

**SENTENCED TO DEATH:
Capital Punishment in Saudi Arabia and the United States**

Throughout history, death has been viewed as an appropriate way to repay society for wrongs committed against it. And, in many societies and cultures, the influence of religion as well as a cultural sense of retribution and fairness has been the driving force behind the implementation of capital punishment. As societies have evolved, progressed, and under some circumstances digressed, capital punishment has remained a hot political topic. Some nations have responded by abolishing the practice altogether, while other nations have chosen to heavily restrict its implementation. Some nations, however, have continued to permit the practice with increasing fervor and minimal due process protections.

In this paper, I will briefly discuss capital punishment procedure in the United States with a special focus on Texas practice, contrasting those processes with Saudi Arabia's procedures.

UNITED STATES – TEXAS PRACTICE

In Texas, only defendants convicted of capital murder are eligible for the death penalty. TX CRIM PRO Art. 37.071. This requirement encompasses a variety of offenses, including but not limited to the murder of police officers "acting under an official capacity" and murders accompanied by the commission of specific felonies, such as aggravated sexual assault, kidnapping, burglary, robbery, or arson. *Id.* It should be noted that the United States does not recognize capital punishment for defendants whose crime did not result in another person's death. Capital Punishment, 37 Geo. L.J. Ann. Rev. Crim. Proc. 764 (2008); see also *Coker v. Georgia*, 433 U.S. 584 (1977). It is this important difference, among others, that distinguishes the American capital punishment system from the Saudi Arabian model.

Moreover, a defendant in the United States is entitled to a "death-qualified jury" to ensure that he receives a fair trial. *Witherspoon v. Illinois*, 391 U.S. 510 (1968). Furthermore, if

the prosecution seeks the death penalty upon conviction, the court is required to hold a “separate sentencing proceeding” to determine if the defendant should receive capital punishment or a life sentence with no opportunity for parole. TX CRIM PRO Art. 37.071. Here, the prosecutor will argue for implementation of the death penalty, and the defense will have the chance to argue against a death sentence. *Id.*

At this stage, evidence pertaining to the defendant’s character and background is introduced, and may be taken into account when the jury decides to recommend a death sentence or not. *Id.* Each issue the jury discusses must be decided beyond a reasonable doubt. *Id.* If the jury returns with a recommendation for the death penalty, its decision will be “subject to automatic review by the Court of Criminal Appeals.” *Id.* The defendant’s opportunities for reversal are not yet exhausted, as he retains several chances to appeal the jury verdict before his sentence is final.

In Texas, the death penalty is performed via a combination of drugs that cause the inmate’s death. TX CRIM PRO Art. 43.14. Executions are carried out in a space chosen by the Department of Corrections and are strictly closed to the public; Texas code only permits specific individuals to witness executions, among them the inmate’s family members or friends, a few physicians, and the executioner. TX CRIM PRO Art. 43.20.

SAUDI ARABIA

Death penalty procedures in Saudi Arabia are governed by Islamic law, and are based firmly in religious interpretation and Sharia principles. Elizabeth Peiffer, The Death Penalty in Traditional Islamic Law and As Interpreted in Saudi Arabia and Nigeria, 11 Wm. & Mary J. Women & L. 507 (2005). Although there are several categories of offenses under Islamic law that are punishable with death, for the purposes of this paper we will focus on murder.

In Saudi Arabia, conviction for murder requires proof beyond a reasonable doubt. *Id.* at 238. However, minimal weight is granted to circumstantial evidence; the bulk of evidentiary support for a conviction is drawn from witnesses and confessions. *Id.* Although the standard in Saudi Arabia is “innocent until proven guilty,” there is no constitutional right to a jury trial for murder; a panel of three judges acts as the sole fact finder. *Id.* And, unlike the American model, victims’ families have a significant role in the trial process as well as the sentencing phase. If a victim’s family wants the defendant to die for his alleged crime(s), the judge panel will fulfill those wishes and sentence the defendant to death. *Id.* In essence, the sentiment of the victim’s families will dictate the fate of the criminal defendant.

Alternatively, if the victim’s family expresses a desire to spare the defendant, the court may sentence the defendant to prison or order him to pay a money sum to the victim’s family. *Id.* Because there is extensive judicial discretion in the implementation of capital punishment and the absence of a uniform criminal code, Saudi courts are not bound by precedent; there is little to no regularity in what to expect as a criminal defendant, and defendants are often unaware of what crime they have been accused of. *Id.*

Furthermore, all murder convictions in Saudi Arabia must be appealed. *Id.* A five-judge panel will conduct the first stage appellate review, and a seven-judge panel will conduct the second stage of appellate review. *Id.* The third and final appellate review is conducted by the Saudi King. *Id.* If the final appeal is unsuccessful, the execution will proceed. Saudi executions are performed publicly via decapitation, the principle being to teach the community a “lesson.” *Id.*

CONCLUSION

A comparative look at United States capital punishment practice may create the false illusion that capital punishment in the United States is far better than capital punishment in Saudi Arabia. However, it is important to proceed with caution, because even though the United States is renowned for its emphasis on due process protections, it still remains in a category with countries like Saudi Arabia, Sudan, Somalia, and Afghanistan— where human rights are scattered, continuously violated, and sometimes nonexistent altogether. *Abolitionist and Retentionist Countries*, Amnesty International (2012).

Given a significant lack of due process protections, criminal defendants in Saudi Arabia are condemned before they have even been convicted, and criminal practice according to the Qur'an differs immensely from the law practiced on the ground. Elizabeth Peiffer, The Death Penalty in Traditional Islamic Law and As Interpreted in Saudi Arabia and Nigeria, 11 Wm. & Mary J. Women & L. 507 (2005). Criminal defendants in the United States have a much higher chance of appealing their sentences, and have far more access to legal representation than Saudi defendants. Although globally abolitionist practices have become the norm, both the United States and Saudi Arabia continue to implement capital punishment. *Abolitionist and Retentionist Countries*, Amnesty International (2012).

REFERENCES

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