

# **CAPITAL PUNISHMENT**

## **An Option for New Zealand?**

**Auckland barrister Marie Dyhrberg\* considers the issues surrounding the reintroduction of the death penalty.**

*from the pages of L A W Y E R N E W Z E A L A N D, 5 April 2001*

### **THE DEATH PENALTY TODAY**

In April 1999, the United Nations Human Rights Commission passed the “Resolution Supporting Worldwide Moratorium on Executions” which calls on countries that have not abolished the death penalty to restrict its use. Ten countries, including the US, China, Pakistan, Rwanda and Sudan, voted against the resolution. Currently more than half the countries in the international community have abolished the death penalty. According to the Death Penalty Information Centre, over 90 countries retain the death penalty including China, Iran, and the United States, all of which rank among the highest for international executions in 1999. A report issued by Amnesty International indicates that Saudi Arabia, Yemen, Nigeria, Pakistan, Iran and the United States also have the death penalty for children.

### **IN NEW ZEALAND**

In New Zealand, the death penalty as a punishment for murder came with other common law from England in 1893, along with hard labour, flogging and whipping. In 1935 the Labour Party suspended the death penalty and in 1941 it was abolished by statute. Between 1942 and 1948 there were several highly-publicised and gruesome murders. People were frightened, they felt vulnerable and the debate about reintroducing the death penalty as a deterrent for crime was rekindled. In 1952, the National Party re-introduced the death penalty. It remained until 1961, when the Labour Party again abolished it. That is the situation today. From 1842 until 1961, 54 people were put to death in New Zealand; 53 men and one woman. The last person to be executed in New Zealand was Walter Bolton, 68, who was hanged at Mt Eden Prison on 18 February 1957 for the murder of his wife. Recently considerable media attention has focused on grieving families who are dealing with the loss, by murder, of a loved one. They want vengeance; they want justice. They want an eye for an eye, and some of them are calling for the death penalty. Unfortunately the one certainty is that reintroducing the death penalty will not ease their grief or remove their loss. In any serious debate on the reintroduction of capital punishment, both the public and the politicians who claim they are tough on crime by supporting it need to think long and hard about its consequences and the complex issues it raises. Some of these concerns include the failure of the death penalty to act as a deterrent to future crime, the financial cost, and the lack of fairness in the legal system, including racial disparity; inadequate defences for poor people, legal errors and miscarriages of justice.

## **JUSTIFICATION**

In arguing for the death penalty, two grounds are advanced as justification: that it acts as a deterrent to others; or that it is a fair and appropriate penalty for the crime that has been committed.

### **A DETERRENT?**

Death penalty proponents argue that the execution of convicted murderers deters other would-be murderers. However, no credible studies have yet produced any scientific evidence showing that capital punishment deters any violent crime. In fact, some studies have found that the death penalty may actually increase the number of homicides. It is thought this may be due to the desire not to leave witnesses. People who murder are rarely rational at the time they commit this crime. The threat of execution does not enter the minds of killers acting under the influence of drugs and/or alcohol, in the grip of fear or rage, panicking while committing another crime, or simply lacking an understanding of the gravity of their actions. Often in these situations, no-one thinks someone could actually die. It is likely that even hired killers convince themselves they will escape detection.

### **FAIR AND APPROPRIATE?**

We all want to believe that the criminal justice system is reliable, fair and infallible. Unfortunately there is a huge discrepancy between what we may wish to believe and fact. Jurors, counsel and Judges are human; they can and do make mistakes; they can act badly. There is the ever-present danger that we will execute the innocent. Since 1976, in the United States alone, more than 75 people were freed from death row, some within hours of their planned execution, because a re-examination of the evidence established that they could not have committed the crime. In other cases, re-examination of the evidence which established innocence came too late. Even the most extensive safeguards against miscarriages of justice cannot produce an infallible legal system. Proven causes of miscarriages include false testimony, mistaken identification, false confessions, delayed access to or withholding of evidence, misinterpretation of evidence, and community prejudices and pressures, all of which singly or in combination affected verdicts and sentences. Our legal system is marked by inequalities such as racial disparities in terms of who is charged and inadequate defences for those who cannot afford better. Countries which have the death penalty, and which bother to study who they are killing, find the people they put to death do not represent the population at large. They have less education, less money, are unlikely to be white, are less able to afford a full defence, and are more likely to come from areas perceived by the police as high crime areas. These are the factors that appear to have a major influence on whether the death penalty is imposed. For example, racism plays an unacceptable and powerful role in capital punishment in the United States. In State death penalty cases, the race of the victim has been shown to be much more important than the criminal record of the accused or the circumstances of the crime. According to the US General Accounting Office, in 82% of studies the race of the victim was found to influence the likelihood of being charged with murder or receiving the death penalty. For example, those who were convicted of the murder of whites were found

more likely to be sentenced to death than those who were convicted of the murder of blacks.

## CONCLUSION

There is no evidence that the death penalty will deter anyone. So long as human error exists, we cannot be sure that a death sentence is just, fair and the appropriate penalty. New Zealand needs a justice system aimed at preventing crime before it occurs, wherever possible, and at supporting people who are affected by crime.

---

*\*The writer gratefully acknowledges the assistance of Wendy Matthews, BA, LLB, Barrister and Solicitor of the High Court of New Zealand in preparing this article. For further information see [www.deathpenaltyinfo.org/innocases.html](http://www.deathpenaltyinfo.org/innocases.html) and [www.deathpenalty.net/race.html](http://www.deathpenalty.net/race.html)*

---

Content Copyright © 2001 by Marie Dyhrberg

Design and Programming Copyright © 2001 Nicholas Alexander