

Lesson 8

The death penalty as a form of torture

Materials:

“Excerpts on Death Penalty”

The 5th Point in “A Briefing for the UN Committee Against Torture”

<http://web.amnesty.org/library/index/engamr510562000>

Activity:

1. Hand out the “Excerpts on Death Penalty” to the participants:

2. Ask participants to briefly write their impressions of the story above, first by listing adjectives that describe their emotions and then by writing a paragraph or two on how they would feel if they were in the situation described above.

3. Ask participants: In the situation above, is the right not to be subjected to cruel, inhuman, and degrading punishment (Article 5 of the Universal Declaration of Human Rights) being violated?

4. Try to find common ground in the discussion by asking:

- i. Does everyone agree that these death row inmates are experiencing mental anguish?
- ii. Does this situation constitute torture?

5. After writing the paragraph, ask the participants:

- i. What is your own definition of torture?
- ii. Who believes that being on death row is a form of:
Physical torture? Why/Why not?
Mental Torture? Why/Why not?

Ask participants why they feel that way and to elaborate on their views.

6. Ask how the class can put the situation at the Idaho Maximum Security Institution within the context of the Convention on Torture and within the overall context of human rights.

7. Ask participants: If human rights were declared to affirm the inherent value of each human being and their dignity, and torture essentially strips people of that same dignity and worth, then how can we place executions within that context? More specifically, does being on death row strip that people of their human dignity and worth, and therefore violate their human rights?

Portfolio Assignment:

1. Ask participants to read “*A Briefing for the UN Committee against Torture*”
2. Ask them to make a list of Amnesty’s main points in the article and to offer their response or comments:
 - i. Why do you agree or disagree with Amnesty’s claims?
 - ii. Ask them to list which of the real life cases seems most like their own definition of torture and why. Also, ask participants to use the language of the Convention on Torture to support their point.
3. Collect the assignments and review them. Offer constructive criticism on how participants could clarify points, and offer rebuttals. When you review a comment, ask:

- i. What other issues does this touch upon?
- ii. Can this comment be related to human rights documents or concepts?
- iii. Are there any underlying issues?
- iv. Can we identify cause and effect?

4. Participants then submit assignment to their portfolio. For extra credit, participants can write corrections or additions and resubmit it, and the teacher will again offer his or her own comments and perspectives. Try to encourage an ongoing correspondence on the issue(s) a student takes a particular interest in.

Excerpts on Death Penalty

The Death Penalty is a form of torture

The cruelty of torture is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. Abolitionist groups claim that the cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state. Prison is an extraordinarily severe punishment that should not be exacerbated with torture or the death penalty.

Torture Defined

Torture of prisoners violates the Eight Amendment's provision against Cruel and Unusual Punishment, and also constitutes a violation of several international laws. The United Nations Convention on Torture defined 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

An example of torture in the US Criminal Justice System

In May 1998, a lawsuit was filed concerning conditions for death row inmates in Idaho Maximum Security Institution. The suit states that inmates are held in solitary confinement for 163 of every week's 168 hours in small concrete and steel cells with solid metal doors and a narrow slit for a window. Inmates are allowed out of their cells for a maximum of one hour a day, excluding weekends, for recreation, alone and handcuffed in one of 12 enclosed wire mesh pens measuring approximately seven by 15 feet. The prisoner named in the lawsuit, Randy McKinney, states that he has lived under such a regime for 16 years, and that such treatment constitutes torture.

A Briefing for the UN Committee against Torture

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5.THE DEATH PENALTY

Amnesty International opposes the death penalty as a violation of fundamental human rights -- the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The cruelty of torture is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. The cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state. This cruelty cannot be justified, no matter how cruel the crime of which the prisoner has been convicted.

If it is not permissible to cause grievous physical and mental harm to a prisoner by subjecting him or her to electric shocks and mock executions, how can it be permissible for public officials to attack not only the body or the mind, but the prisoner's very life? Threatening to kill a prisoner can be one of the most fearsome forms of torture. As torture, it is prohibited. How can it be permissible to subject a prisoner to the same threat in the form of a death sentence, passed by a court of law and due to be carried out by the prison authorities?

In defending its use of the death penalty, the USA repeatedly states that the punishment is not a violation of international law. However, for those countries which retain the punishment, strict international safeguards and restrictions govern its use. US authorities regularly violate such standards. The USA continues to use the death penalty against child offenders (those who were under 18 at the time of the crime), the mentally retarded, those about whose sanity there were serious doubts, people deprived of their internationally-recognized right to competent defence counsel at all stages of proceedings, and foreign nationals whose rights to consular access after arrest was violated.

Length of time on death row

When the USA ratified the Convention against Torture, it did so on the understanding that the Convention did not restrict or prohibit it from applying the death penalty, "including any constitutional period of confinement" prior to execution.

As Amnesty International unconditionally opposes the death penalty under all circumstances, it takes no additional position on the length of confinement to death row prior to execution. However, it is important to point out that several courts outside of the USA have held that long periods of confinement to death row renders the punishment cruel, inhuman or degrading, including the European Court of Human Rights and the Judicial Committee of the Privy Council. This very fact was pointed out in a dissenting opinion in November 1999 by US Supreme Court Justice Breyer in the case of two men who between them had spent more than four decades on death row. He wrote: "Both of these cases involve astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures. Where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one." However, as yet, Justice Breyer remains in a minority on the court.

Many US politicians seek to cut the time between death sentence and execution. Again, it is important

to point out that in doing so they are increasing the risk of execution of the wrongfully convicted. Many innocent people in the USA have been subjected to the cruelty of the death penalty for crimes they did not commit. Between 1973 and March 2000, at least 87 people have been freed from death row after evidence of their innocence emerged. Many spent years on death row and came close to execution before their wrongful conviction came to light. Anthony Porter spent more than 16 years on death row in Illinois and came within 48 hours of execution in September 1998. He was subsequently found innocent after a group of participants investigated his case and he was released in February 1999.

On 16 March 2000, Joseph Green was acquitted of the crime for which he had been sentenced to die in Florida in 1993. For nearly four of the seven years he spent in prison he was on death row, during which time eight other prisoners were executed in the prison's death chamber. On 15 March, Joseph Green told Amnesty International: "To know a guy has been executed who you talked to, to know that one day someone is going to come and take you to death watch and then kill you -- that eats at you, and eats at you, and eats at you. Death row is very, very dehumanizing."

Conditions on death row

In addition to the cruelty of the death sentence itself, Amnesty International has serious concerns about the conditions on death rows across the country. For example it believes that conditions in H-Unit of Oklahoma State Penitentiary amount to cruel, inhuman or degrading treatment in violation of international standards. The facility houses the state's male death row population, effectively underground in tiny windowless concrete cells, in which the condemned are confined for 23 to 24 hours a day. For up to 60 days prior to their scheduled execution, the 10 inmates put to death in H-Unit in 1998 and 1999 were transferred to solitary confinement in special double-doored punishment cells and subjected to a harsh suicide watch regime, including repeated strip-searches and cell searches.

As in the case of Frank Valdes, individual prisoners on death row have allegedly been subjected to torture or ill-treatment. Christopher Beck was hours from execution in Virginia on 10 June 1999 when he was granted a stay. Exactly a month earlier, on 10 May, an hour and a half after an incident in which he threw a cup of water at a nurse through the food slot in his cell door, up to 10 prison guards entered his cell. It is alleged that they beat him for 45 minutes and arbitrarily electro-shocked him with a stun shield. He was then allegedly held in four-point restraint for 24 hours. The Warden of Sussex I State Prison informed Amnesty International that an investigation was being carried out into the incident, but the organization has not yet been told of its conclusions.

Emile Duhamel was found dead in his Texas death row cell on 9 July 1998. He was a severely mentally impaired man, with an IQ of 56, and had been diagnosed with serious mental illness, including paranoid schizophrenia. Although he was reported to have died from "natural causes", there was concern that medical neglect and the high temperatures (over 40 degrees centigrade) in the non-air conditioned cells during the summer heatwave may have contributed to his death. Anti-psychotic drugs, which Duhamel was taking, interfere with the body's temperature regulation. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, concerned by the USA's continuing use of the death penalty against the mentally impaired in contravention of international standards, had met Emile Duhamel during his visit to Texas death row in late 1997.

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