

# *Why we punish - social harmony and public concerns*

© Dr. juris, Justice Hanne Sophie Greve

Former judge at the European Court of Human Rights

Member of the International Commission against the Death Penalty



## **The ideal of harmony between the individual and the society**

The human being is social and political, living more or less integrated in his or her society. Every individual is thus both an individual and a part of the collective. No one can live entirely independent of others, and no one can lead a good life if society does not respect him or her as an individual. This is the intrinsic dual nature of being human. Human rights are developed as a protective web around the individual – that is each and every individual at the same time. My rights end where yours start, and vice versa. It is all about striking the right balance – a balance that can be achieved only when the individual has both rights and duties at the same time.

One may construe a primordial memory of society before any conflict between the individual and the community existed. Given individual differences, preferences and interests there is however, an almost inevitability conflict between individual rights and the common good or the rights of everyone else. Social harmony means to balance the rights of the individual – every individual – against the rights of the community. That is, to strike a balanced co-existence between the two sides – two

sides that are mirrored in the very nature of the human existence. Each and everyone are both ‘self’ and ‘the other’. An indelible bond unites all human beings. Human rights make up an intertwined totality composed of everyone’s many different rights at any one time.

Article 1 of the Universal Declaration of Human Rights proclaims, ‘*All human beings are born free and equal in dignity and rights.*’ Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the core of the Charter of the UN. The human being has rights and duties originating directly and simultaneously from her or his human nature – rights and duties which are universal, inviolable and inalienable.

*The right to uphold life is of a more fundamental character than other rights. All other rights are but to secure the quality of the life that is being upheld.* Human life is unique.

Article 1 of the Universal Declaration in contradistinction to the Charter of the UN combines dignity and worth as ‘dignity’. There is however, the possibility of addressing the issues separately by saying that each person has an inalienable worth, which must be respected by all; but that it is by doing good that the human being gains dignity. That is to ascertain that worth is given, while dignity is acquired. In this latter sense dignity denotes worthiness meaning the outer aspect of a person's social role which evokes respect.

In this vein one may say that human rights are based on the worth of the person and should have as their goal the realization of the person's human dignity. Human rights and liberties are effective inasmuch as they help the individual to grow in good, defend the individual from evil within and without, and promote the individual's positive role in society.

Genuine social harmony is found when no one is unduly interfered with or dominated by others or by the community. This balance can be achieved only when every individual recognize his or her impact on the common good be the individual politically active in a more narrow sense or not.

**The social project is to teach every individual – that is every member of society – to be fully human, that is adjusted also to the social context of human life.**

As for the essence of freedom it may be viewed in dynamic rather than in static terms. It is not enough to be, it is not enough to be free to be what one is. One must also be free to become what one's conscience requires one to become in light of one's best knowledge – that is the freedom of change.

We *are* humans, but we have to work to become humane. The human being is an ideal and a norm. The life project is to become ever more humane by building a profound understanding of the intertwined duality between humankind and self. That is the road from naiveté to sophistication. Empathy and sympathy are necessary for the individual to make moral choices.

The prevention of crime is primarily possible by helping everyone to build humanity into their lives as individual human beings; and by the making of a just society also socially and economically.

The dual character of the human challenge – to be fully human both as an individual and as a member of society – is illustrated in the reply by Confucius when he was asked if there is one word which may serve as guidance for all one's life. He replied, 'Is not *reciprocity* such a word?' Knowing self, the individual simultaneously realizes that 'What you do not want done to yourself, do not do to others.'

All human beings are endowed with reason and conscience and should act towards one another as if they were siblings, as expressed in the Universal Declaration. Every sound individual who is not mentally retarded, has a capacity to develop by learning. Others may be leniently restrained as their capacity to do harm is limited at all events.

The human conscience is an understanding of the distinction between right and wrong that has to be applied in concrete situations considering the mix of concerns and interests as real life situations represent. The conscience is a tool to evaluate one's own behaviour – also inactivity – in relation to basic values in concrete situations and to help the person act properly and refrain from injustice. When a human being understands him- or herself as part of and dependent on the

society, the impact of the understanding of reciprocity is increased.

Darwin emphasized that the development of the human conscience is a stadium in the human development – a precondition for the person to be able to live in a community. The one who is unable to distinguish between right and wrong excludes him- or herself from community with others. The conscience is necessary to accommodate diversity.

The laws of society are aimed at striking a balance between everyone's needs and interests as they meet with the needs and interests of fellow human beings. **Presuming that the laws are reasonably balanced, crime represents imbalance.**

Russians usually call those in prison, no matter what their crime, not 'crooks' or 'villains', but 'the unfortunate'. There is an attitude of compassion suggested in this that is missing in many cultures. Perhaps lack of compassion is itself a factor to explain the rate of crime anywhere at any one time.

**Criminal law is intended to prevent social imbalance and to restore balance and order.** Retribution as such is not needed if the balance can be restored otherwise.

Societies now have the ability to keep a person incarcerated for the rest of his or her life so the need for capital punishment no longer applies to prevent new crime by the said criminal.

**Criminal justice must impact the perpetrator, the victim and the public at large.** Punishment for crime serves to teach people to make them beware and deter them from wrongdoing.

Punishment by death cannot be reformatory. Mercy signifies power better than revenge do. Application of the death penalty prevents normally not only rehabilitation of the perpetrator but reconciliation as well.

The core question is how society by its selection of punishment impacts society – actual and potential perpetrators, victims and the society at large. How does the death penalty impact the different target groups for the teaching of social behaviour?

**The basic concerns of the population at large are protection from crime, no impunity and measured punishment.**

All human beings regret to be subjected to crime, especially violent crime; sex offenses, corruption and embezzlement – not to speak of terrorism, crime as carried out by criminal gangs, and crime causing social harm of some magnitude.

Primarily people want safety and protection from crime as such. That is, ideally crime has to be prevented, it does not suffice that crime is punished when first committed. But, when prevention fails, it becomes important to punish the perpetrators. **Impunity is seen to encourage crime or at least**

**not to dissuade crime.** It is furthermore seen as rewarding the criminals – especially if the criminals are considered privileged for a start. Impunity is equated with social imbalance and disharmony.

The issue is how to strike a balance: to punish both to dissuade crime and to restore a balance after crime has been committed.

**People have confidence in the legal system but know that it makes mistakes.** All legal systems make mistakes, and a miscarriage of justice can never be rectified when the death penalty has been applied. At no event does the execution of a criminal bring back any life lost by the hands of that very criminal. In a number of countries where the death penalty may be backed in principle, the population by and large is opposed to it because of the malpractices they experience in the justice system.

The burden of proof is normally on those advocating a measure to demonstrate its effectiveness. This implies that the death penalty ought to be utilized only if it can be documented that it functions as a deterrent. **In most societies *the real deterrent against criminal activity is a very high probability of the criminal being caught, prosecuted and given a measured punishment.***

Europe decided to abolish the death penalty in the aftermath of the Second World War – that is when the continent had been reduced to an immense ‘Ground Zero’. Abolishment was not

the result of *theoretical* principles, but the core implement one could come up with to secure a 'Never Again'.

It is not proven that the death penalty functions as a deterrent. Lack of deterrence and a failure to protect society are never the less but one aspect of capital punishment. It is more important that the death penalty itself **appears to** produce serious crime and social setbacks. This may be referred to as a *brutalizing effect of the death penalty*. It is said that executions stimulate homicides in three ways:

Side | 8

- i. executions desensitize the public to the immorality of killing, and thereby increase the probability that some people will be motivated to kill;
- ii. the State legitimizes the notion that vengeance for past misdeeds is acceptable; and
- iii. executions also have an imitation effect, where people actually follow the example set by the State – people feel that if the government can kill its enemies, so can they.

Thus it is argued that the death penalty is anathema to a State's two primary responsibilities: (i) to protect its people; and (ii) to provide equity, fairness and justice to its citizens.

It may be argued that a brutalization effect is more likely than a deterrent effect of the death penalty.

Reciprocity as a general guide to social relations does not require a life for a life, but prescribes a certain balance.

Lone wolves, extremists and tyrants have one thing in common: their belief in death as a solution. But, they are mistaken – **death is but a dead end to any challenge**. Death may eradicate a challenge, but it can never be a solution. The prevention of crime is possible first of all through education aimed at installing in society the needed spiritual and moral values.

The death penalty does not terminate vicious circles. Conversely, it is likely to create more violence. The death penalty – as all punishment – is contextual. **One message the death penalty sends to society is that it makes human life a relative entity; and denies that human life is a unique abode of worth and potential dignity**. The State carries out the death penalty in our name – in the name of the people.

The State ought always to champion life. What the people desire is to see human dignity enhanced and to have respect for human life affirmed. Death as punishment is perpetuating a culture of violence and death. Even in times of enormous challenges it may be very prudent to reduce the utilization of the death penalty or even introduce a *de facto* moratorium on the usage.

In demanding social circumstances, as in the world today, everyone with resources – intellectual resources and State power not in the least – have an obligation to apply their every skill to further a culture of life and hope.

**The death penalty is a negation of hope:**

- the hope that is linked to human life itself in terms of change and improvement; and
- the hope of building an ever better community of humankind.

From a position of power not to take life, is where we differ fundamentally from terrorists. Terrorism and the death penalty are interrelated in the sense that together they may spiral more violence and death. Terrorists often originate from climates conducive to violence. Terrorism causes vicious circles that need to be broken. The need to transcend a culture of violence, crime and death is urgent.

It is for us to make a better world – the one we desire and believe in. We must embrace a culture of life and respect for the dignity for every member of the human family.

In short, *any* assault on human dignity has repercussions on the life of everyone – as an indelible bond unites all human beings. Violence and the taking of life brutalize the human environment – that is exactly what we want to avoid.

We should not associate the supreme value of justice with the cruelty of killing.

We must plant the seed of the tree we want to grow – that is enhance human dignity and everyone's confidence in and respect for the life of the human being.



