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ARTICLES

SYMPOSIUM: DEATH PENALTY FROM AN INTERNATIONAL AND HUMAN RIGHTS LAW PERSPECTIVE

Danielle Mitterrand*

I suppose that most of you are in favor of the abolition of the death penalty; however, I would truly hope to find in this assembly some defenders of the death penalty for the sake of debate.

In recalling the original and literal definition of the terms we use, when I say DEMOCRACY, I am basically referring to the concept underlying today's meeting, i.e., a political system in which the people are sovereign and govern themselves by way of elected representatives.

This is assuming that this sovereign people will break away from prejudices born of ignorance, build an active society, look at life with insight and make informed decisions. As true Americans, you are proud of your democracy and you honor your Constitution; you stand together behind the Star-Spangled Banner when your country is attacked, and together you gather under it to mourn innocent victims. Like any nation whose Constitution matches the principles of the Universal Declaration of Human Rights, you advocate the right to live.

* Keynote Address at the Symposium on the Death Penalty from an International and Human Rights Law Perspective, held on March 15, 2002, at Santa Clara University. Danielle Mitterrand is the founder and President of France Libertés Foundation, a foundation that promotes, among other international human rights issues, the universal abolition of the death penalty. In the address, Madame Mitterrand discussed her experience as a First Lady with the abolition of the death penalty in 1981, and the foundation's human rights efforts in other countries. Madame Mitterrand took part in the Resistance movement during World War II and was France's First Lady from 1981 to 1995, the period of François Mitterrand's two presidential terms of office.

Should we not see the death penalty in its true dimension more so when its magnitude is known?

Should we not be concerned with the death penalty for what it is, not as a problem by itself, but as a violation of the fundamental rights of the individual, of which the first is life itself?

Should we accept to write it off as accountable for the public scourge modestly named "government political murder" by international experts?

It must be acknowledged that the death penalty is incompatible with democratic values.

Need we recall the 2,000 summary executions in Guatemala, the 4,000 Chileans murdered by Pinochet, the hundreds of victims of death squadrons in Brazil, the thousands of "desaparecidos" in Argentina and Uruguay, after the coups; and in Africa, in Asia . . . the list is too long. It would take hours. As we think of these events, we ask ourselves one same question: why did democratic initiatives, in every one of these cases, stir such fury among the mightiest of this world to cause such carnage?

You might, at times, as citizens of this great nation, wonder whether, in the name of this open and all-encompassing democracy, all is for the best; whether the policies implemented by your elected representatives on your behalf, truly reflect your humanitarian beliefs and expectations.

How can we persuade others that the worst legal and lethal act of violence in a State, the death penalty, is a part of a political race for global repression with the use of extremely sophisticated weapons, thus justifying the U.S. multi-billion dollar budgets?

Do your leaders implement a *policy* compatible with a truly democratic *rule*? One concerned with the respect of the self and of all, and the protection of equal rights? Above all, life. Yours and mine.

For the past decades, the most common of words have been used in such fashion as to deviate from their original meaning; I, therefore, feel the need to define them before saying them.

We think of the term "Politics" with a global definition: "To hold political power." This small sentence involves two concepts: the adjective "political," which is defined in my dictionary as "pertaining to the organization and the exercise of

power within the State;" and the noun "Politics," which it defines as "practices, deeds, institutions and policies of a State or local government."

How does Webster or the *American Heritage Dictionary* define these terms?

Any policy in the making which associates itself to a labeled democracy, whether its label is liberal, all-encompassing, Christian, social, military or monarchical, goes against the very nature and essence of democracy as such.

Does your Constitution, in the spirit of the Universal Declaration of Human Rights, rule the evolution of the society of which you are *all* a part?

Do you see any reason why your current administration, or the previous ones, object to signing or ratifying certain International Treaties on Humanitarian Law, on Human Rights, and on the protection of the Environment?

Their excuse? It does not concern the United States. Is there not a correlation between this decision and the decision to uphold the death penalty?

I will leave the comments to you.

According to my sources, Article 3 of the Universal Declaration of Human Rights states that "Everyone has the right to life" and Article 7 further states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

This means that the lawmakers, *when they consider potential death penalty laws*, are in conflict with their own commitment to the Universal Declaration of Human Rights.

Of course, they have one easy way out of any guilt-ridden feelings: if not the Governor's, there's always the Presidential grace. This pardon is the prerogative of the higher powers that be, it is the remnant of the former monarchs' right over the life or death of their subjects. As it was then, it is discretionary.

I open this debate with a moral approach.

As I see it, this is essential, yet I can also understand that some may be troubled by the increasing and pervasive insecurity of today's world. They are frightened and call upon the repressive powers vested in their government for protection. Thereafter, the adoption of compounded repressive laws

ultimately paves the road for the death penalty, which opens the door to unbridled cruel and violent acts.

This is the age of the executioner because it is the age of the murderers. For an angry people, let us appease the wrath of God, an eye for an eye, a death for a death; we need to project our insurmountable anguish.

If fear may scorn moral ethics, you may then feel reassured by the fact that the alleged criminal is behind bars. You attended the trial, which followed a preliminary investigation that is all too often biased (this, unfortunately, is not particular to the United States: Justice has a human face and is subject to human moods); you heard the facts and the required evidence. This man—or woman—must be sentenced, declares the judge. “Ladies and Gentlemen of the Jury, society would shake in its foundations if public vengeance were not brought upon extreme criminals such as this one . . .” says the District Attorney.

To you, the jurors: life or death? It is up to you. You take on this terrifying responsibility and will carry it as a burden in your soul and conscience for the rest of your days. You know well that full certainty happens but rarely, especially when it comes to the human individual.

Knowledge fades when jurors are asked to make such an irreversible decision without the slightest shadow of a doubt.

And you could yourself have been a member of the Jury,
“What can be alleged in favor of punishment by death?”

This question has yet to be answered in the United States of the 21st century. Even back in the 19th century, Victor Hugo had asked this same question to his contemporaries who seemed content as they were reassured by the capital punishment.

I shall let the author ask the question as I quote him:
What can be alleged in favor of punishment by death?

I put this question seriously. I ask it that it may be answered; I ask it of criminal jurists, and not of literary gossips. I know there are people who take “the excellence of punishment by death” for a text of paradoxes, like any other theme . . . It is not to these that I address myself, but to men of law, properly so called—to logicians, to reasoners; to those who love the death penalty for its beauty, its kindness, its grace!

Let them give their reasons . . .

"[T]o remove from the social community a member which has already injured it, and might injure it again."

Let there be no executioner where a jailer can be sufficient. . . .

"[S]ociety must avenge itself; society must punish. . . ."

Society should not punish to avenge itself; it should correct, to ameliorate others.

"We must make examples. By the sight of the fate inflicted on criminals, we must shock those who might otherwise be tempted to imitate them."

We do not agree that the sight of executions produces the desired effect.¹

THERE. Our 19th century author said it so well that my own words could not have reflected my feelings more truly. And those fools who went to watch the spectacle of the execution had no idea of what they were doing.

Are they still attracted by the execution in the age of information, information that comes to them more openly, faster and from all sides?

Let us come back to the threshold of the 21st century and retrace the road taken. In Europe, all members of the European Union have abolished the death penalty.

One might recall that, not so long ago, in 1980, France was the last country in Western Europe to still uphold the death penalty. It is thanks to my husband, President François Mitterrand, thanks to his political courage and strong will, that France came to abolish the death penalty. At the time, a wide majority of the public opinion was in favor of the death penalty. In the spring of 1981, polls revealed that sixty-four percent of those polled were in favor of maintaining the death penalty and only thirty-three percent were in favor of abolishing it. Furthermore, in the course of 1980, a series of horrible murders rallied the public opinion. The juries' verdicts reflected those same feelings. As a result, never in the past thirty years had so many death sentences been pronounced by the Courts of law as in the months between October 1980 and May 1981. The feelings of insecurity and public vengeance were rampant.

1. The full translation of Victor Hugo's text "Capital Punishment" is available at <http://www.gavroche.org/vhugo/cappun.gav>.

The 1981 presidential campaign started amidst this very emotional climate. On March 16, 1981, the question of the death penalty was raised during an important televised interview with the then presidential contender François Mitterrand. He answered, "In all my faith and conscience, I am against the death sentence." He then added,

And I do not have to look back on the opinion polls which say the contrary, that is, that the majority of the public at large is in favor of the death penalty. LISTEN, I am a candidate to the presidency of the French Republic . . . I say what I mean, what I believe in, and why my convictions are what they are; I express my faith, and my concerns about our civilization: I am not in favor of the death penalty.

The impact of this statement was considerable. It was altogether an exceptional act of political courage if one takes into account the circumstances at the time this statement was made. Indeed, seven years earlier, Valéry Giscard d'Estaing had won the presidential elections against François Mitterrand by a narrow margin of 200,000 votes. In March 1981, the polls showed a close tie for the two main candidates, Valéry Giscard d'Estaing and François Mitterrand. To express his conviction so boldly and so clearly on the matter of the abolition of the death penalty was enough to fend off a few hundred thousand voters who were firm defenders of the death penalty, even among the left. François Mitterrand allowed his conscience to prevail over his political interests at a crucial point in his career.

Paradoxically, this forthright and courageous statement actually profited François Mitterrand's image in the public eye, one used to seeing electoral candidates avoid facing the risk of taking a moral stance contrary to that of the majority of French voters. The fact that François Mitterrand had chosen to assert his strong conviction in favor of abolition so forcefully though it was unpopular, revealed to the public not only his wisdom as a politician but also that he had the strength of character and conviction required to be the President of the Republic.

On May 10, 1981, François Mitterrand was elected by a landslide. One of his first presidential acts was to pardon Philippe Maurice, who was on death row for having killed a policeman and a security guard. This measure was consistent

with François Mitterrand's stance throughout his presidential campaign. It was also the herald of the upcoming abolition within our legislature.

Hence, the time had come to vote for abolition of the death penalty or capital punishment, whatever you prefer. François Mitterrand had chosen Robert Badinter as Attorney General of his Administration. At the meeting of our Congress or "Assemblée Nationale," the leftist representatives, who held the majority, voted in favor of abolition of the death penalty. A significant number of the rightist representatives also voted in favor of it, prompted mainly by their own conscience. One of these representatives was Mr. Jacques Chirac.

The greatest surprise came from the House of Representative, our Senate. The majority there was rightist, yet, after three days of heated debates, the Senate eventually voted in favor of abolishing the death penalty. The decree was adopted on October 9, 1981 and the Justice Minister, as a symbolic gesture, donated the guillotine to a museum.

The task did not end there. Indeed, in 1983, the Council of Europe added a Memorandum to the European Convention of Human Rights, which lays the foundation of Europe's basic moral and legal principles. With this Memorandum, which is implemented as a Treaty, the member States of the Council of Europe, gave up any recourse to the death penalty in times of peace. By decision of President François Mitterrand, France immediately signed the text. Its ratification was adopted by Parliamentary vote in 1985. In doing so, France had made it impossible to reinstate the death penalty.

With respect to the current situation in the United States, I can only say how very sorry I am and can only encourage our American friends to pursue their efforts towards abolishing the death penalty; especially so insofar as so many Americans have much to say about trial procedures, whether because of the color of the skin, or the social rank, or of the standard of living of the accused.

For several decades now, marginalized Americans have not been able to make themselves heard; they are those who cannot because they are not registered voters; those who, hopeless, have lost their sense of civil responsibility; those who no longer trust their representatives; they are all the ones whose endurance is never heard. All those who belong

to what I call the "other America." They are the ones we meet during solidarity rallies of people who advocate building the "Other Possible World in Motion."

Their voice is echoed by those who have a different concept of the political approach and one that should be shared by all concerned.

Realizing that their unhappiness is the feat of a global power at the hands of the one with the greater might, they rally and take their destiny into their own hands, to establish the local foundations of a peaceful global movement of united, non-violent peoples, started decades ago.

Ever since they have had the technical means to exchange, compare, improve and enrich their know-how, the need of a global justice system plays an increasing role in their daily life.

There will be neither unbiased justice nor involved democracy unless they are universally implemented.

At the moment, they are still knocking at the door of the sacrosanct politics protected by obsolete international measures that mandate the respect of non-interference in the affairs of a sovereign state, notwithstanding the appeals for assistance to endangered persons and populations. Spiteful and unreceptive to any proposal other than their own, *the governors* who still enforce capital punishment and *your President* refuse to hear any argument in favor of the abolition of the death penalty.

Proud to portray America as the example of democracy, *par excellence*, they rely on the majority of voters, a very, very thin majority indeed, within a minority of voters!

This is where the terms and conditions of our discourse find their settings, a discourse that will bring about the unifying concept of our aspirations.

Who are we? Mostly, we are a gathering of people representative of society at large. We may, at times, have conflicting opinions, be somewhat intolerant, or tone down our position. We also share common ideas.

You know who I am.

No one can claim to be surprised by my presence at this conference.

I am simply pursuing the uninterrupted political course towards a fairer and more fraternal democracy, in keeping with my own upbringing: a democracy that my husband,

François Mitterrand, tried to institute in France.

Actually, this path was in tune with *my deepest conviction, i.e., that no one may legally lay claim to another person's life*. It would not be consistent with democratic values.

And you, what have you heard? What do you say?

Today, the marginalized people of our world, using the most modern and efficient tools to call upon the solidarity of the peoples of the world—I have seen their yearning for life—have found a worldwide echo to their plea, carried further by those who committed themselves to defend and advocate the cause in favor of life.

Whether you are in favor of capital punishment in any case, or only in some cases, or altogether against it; whether you are one to understand and identify yourself with the problem at hand and knowingly speak of the suffering, of the fears and of the hatred; whether you are one to flaunt your righteousness and state your position, end of argument; whether you are one who would rather lose yourself and sink in an uncertain truth than lose face; or, whether you are one who feels offended by the lack of security over which your government has no control and, as a result, you call for the most repressive of justice; you now have the floor.

Has this meeting with a lady who came from so far to share with you her thoughts and experience opened your horizon to bring you closer to a more peaceful political path?

We are witnessing the trial of a human being. Politicians, technocrats, students, townspeople, merchants and shopkeepers, businessmen, artists. It is up to us to decide whether he will live or die.

Who is that man? He could be one of us

A typical criminal: a thief, why?

A murderer, how?

A terrorist, where does he come from?

This could be the topic of our next conference. I would first recommend that you read the story of Claude Gueux, sentenced to death, whose last day is told by Victor Hugo² like no one could have done it, to caution us against the danger of

² See generally Victor Hugo, *The Last Day Of A Condemned Man And Other Prison Writings* (Geoff Wollin trans., Oxford University Press: World's Classics 1992) (1829).

going astray while trying to remain firm in the course of our own beliefs.

Who is the one judging and sentencing him? Would you have condemned him in the same fashion?

ALL IN ALL, this challenge will end with one winner and one looser, despite the fact that, above all, they were brothers.

With respect to a political strategy that, ultimately, will lead to the abolition of the death penalty here, in the United States, I am not qualified to give any advice. The situation in the United States is poles apart from that of France inasmuch as the United States are a federation of individual states, each having its own penalty laws.

May I just point out that the individual is made of body and soul, and it is for the individual, made of body and soul, that death sentence and humanity cannot be compatible.

I am no less convinced that the example of François Mitterrand will provide valuable insight to those who believe, as he did, in the power of political courage and personal convictions when it comes to the important matter of right and good in our modern societies.