

Capital Punishment

Is it a Deterrent?

JEREMY BUTTIGIEG

A HISTORICAL OVERVIEW OF CAPITAL PUNISHMENT IN MALTA

The final execution at the Corradino Prison took place on 5 July 1943, wherein Karmnu Zammit and his brother Guzeppi were hanged as they were found guilty of murdering Spiru Grech of Zabbar. In 1934 a new law was promulgated,¹ by which a woman expecting a child had to have her capital punishment sentence changed into life imprisonment, after proving her pregnancy to the satisfaction of the court.

Although the abovementioned final execution took place in 1943, Malta witnessed two sentences condemning the accused to capital punishment in 1962 and in 1963. The former was none other than the judgment of Giga Camilleri, found guilty of murdering her son Twannie. The latter, being the very final sentence on capital punishment, was that of Anthony Patignott, on 1 October 1963, who had been found guilty of murdering Manwel Baldacchino. The Governor of Malta eventually reduced the last two judgments into life imprisonment sentences.

On 4 October 1971 and through Act XXI, the Maltese Parliament unanimously approved the abolition of capital punishment from the Criminal Code. However, it remained applicable to certain crimes committed by the Armed Forces of Malta and during wartime to those aiding the enemy in treason. The first trial by jury after the abolition of the death sentence was presided over by Judge Joseph Flores and was held in November of 1971, wherein the prosecution asked the court to award the sentence of life imprisonment.

In May 2002, Malta ratified Protocol No. 13 to the European Convention on Human Rights and Fundamental Freedoms, on the abolition of Death Penalty in all circumstances,² thus bringing the death penalty to a complete end in Malta.

In Malta, persons under the age of eighteen were not hanged and although there were five sentences condemning women to capital punishment, these women were reprieved.

Simultaneously noteworthy and interesting is that globally, the Roman Catholic Church evolved throughout the years. Initially, its view as per Canon Law was that persons condemned to death by hanging were buried without a ceremony

¹ Ordinance No XXXVII dated 31/10/1934

² Council of Europe, *Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances*, 3 May 2002, ETS 187, available at: < <http://www.refworld.org/docid/3ddd0e4c4.html> > accessed 1 November 2013

and could not be buried in sacred land, in other words, in a cemetery. Later, the Roman Catholic Church rectified its perspectives and burials began to take place in a cemetery. Nowadays, as opposed to its initial view of being in favour of capital punishment, the Roman Catholic Church is against capital punishment, whatever the crime committed.

TWO IMPORTANT JUDGEMENTS

Two controversial executions in Malta were those of Ruzar Mizzi known as '*Il-Lajs*' and that of Antonio Azzopardi known as '*Ninu Xkora*' in 1894 and 1908 respectively.

In relation to Mizzi's execution due to a murder conviction, Edward Attard states that from the facts of the case, it appears that a miscarriage of justice might have been committed. Proof of this lies in the fact that when Lord Strickland, who at the time of the execution was Secretary to the Government, was socially attacked due to this execution when Strickland became Prime Minister, he claimed that he had nothing to do with that "dirty business".³ Thus, Strickland admitted that there was dirty business, which could have been a frame-up.

Antonio Azzopardi was found guilty of murdering his daughter's fiancé and was consequently hanged in Corradino. Suspicions were later aroused as to whether he was actually buried alive, since the law required that burial had to occur within just an hour after execution. It was claimed that the length of the rope was short when compared to Azzopardi's stature. Upon hanging, the atlas vertebrae cracks and breaks. After such horrific breakage, the head should be turned at an angle of more than one-hundred and eighty degrees. This would enable the doctors to confirm the death. The editors of newspapers *Risorgimento* and *In-Nahla* questioned and criticized the execution of Azzopardi. Doctors filed libel proceedings, wherein the editors emerged victorious. They brought, in their defence, a case of a girl who fell from a balcony, and although her head was graphically twisted at an angle of more one-hundred and eighty degrees, her atlas vertebrae was not broken.

The drop was determined after taking into consideration the length, weight and stature of the person condemned. Too short a drop could lead to a situation wherein a person is still alive, and an excessively long drop could result in decapitation, as in the case of Saddam Hussein's half-brother, Barzan Ibrahim al-Tikriti.

IS CAPITAL PUNISHMENT A DETERRENT?

Attard opines that capital punishment can never be justifiably seen as a deterrent. He has brought China as an example, wherein if a person repeatedly evades VAT and tax, capital punishment may be applied. Amnesty International are shockingly kept in the dark as to how many lives are brought to an end every year in such a brutal way. Capital punishment is still popular in certain parts of the United States, Afghanistan and Vietnam and in other Arab and Muslim countries. Methods

³ Strickland made the 'dirty business' statement in 1927 during one of the meetings of the Legislative Assembly

in use are gas chambers, lethal injections, hanging, stoning, electrocution and decapitation. Turkey moved away from its traditional perception, having abolished capital punishment in 2004 and also ratified the aforementioned Protocol No. 13 in 2006,⁴ with a view of joining the European Union. Attard states that review of judgements from the American Federal Court shows that capital punishments were also given in relation to crimes that were not grave in nature, more so if the person was Afro-American or dark-skinned.

Attard also opines that capital punishment is not needed in Malta. It is also noticeable that luckily enough, we are short of sex crimes such as rapes that lead to murders and other grave crimes that could ever possibly justify capital punishment.

THE JUDGMENT OF VINTER AND OTHERS VS THE UNITED KINGDOM: WHAT VALUE IS BEING GIVEN TO THE LIFE OF THE VICTIM?

Jeremy Neville Bamber murdered five members of his family and was consequently jailed for life, together with Douglas Gary Vinter and Peter Howard Moore. On appeal, the European Court of Human Rights⁵ in Strasbourg held that there had been a violation of Article 3 of the European Convention on Human Rights⁶ prohibiting inhuman and degrading treatment. In order for a life sentence to be in accordance with Article 3, there must simultaneously be both a possibility of release and a possibility of review.

What about the consideration of abolishing not only the death penalty, but also life imprisonment? Attard opines that if this is to happen, the human race could potentially be crossing the line. Capital punishment is not a deterrent to the perpetrator of a crime, however life imprisonment is another issue. If we are to remove life imprisonment, the value given to life will be brought down to nothing. Moreover, this offers no consolation to the family of the victim in moments of distress. Attard holds that Mr Justice Joseph Galea Debono, who ended a forty-year legal career in 2010, will be remembered for his harsh sentences. In one of his final sentences, together with life imprisonment, the accused was also given a period of reclusion.

The matters of capital punishment and life imprisonment all boil down to a stark question of opinion. It is safe to state that certain crime perpetrators deserve to be separated from society and strictly segregated due to their dangerous tendencies, and here one may speak of premeditated murders, sex crimes and crimes committed on vulnerable persons.

⁴ *Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances*

⁵ *Vinter and Others vs The United Kingdom*, App no 66069/09 (ECHR 09/07/2013)

⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <<http://www.refworld.org/docid/3ae6b3b04.html>> accessed 1 November 2013