that the extensive “empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment” (2009, p. 490). Shepherd (2005) nicely compliments the arguments raised by Radelet and Lacoc. Through a detailed analysis on the States that retain the death penalty, Shepherd (2005) reaches the conclusion that the death penalty either increases the crime rate or has no influence on it whatsoever. With the deterrence being the central basis for the majority of policymakers to enforce the death penalty, it follows that the death penalty should be abolished since it fails to prevent crime.

As far as the defendants on death row are concerned, it was estimated that 4% of them are supposed to be innocent proving that the justice system is rotten (Pilkington, 2014). The role race plays in the US also makes the system rotten. Brayer reveals the important role race plays and how

this unconsciously affects the legal system by paying particular attention to how “unconscious racial bias exists in the hidden belief systems of many, if not all, jurors” (2015, p. 163). Seminal contributions have been also made by Anwar, Bayer and Hjalmarsson (2012). Their research has provided evidence for the decisive role racial bias plays in the outcome of the verdict. Specifically, white jury pools were found more likely to impose the death penalty on black defendants rather than white defendants.

Arbitrary results, which are not unheard of in the American justice system, commonly arise from inadequacy of counsel. Bright (2015) meticulously explains that the impoverished people accused of serious crimes are more likely to be represented by inexperienced lawyers who lack the necessary resources to handle cases concerning capital crimes. Bright (2015) argues that the lack of adequate legal representation stem from the fact that the death penalty is imposed upon the poorest. Johnson and Johnson (2001) lay out that the death penalty in the US is discriminatory towards those that are economically disadvantaged. Closure for victims' families is another argument that has been put forward which favors the death penalty. The past years the institutional killing has received considerable attention, not only because it promises closure and healing to the victims' families but because it promises to serve justice (Berns, 2009). Yet, scientists argue that executions do not really provide satisfaction to the victims' families and an increasing number of people insist that the death penalty's promise to heal the families is broken (DPIC, 2016).

Reiman (1985) claims that even if the death penalty a.) was not discriminatory, b.) was not usually imposed on the poor or marginalized groups of people and c.) did not put at risk individuals that may have not committed the crime they are being accused of, it should still be abolished simply because it violates human rights (a topic which will be explored later on). However, even though all of the arguments in favor of the death penalty fall apart, the position of the US toward the death penalty does not seem to have changed substantially in today's society. Tracing back the history and the development of the death penalty can be helpful in finding out why the US still maintains the same position while Europe has abandoned it. As it has already been mentioned, the death penalty has been widely imposed by the majority of the cultures from the early ages until the end of the eighteenth century (Johnson, 2006). The reasoning behind its practice would primarily be to deter people from committing crimes or punish those that had already committed one (Radzinowich, 1948). The death

penalty would also be imposed in Europe as well as in the US as a reasonable extension of a prevailing form of punishment in all parts of the world. However, there have been substantial changes in the approaches taken in Europe when it comes to the death penalty. At first, between the 15th and 16th century-a time well-known for the dominance of monarchies over Europe-the use of the death penalty experienced a significant rise, with the executions being barbaric. Nonetheless, in the 18th century, a major drop in the use of the death penalty was observed mainly because more people started being imprisoned than executed. Historians have come to a consensus that it was approximately during the 19th century that the death penalty became the 'death penalty' as we know it today (Garland, 2010).

Hammel (2010) has extensively studied the abolition of the death penalty that occurred in Europe and has pointed out that its abolition is attributed to certain shifts that took place during the 19th century in three gradual steps. The first step was to reserve the death penalty only for the most severe offenses. The second step was to remove the distasteful executions from the public sphere; it was decided that the infliction of pain should be kept private. The third step was to adopt modes of executions that were believed to be more civilized and less barbarous (Hammel, 2010). These shifts demonstrated the change in the way politics was conducted and justice was served (Hammel, 2010). In Europe, "abolition of the death penalty is generally considered to be an important element in democratic development for states breaking with a past characterized by terror, injustice and repression" (Schabas, 1998, p. 799). Specifically, the atrocities of WW2 resulted in the recognition of human rights which "created a climate that advocated, in the name of democracy and freedom, the protection of citizens from the power of the state and the tyranny of the opinions of the masses" (Hood and Hoyle, 2009, p. 18). Consequently, the death penalty was no longer a tool used to combat crime or a public spectacle but a fundamental violation of human rights; it was not only believed to violate the right to life but also the right to be free from unnecessary, suppressive and brutal punishments-at least in Europe (Zimring, 2003).

The progress that we have made concerning the death penalty is striking, especially if one takes into consideration the high number of people that were executed throughout human history. Europe has achieved to become a death-penalty-free zone. Canada as well as Mexico have also barred executions. Albania and other similar poor countries have also stopped authorizing death

sentences and South Africa has also set an example by declaring the death penalty unconstitutional and unlawful (Bessler, 2009). So, even though the death penalty has been barred in the majority of countries-some of them being poor and developing-it is still well maintained within the US with 29 States still enforcing it. While it has been proven that the death penalty does not deter crime (Radelet and Lacock, 2009), that it does not provide satisfaction for the victims' families (DPIC, 2016) and that it violates fundamental human rights, these arguments seem not to be strong enough to persuade the 29 American States to set the death penalty aside and embrace more humane methods of punishment (Bessler, 2018). Whitman gives his own distinctive answers. In his very detailed book, Whitman (2005) argues that the death penalty will probably not last forever in the US but also points out that as a liberal country, America has put itself in a very shameful place on the international scene. Specifically, the US is not compared anymore to the other liberal countries but bears a closer resemblance to Yemen or Nigeria when it comes to the lawful executions. Such a fact cannot leave one without wondering how this is possible. The US has persistently been distrustful towards its government and has never experienced nazism or fascism (Whitman, 2005). So, how come the US follows the lead of Afghanistan embracing the most severe punishment methods? Why the punishment methods of the contemporary European Union are so different from the ones in the US?

Whitman (2005) admits that this answer could be answered by meticulously exploring the past starting from the eighteenth century. In his analysis, attention is paid to the US in comparison to France and Germany. France and Germany are considerably big countries with an impressive industry (Cassis, 1999). Both of these countries have been holding civilized and humane Western values since the mid-1940s (Bavaj, 2011). However, these two countries have not always been human rights advocates or democratic. At some point in history they were neither democratic nor compassionate. It was mainly the US that embraced and fought for democracy. France and Germany, as Whitman suggests, "are the descendants of the "despotic," state-heavy, hierarchical societies against which we defined ourselves two and half centuries ago. They are also countries that have had recurrent episodes of authoritarian government, from the nineteenth century through the horrific 1930s and 1940s" (Whitman, 2005, p. 5). Nonetheless, in the 21st century, France and Germany have managed to have methods of punishment that are friendlier and more humane than the ones the US has. How is that possible?

In order to better comprehend why the US punishes its people in such a strict way, Whitman argues (2005) that one has to really study and understand the history of America by concentrating on the comparative culture. While racism pervades every nook and cranny of the US (Tatum, 2017) or while there is a higher number of people breaking the law that may affect the intensity that Americans punish their offenders, the 'egalitarian social status' and the 'resistance to state power' are given as primary reasons for the severity of the US punishment by Whitman. The US has demonstrated an acute animosity towards social hierarchy (Whitman, 2005). The US has also showed constant skepticism and distrust towards state power. Germany and France, on the other hand, have been more accepting with social hierarchy and state power. And these (dislike of social hierarchy and distrust towards state power) "most characteristically 'liberal' features of American culture have contributed to making American punishment uniquely harsh in the West" (Whitman, 2005, p. 6).

The belief that the US is fixated with the status equality is not recent. Toesqueville powerfully suggested that "the forms of American culture grew out of our historic lack of social hierarchy-out of our lack of what he called the 'aristocratic element'" (Whitman, 2005, p. 7). Toesqueville believed that this lack of 'aristocratic element' indicates that the US will have punishment methods that are more "gentle" and moderate (Spring, 1980). Additionally, Toesqueville claimed that societies tend to take a milder approach in all matters when a sense of equality emerges; this is because people who enjoy the same levels of equality are believed to be more sensitive and understanding, and thus softer on each other (Spring, 1980). Consequently, he argued that since the US is the most egalitarian country, it should inescapably have one of the mildest justice systems (Spring, 1980). Whitman (2005) does not deny the argument of Toesqueville; instead, he acknowledges that the US is an egalitarian country. However, he argues that egalitarianism has not really prevented the US from being harsh on their punishments. This is because, according to Whitman (2005), degradation is an integral part of the American criminal justice system. While degradation is visible in the American justice system, it is barely discernible in Europe. The fact that Americans are more inclined to degradation essentially explains why they take a harsher approach on their punishment. At the end, Whitman (2005) concludes that it is the absence of the "aristocratic element" that makes the US justice system prone to degradation.

The word “degrade” is described as “to lower in grade, rank or status” or “to lower to an inferior or less effective level” (Merriam-Webster, n.d.). Degrading an offender or criminal is of paramount importance in punishment. One of the components that makes punishments efficient is their ability to make the people that are punished for their crime perceive themselves as creatures of lesser importance. In the criminal justice system, such degradation is usually attained when people are humiliated or tortured (Whitman, 2005). Contemporary France and Germany, on the other hand, have a different perspective when it comes to how offenders should be treated. They condemn degradation and believe that offenders should be treated with respect and dignity. The way these European countries treat their offenders and their length of the punishment are fundamentally different from the approaches the US takes. Offenders in Europe are less likely to be put behind bars for minor offenses and the sentences they may receive are considerably reduced compared to the ones in the US. However, under no circumstances should it be implied that there is no punishment for offenders in Europe (Reitz, 2018). People are punished, when deemed necessary, but their punishment is carried out in a less demeaning and humiliating way. Put differently, continental prisons are designed in such a way that restricts the degradation and the humiliation of prisoners. Uniforms are commonly not used when possible and prisoners receive a respectful treatment (Whitman, 2005).

The inmates' privacy plays a critical role as well in continental Europe. Barred doors have been removed from prisons. These measures are part of what Germany likes to describe as “the principle of approximation”; this principle asks that life of the prisoners should bear some resemblance to the life they had before they were imprisoned (if feasible) (Nolte, 2005). Even though the principle is hard to be achieved under prison conditions, both Germany and France are trying hard to abide by it in order to ensure the protection and respect of their inmates' rights, with the US straying far behind. Another step these countries have taken in order to ensure that the lives of the prisoners are similar to the ones they had in the outside world is to put them to work at regular jobs. In this way, prisoners are not considered or treated as inferior citizens. This is not the case with the US prisoners though (Subramanian and Shames, 2014; Crétenot and Liaras, 2013).

The US does not seem to devote time and effort to ensure that their prisoners' dignity and privacy are respected. Prisoners in America are put in jails where privacy is not guaranteed or their records are exposed publicly, all of which are instances of the denial of their civil and political rights

(Whitman, 2005). Whitman explains that “the oldest legal form of status degradation-automatic deprivation of rights of participation-still survives in America” (2005, p. 9). Individuals found guilty are repeatedly stripped of their civic rights. On the other hand, Germany and France ensure that their inmates are motivated to exercise their civil rights such as voting. These divergences in the justice system can actually help us figure out why the US justice system harshly punishes its offenders and why the punishment methods diverge so greatly from the ones in Germany and France. Whitman (2005) indicates that it is the cultures that are respectful towards their prisoners that are more probable to have a benign criminal justice system; on the contrary, cultures (like the US) that tend not to pay particular attention to the respect and rights of the prisoners are more probable to be harsher on their punishments.

The differences between the punishment of the US and these two European countries could be explained by delving deeper into sociology. Since the 18th century, Germany and France (whole Europe actually) have eliminated high-status and low-status punishments; all prisoners receive the same treatment (Whitman, 2005). This measure was taken because Europeans considered the low-status punishments as distasteful and inhumane “survivals of the inegalitarian status-order of the past” (2005, p. 10). The last centuries, the number of prisoners that are being treated with dignity is constantly increasing. Notably, the high-status punishment that was once a benefit for the few has now become a right for all (whenever possible). This change has been observed throughout Europe and is distinct in its law as well. Europe as Whitman argues is “the scene of a leveling-up egalitarianism-an egalitarianism whose aim is to raise every member of society up in social status” (2005, p. 10).

The US continues enforcing harsh punishments because they took the opposite path concerning the high-status punishment. Instead of providing everyone with the high-status treatment, the US eliminated it. In fact, Americans seemed to endorse the low-status treatment-the degradation of all prisoners (Whitman, 2005). Europeans feel repelled by the low-status punishments that used to impose and no longer endorse the infliction of severe punishment that results in the degradation of people. The US feels and acts differently on this matter. Whitman concludes that “we can revive old-style public shaming, for example, without feeling any European qualms: humiliating and degrading

offenders, for us, does not smack of social hierarchy: We have not learned to think of humiliation and degradation, in the way that Europeans do, as inegalitarian practices” (2005, p. 11).

While Whitman largely devoted most of his book on social hierarchy and degradation, he also substantially analyzed the resistance of America to state power. Whitman (2005) insists that people usually hold the notion that stronger states invariably impose harsher punishments on people than weaker states. Durkheim took it for granted that this was the case; he claimed that the stronger the state power, the harsher the punishment (Burkhardt and Connor, 2015). This notion is widely and still embraced by a variety of scholars (Lacey, 1988) and commonly held by most Americans (Whitman, 2005). Considering this notion as true, one would expect that the US-which strongly resists state power-would punish more gently. In fact, the majority of Americans presume that due to their resistance to state power their country is exceptional in mildly punishing offenders (Whitman, 2005). Yet, this presumption is far from accurate. The US is the only Western country that punishes so severely its offenders (Porter, 2004)

Whitman (2005) endeavors to explain how the state power can actually account for mildness in punishment. He achieves that by focusing on two aspects of state power: the application of mercy and the inclination toward bureaucratization. “Mercy”, he goes on, is a complicated concept that is hard to define. Moderately, it is a concept that presumes status hierarchy relations handed from the people that enjoy high-status to the people of low-status. This mercy, as it is easily understood, is closely associated with degradation. When we are showing mercy on someone, somehow his low-status is insinuated and in a country that it recognizes and imposes status differences, the country will probably endorse a tradition of mercy. Yet, mercy is not only about status differences, it is also about the recognition that every individual is different. A justice that surrounds itself around mercy looks at each case individually and tries to punish the individual accordingly. This type of mercy that focuses on the individualization of the due process showcases a tendency to determine the severity of the punishment that each offender deserves. The opposite of mercy would be equality where justice is served by treating all offenders in the same way without showing mercy to any individual (Whitman, 2005). Kant used to support equality in justice by arguing that “the law of punishment is a categorical imperative, and woe to him who creeps along the serpent paths of the theory of social welfare hoping

to turn up some argument that makes it seem like good policy to release him from his punishment, or diminish it" (Whitman, 2005, p. 13).

The mercy that Germany and France have shown towards the offenders has been greater than the one the US has shown. This can be mainly attributed to the fact that mercy was prevalent from the 18th century and managed to survive in Europe. The European law tends to individualize every punishment. On the other hand, the US law seems not to take the same actions. Instead, a tendency towards equality is observed. The fact that European law has avoided treating every offender the same is because it is more willing and prepared to individualize every offense and this reason lies within the fact that continental Europe has countries that are stronger than the US. By "strong" Whitman means the state apparatuses that are characterized both by power and autonomy. The power is identified when the states are not restricted to interfere in civil society. Their autonomy is identified when driven by bureaucracies that are resistant to the caprices of the public opinion. The powerful and autonomous countries, Whitman (2005) suggests, have persistently tried to preserve mercy in their criminal justice.

Indeed, mercy derives from the relative power and relative autonomy. This fact has not been ignored by American scholars that have noticed this in the criminal justice system. As it has been observed, the way the US punishes its offenders is predominantly affected by 'popular justice' (Cullen, Fisher and Applegate, 2000). American politicians avoid being called "soft on crime" because it affects their votes and power. This usually results in politicians taking extremely harsh measures when it comes to punishing crime. Political publicity and punishment go hand in hand in the US (Hazlip, 2012). Political publicity in continental Europe though, it is not affected (as much) by the approach the governments take on punishment and they have succeeded in maintaining their autonomy in their apparatuses. For example, France and Germany have managed to take decisions on the punishment criminals have to face without losing their political legitimacy due to pressure or criticism that may come from the public (Whitman, 2005).

Zimring, who has also tried to identify the reasons behind America's persistence to retain the death penalty, has put forward different arguments. Zimring (2003) recognizes that Europe started perceiving the death penalty as cruel and inhumane in the early 1980s when human rights rose into prominence while the US stands alone among the Western countries as uncivilized for still embracing

the death penalty in its justice system. This entails the question: what led the US to follow a different path than the rest of the Western world? Zimring believes that the answer lies in the American culture and its “attraction to vigilante justice in the lynch mob” (2003, n.p.). Zimring argues that “it is the lynching tradition as a historical institution that seems to have lasting influence on capital punishment in parts of the United States; it represents a still-honored tradition of vigilante justice that has never been completely exorcised from American culture” (2003, p. 90).

Investigating some of the statistics in regard to the American lynching showcases its important and decisive role in American culture. A comprehensive research on lynching in the US indicates that most of the lynchings were observed in the South whereas in the Northeast the number of lynchings was relatively low. Specifically, the Southern states were responsible for nearly nine out of ten lynchings while the Northeast barely accounted for any of the lynchings. The relatively few executions that have occurred in larger states where lynching was a rare phenomenon might “signal that some element of the social tradition that supported lynching is necessary by the late twentieth century to support regular state execution” (Zimring, 2003, p. 98). Zimring then raises the question of “how can these historical traditions account for such sharp variations in official conduct almost a hundred years after the peak of American lynching?” (2003, p. 98).

Zimring (2003) indicates that the deep impact of the vigilante precedents on today's death penalty is not an immediate result of America's eagerness to kill in order to socially control US citizens. Instead, as Zimring implies “the tradition of regarding the punishment of criminals as a local concern acts to remove one major argument against the death penalty where the punishing agency is regarded as a government that may itself be a potential adversary to citizen interests” (2003, p. 99). Considering that this may be true, perceiving punishment as justice served by the community and not by the government should result in US citizens feeling less concerned, disturbed or conflicted about institutional killings although US citizens may tend to be skeptical of the governmental power. The claim that institutional killings are troubling on the grounds that they grant absolute power to governments should be accepted as accurate in conducted surveys when the participants come from low-lynching states. The importance of considering harsh punishment as justice served by the community may impact the intensity of support among those who advocate death penalty by getting rid of any doubt or criticism. Both Eastern and Southern states may hold a positive attitude towards

the death penalty. Yet, the Southern states-less concerned about the government's power-will be less skeptical advocates of the death penalty (Zimring, 2003).

Similarly to Whitman and Zimring, Garland has also delved into the death penalty in the US and has analyzed the path it has taken throughout the years in comparison to Europe. Garland (2010) argues that the death penalty in America rarely occurs, especially when one takes into consideration the overwhelming number of offenders that are on death row. Besides that, Garland (2010) notices that appeals processes seem to be never-ending. In view of these, he suggests that the death penalty is a matter that Americans feel uncertain about. Garland, following Zimring's same line of thought, supports that a significant number of Americans-even those who appear to be in favor of the death penalty-is profoundly uncomfortable with the way this "peculiar institution" operates. Everyone seems to be ambivalent; the higher courts try to use it carefully and the elites are aware that it is outdated. The last decades the death penalty has brought much distress and confusion. So, how can it be that this uncomfortable, conflicting and peculiar institution is very much alive in the US?

Garland (2010) insists that the death penalty has maintained its popularity for a variety of cultural reasons. First, the American public is amused by the application of a punishment that is considered outdated and unthinkable for other countries. Secondly, institutional killings afford to the American public "a release from repression" (Garland, 2010, p. 304). Third, political parties proclaim their support for the death penalty in order to display an attitude that tends to be tough on crime and an assurance of their engagement to Americans' rights. At the end, in order to point out why the US followed a different path from Europe in regard to human rights, Garland (2010) gives the same reasons Whitman and Zimring stating that racism as well as lynchings are contributing factors to this divergence. Garland (2010) argues that "At these notorious events, crowds of white townspeople looked on as lynch mobs tortured and burned black men and women accused of heinous crimes. Following the lynching, the dismembered black body would be displayed for all to see, and picture postcards would be mailed to friends and relatives as mementoes of the occasion" (2010, p. 12). Nowadays, the exact same Southern States have stirred controversy over their executions. Specifically, it has been found that the Southern States are more likely to execute offenders that are African-American without offering them adequate legal representation. "In the minds of many people, today's death penalty-which is more than ever before an institution of the Southern states-carries

clear traces of racial lynching and is inextricably linked to the “peculiar institution” of slavery that lies at the root of this blood-stained history” (Garland, 2010, p. 12). Garland referred to the “peculiar institution” in other works as well by claiming that “we ought to regard today's peculiarities not as institutional accidents or arbitrary features but instead as carefully crafted cultural forms, the result of a definite historical process” (2007, p. 456). Garland further elaborates his argument by stating that “today's death penalty is a negative mirror image of a public torture lynching-an inverse institution, a disavowal, calculated to resist and deny any such association. But substantively, many of the same social forces that previously prompted lynchings nowadays prompt capital punishment; many of the same social functions performed by lynching then are performed by capital punishment now; and much the same political structures that permitted lynchings then, enable capital punishment now” (2007, p. 457).

4.2 Death Penalty and International Human Rights Law

In many parts around world, the death penalty is widely perceived to flagrantly violate fundamental human rights. This understanding has led to an increasing number of countries aiming at abolishing the death penalty. The EU eagerly supports the abolition of the death penalty and has made it a prerequisite for countries considering to enter the EU to end executions. Nevertheless, executions still occur in certain countries and sadly enough the US is among the countries with the most frequent executions. The persistence of the death penalty in the US has received a lot of criticism since the death penalty has been found to breach basic human rights. Specifically, the death penalty fails to ensure the right to life. Furthermore, the death penalty is usually discriminatory which violates the principle of non-discrimination. Besides this, the death row phenomenon has been proven to be responsible for cruel, inhuman or degrading treatment which is prohibited under the international human rights law (Dieter, 1999).

4.3 Discrimination under International law

The principles of equality and non-discrimination form the core of the international human rights law. These specific principles are included in basically all leading human rights treaties (Farrior, 2015). The Committee on the Elimination of Racial Discrimination (CERD) defines discrimination as

“distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms . . .”(UN General Assembly, 1965). The US is signatory to all major treaties which ask for the protection of all humans rights forbidding any distinction.

The Inter-American Commission on Human Rights (IACHR) has also focused on discrimination. Essentially, the IACHR has stated that “[i]nternational human rights law prohibits not only deliberately discriminatory policies and practices, but also policies and practices with a discriminatory impact on certain categories of persons, even though a discriminatory intention cannot be proved” (2003, p. 20). However, the US has been found multiple times guilty of racial discrimination. A pertinent example would be that of William Andrews-a death row inmate who was executed in 1992 in the State of Utah. Even though there is evidence (one of the juries wrote on a piece of paper “Hang the Niggers”) which suggests that the jury-which was responsible for his case-was racially biased, the court never accepted to have a hearing in order to check in thoroughly whether the trial was fair and impartial (Dieter, 1998).

4.4 Torture and cruel, inhuman or degrading treatment under international law

When a country fails, denies or is unable to treat with respect the inmates that are sentenced to death, it severely subjects its inmates to torture as well as to cruel, inhuman or degrading treatment, all of which are prohibited under the international human rights law. Both the prohibition of torture and the prohibition of the cruel, inhuman or degrading treatment are fundamental principles of international law that are universally accepted as norms and under no circumstances can they be derogated. The CAT defines torture as

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”(UN General Assembly, 1984).

It is important to pinpoint that in the case of the death penalty, torture is not restricted to physically hurting someone; adversely affecting the inmates' mental health is regarded as torture as well.

The death row phenomenon which is an immediate result of sentencing offenders to death has received extensive criticism because it has a detrimental impact not only on the physical but also mental health of the death row inmates. The deterioration of the physical and mental health is seen by various international tribunals as a violation of human rights where inmates receive cruel, inhuman or degrading treatment (Harrison and Tamony, 2010). Delays are one of the factors that are held accountable for affecting the inmates' health. The delay of executions is a relatively new development. The time it takes for the death row inmates to be executed is years. The US is a pertinent example of this development. While in the 1970s an inmate's actual execution would take nearly 50 months to occur, the number skyrocketed within 20 years to more than 130 months (Bureau of Justice Statistics, 1997). These days, the time between the sentencing and actual execution may exceed the 30 years. A pertinent example is that of David Earl Miller who had spent 36 years on death row before he got executed (Forrest, 2018).

Extended delays, alone, do not constitute the death row phenomenon. Harsh conditions combined with extended delays do though (Hudson, 2000). The study, "Designed to Break You", has divulged that death row inmates are doomed to face harsh conditions. From a wide collection of stories from death row prisoners, it was revealed that prisoners went through solitary confinement which could last up to 23 hours a day. Additionally, visits from families, friends or lawyers were increasingly restricted. Not to mention the fact that they rarely received the necessary medical treatment. The study also reports that

"this prolonged solitary confinement has overwhelmingly negative effects on inmates' mental health, exacerbating existing mental health conditions and causing many prisoners to develop mental illness for the first time. In addition to the detrimental effects of isolation, the practice of setting multiple execution dates means that many prisoners are subjected to the psychological stress of preparing to die several times during their sentence" (2017, p. 5).

All in all, as it has been argued above, the American States that maintain the death penalty fail to abide by the fundamental human rights treaties to which they are a party. The States have generally managed to avoid complying with these treaties by the unprecedented number of reservations they

have made. However, “the U.S. Is committed to the underlying human rights principally of these treaties and these instruments can serve as a starting point for reforming and restricting the death penalty from a human rights perspective” (Deiter, 1999, p. 34).

4.5 The Death Penalty should be abandoned as part of the civilizing process

The US has been heavily accused of not respecting human rights by applying the death penalty. However, this is not the only reason the US has been confronted. Many people struggle to understand how the death penalty is still applied in certain States while the rest of the liberal democracies have abolished it (Garland, 2010). The West (Europe) has life imprisonment as its most severe punishment. And while evidence suggests that life imprisonment can have a detrimental effect on the inmates' mental and physical health (Massoglia and Pridemore, 2015), as a society we appear to not be concerned because it is kept private and it does not offend our sensibilities (Pratt, 2000). Our humane society is only disturbed by the infliction of pain and torture and for this reason there have been many attempts by the West if not to forbid the use of pain at least to decrease it (Pratt, 2000). The same thing applies to the death penalty. Since its cruelty and violence disturb our civilized society, we have gotten rid of it (Pratt, 2000). And even if some parts of the US still retain it, there have still been efforts to make the death penalty as humane as possible. Basically, the last decades the US government has endeavored to find new execution methods that will not greatly offend our sensibilities. In the beginning, the government tried to not have the offender executed by a fellow human being and as a result firing squad was used. Later on, it was decided that in order for the execution to be less brutal and for the killing not to be associated with another human to introduce the electric chair. Finally, the lethal injection was introduced which even though has been criticized for the agonizing pain it causes to the inmate, it is still used because the pain is not noticeable by the public eye-instead the inmate looks peaceful. Essentially, the government has tried to find execution methods that are not “easier” on the inmates but more tasteful for the public (Spierenburg, 1984). So, it seems that the US has also made steps trying to respect the increased sensibilities of our society. Nonetheless, retaining the death penalty does not follow the civilizing mission of the modern states which is to completely abandon the death penalty.

Reiman (1985) claims that the death penalty in some cases is a just punishment but argues that just because someone deserves a particular punishment, it does not necessarily mean that he should receive that punishment, because there might be other reasons for not imposing it. Therefore, even if the rapists justly deserve to be raped or the torturers justly deserve to be tortured, it does not automatically mean that the same thing should happen to them in order to suffer as much as their victims did. The same thing applies for the death penalty. Executing someone because he deprived someone of his life (even though may be justly deserved) should not necessarily happen. Asking for the abolition of the death penalty, even if justly deserved, “amounts to urging that as a society we place execution in the same category of sanction as beating, raping, and torturing, and treat it as something it would also not be right for us to do to offenders, even if it were their just deserts” (Reiman, 1985, p. 135).

In his attempt to explain why execution falls under this category, he first tries to explain how it benefits us to place torture and execution under the same category and how the abolition of the death penalty yields the same benefits that the abolition of the torture does. Execution falls under the same category as torture because as Reiman (1985) suggests the death penalty (from the moment someone is sentenced to death until their actual execution) is an extremely tortuous procedure. First, having torture in this category declares that as a society we perceive torture in not such a favorable way. Instead, we believe it is such a distasteful and abhorrent thing to do that we simply reject it even if this is what should be done. Bear in mind that such a perception does not really engages us to a total constraint on torturing. Regardless of how abhorrent and appalling we consider something to be, it might still be acceptable to do it in case it is crucial to avoid another worse situation that may occur. So, the question that arises is what there is for us to gain when as a society we perceive torture as something too abhorrent to do even if it is a just action?

Civilization is probably the most suitable answer to this question (Reiman, 1985; Garland, 1991; Pratt, 2000). The infliction of pain seems to be more intolerable today than it was the previous centuries. This intolerance marks the progress we have made as a society; nowadays, we tend to empathize more than we did in the past (Reiman, 1985; Garland, 1991; Pratt, 2000). So, if our society's intolerance towards pain has increased, then publicly rejecting to commit abhorrent acts “both signals the level of our civilization and by our example, continues the work of civilizing” (Reiman,

1985, p. 136). The denial to commit abhorrent acts to the people that may justly deserve them makes this gesture even more important and dynamic. And the more acts we are capable of acknowledging as torture, the more civilized, humane and advanced we are. Therefore, we benefit when we include torture in the category of abhorrent acts, and with execution being undeniably abhorrent, we benefit even more adding it in the same category (Reiman, 1985).

While it is hard for all societies to agree on what should be considered “civilized”, Reiman suggests that “civilization involves the taming of the natural environment and of the human animals in it, and that the overall trend in human history is toward increasing this taming, though the trend is by no means unbroken or without reverses” (1985, p. 136). Reiman elaborates on the concept of civilization by arguing that “that growth in civilization generally marks human history, that a reduction in the horrible things we tolerate doing to our fellows (even when they deserve them) is part of this growth, and that once the work of civilization is taken on consciously, it includes forward and expanding this reduction” (1985, p. 136). Durkheim (1973) seems to follow the same line of thought by claiming that the growth in our civilization leads to a more advanced society that is less tolerant to the infliction of pain and cruel punishment. However, some may claim that not all growth is positive. For instance the continuing growth in population is not desirable. What this essentially means is that growth by itself is not useful. Only if it is beneficial for the human species and the benefits it brings are more than the disadvantages, it is desirable.

So, how do we, as a society, benefit from decreasing the number of abhorrent things we do to those who mostly deserve them? First, bearing in mind that as human beings we are vulnerable to pain, it is evident that it is a benefit for us. Is it nonetheless an absolute benefit? The answer would be positive as long as the decrease did not endanger our lives. Reiman (1985) insists that abhorrent acts of punishment are vital when they have the power to deter other abhorrent acts. Therefore,

“thus if such refraining does not make our lives more dangerous, then it is no loss, and given our vulnerability to pain, it is a gain. Consequently, reduction in the horrible things we do to our fellows, when not necessary to our protection, is an advance in civilization that we are called upon to continue once we consciously take upon ourselves the work of civilization” (Reiman, 1985, p. 139).

To reinforce his argument, Reiman (1985) focuses on showing that execution (death penalty) is as abhorrent as torture is. Reiman (1985) claims that what makes both torture and execution abhorrent

are their two distinctive characteristics: the excruciating pain and the display of a human being subordinated by his fellow human being. He goes on suggesting that "execution shares this separate feature, since killing a bound and defenseless human being enacts the total subjugation of that person to his fellows" (Reiman, 1985, p. 140). Reiman believes

"that this accounts for the general uneasiness with which execution by lethal injection has been greeted. Rather than humanizing the event, it seems only to have purchased a possible reduction in physical pain at the price of increasing the spectacle of subjugation-with no net gain in the attractiveness of the death penalty. Indeed, its net effect may have been the reverse" (1985, p. 140). Yet, it has been argued many times that the lethal injection is not a painless and humane way to execute prisoners on death row. In fact, it is believed that the pain caused by the lethal injection is excruciating. Detailed studies have revealed that not only is the lethal injection not as harmless and painless as it may look but that it is actually as cruel and inhuman as the other punishment methods that were have been used in death penalty (Denno, 2002).

Besides the intense pain and the spectacle of subordination, there is also the severe mental pain that results from sentencing someone to death which is different from simply dying. Reiman explains this by stating that "although we are not terribly squeamish about the loss of life itself, allowing it in war, self-defense, as a necessary cost of progress, and so on, we are, as the extraordinary hesitance of our courts testifies, quite reluctant to execute" (1985, p. 40). This could be mainly attributed to the fact that we consider the unexpected death as less socking than the one we expect on the grounds that "a foreseen death adds to the loss of life the terrible consciousness of that impending loss" (Reiman, 1985, p. 140).

Apart from all the reasons used to argue why torture should be avoided, there is also an additional one that is worth mentioning; torture shows how ruthless we can become. Torturing someone is a terrible thing to do not only because of the immense pain we cause to that person but also because of what we are required to be capable of doing in order to cause that pain. Reiman argues that "the tortured body cringes, using its full exertion to escape the pain imposed upon it- it literally begs for relief with its muscles as it does with its cries. To torture someone is to demonstrate a capacity to resist this begging, and that in turn demonstrates a kind of hardheartedness that a society ought not parade" (1985, p. 141). This applies to the death penalty as well. As a civilized society,

nowadays, we refrain from executing someone even if it is a more cost-effective method. Instead, life imprisonment is preferred (Pratt, 2000). Avoiding to torture or execute someone, we reject the idea of doing horrible things to our fellow human being. The capital punishment is the last cruel corporal punishment method that has been lately used in our advanced world with it losing ground the last decades.

“And it is corporal not only because administered via the body, but because the pain of foreseen, humanly administered death strikes us with the urgency that characterizes intense physical pain, causing grown men to cry, faint, and lose control of their bodily functions. There is something to be gained by refusing to endorse the hardness of heart necessary to impose such a fate” (Reiman, 1985, p. 141).

So, by putting execution and torture under the same category of the abhorrent things we should refrain from doing to our fellow human beings, we make loud and clear that subordinating a fellow human being and causing him tremendous pain is unacceptably abhorrent to be done by our increasingly civilized society. At the end of the day, Reiman claims that “refusing to execute murderers though they deserve it both reflects and continues the taming of the human species that we call civilization. Thus, I take it that the abolition of the death penalty, though it is a just punishment for murder, is part of the civilizing mission of modern states” (1985, p. 141).

The infliction of pain is not the only thing that a civilized society needs to avoid. The violation of human rights (which may result from inflicting pain on other human beings) is also a practice that a civilized society needs to avoid (Iterson et al., 2002).

“After Hitler revealed the barbarian 'other' inside the 'civilized' West 'civilization' was in need of constructive reassertion, above all at home. This required an idiom more demanding than either the classic standard of civilization...Human rights offered a new inclusive standard that emphasized what is shared by and owed to everyone” (Donnelly, 1998, p. 14).

And it is the realization of human rights that created a 'new standard of civilization' which requires from all governments to protect and respect human rights in order to be entitled to full membership in the international political arena. The requirement to protect and respect human rights is the standard of civilization “needed to save us from the barbarism of a pristine sovereignty that would consign countless millions of individuals and entire peoples to international neglect” (Donnelly, 1998, pp. 15-

16). The UDHR and the international human rights treaties appear to be able to play a decisive role in protecting human rights.

The emergence of the concept of human rights has not only 'set a standard' that a civilized society ought to follow but it also "presents a story of moral progress" (Donnelly, 1998, p. 20). Essentially, "human rights rest on a morally attractive vision of a life of equality and autonomy..." (Donnelly, 1998, p. 20). Furthermore, they "represent a progressive late twentieth-century expression of the important idea that international legitimacy and full membership in international society must rest in part on standards of just, humane or civilized behaviour" (Donnelly, 1998, p. 21). Returning back to the issue of the death penalty, it is evident the American States that still retain the death penalty are not entitled to be regarded as civilized because they clearly violate various human rights that have already been analyzed.

5. Conclusion

This research aimed at identifying the main reasons why the death penalty is still on the books and enforced in some American States (while for other Western countries it is a practice that belongs to the past) and the reasons for abolishing it. Through secondary research, I put forward the most important arguments that have been made about the persistence of the death penalty in the US. Whitman (2003) sheds light on why the death penalty is so firmly entrenched in the US by analyzing the concept of "degradation". He argues that the fact that all the forms of punishments have been leveled down in the US and all prisoners are treated the same (regardless of the severity of their crime) has led the US in being harsher in their punishments and more likely to enforce the death penalty. Zimring (2003) gives another explanation for the persistence of the death penalty in the US; race. He insists that race has for a long time played a decisive role in the US and that the death penalty has not been unaffected. Garland seems to share the same view arguing that lynchings have significantly shaped the death penalty as we know it today. Moreover, he suggests that the shadow of lynchings is especially haunting the Southern States where lynchings were prevalent the previous centuries.

As for why the US should abolish the death penalty, the answer lies within the recognition of the human rights. The scourges of WW2 made the world realize the importance of the protection of

the human life (Hood and Hoyle, 2009). As a result, there has been a universal attempt to ensure that the human life is respected and that the violation of human rights are eliminated. This attempt is empowered by the development of the international human rights law. The recognition that the death penalty violates basic human rights by subjecting individuals to torture and inhuman conditions has led to its condemnation and prohibition by the international law (Hood and Hoyle, 2009). Consequently, many people argue against the death penalty from a human rights perspective.

The civilizing process has also tremendously help in decreasing the number of executions. These days, most Western countries, as part of the civilizing process have changed their modern penal practice. Specifically, they have abolished the death penalty as their most severe punishment method and have replaced it with life imprisonment (Garland, 1990; Pratt, 2011). All Western countries have acted similarly except for the US. Since the US is considered a Western civilized society, it should follow the lead of the rest of the Western countries by abolishing the death penalty. This should be done for two main reasons. First, in the West our sensibilities have increased and as a result we tend to be less comfortable with causing pain (Garland, 1990). Second, the emergence of human rights has set a new standard that all civilized societies ought to abide by (Donnelly, 1998).

From my perspective, I believe the death penalty should not be enforced on anyone regardless of how cruel and abhorrent the crime might be. Not only because the death penalty is discriminatorr, unable to deter crime and flawed but also because it flagrantly breaches human rights under widely accepted human rights law. At the end of the day, what is the purpose of having an Article stating that everyone has a right to life when countries like the US ignore it and lawfully execute their citizens? It defies the whole purpose of the international human rights treaties. If developed countries like the US ignore the treaties, then how can we expect from less developed countries to take the treaties seriously and comply with them? The US, as a developed country, needs to reconsider its position on the death penalty and what steps should take in order to ensure that the US citizens' rights are protected and their lives preserved.

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