

HUMAN RIGHTS AND THE DEATH PENALTY- STOP CRIME NOT LIVES.

"There is no crueller tyranny than that which is perpetrated under the shield of law and in the name of justice."

-- **Montesquieu**, French political thinker and philosopher (1689-1755).

In Trinidad and Tobago, on achieving independence, and in deciding thereafter to hold ourselves out to the world as a Republic, we embraced the idea that the center of our civilization was the promotion and protection of the individual, in the context, not only of our collective experiences as a people, but grounded in the firm belief, that our future and destiny lay within our hands.

Reflective of that core belief, was the adoption of the Universal Declaration of Human Rights as the centerpiece of our Constitution, in the fundamental rights provisions of the Constitution. As a country, we decided that those principles were so important to us, that we gave them preeminence over the President, the Judiciary, the Parliament and the Executive. We created fail safe mechanisms that prevented these institutions from altering those rights without review and without testing them against the background of the human rights provisions in the Constitutions. These safeguard are enforced by an independent judiciary. This approach was markedly different from the United Kingdom, who imposed most of its governance traditions on our existing Spanish infrastructure while we were a decidedly French culture imbued with a cross fertilized ethnic mix.

In the United Kingdom, Parliament is Supreme. There was and still is no written Constitution. Parliament was free to pass any law, bound only by a loose code of entrenched traditions. After the Civil War in England, even the Queen was, in effect, subject to Parliament, and individuals continued to be "subjects of the Queen, not citizens, in the Republican sense.

That was the context in which Trinidad & Tobago, after invasion and servitude, through a combination of colonialism, slavery and indentureship, chose to make a statement, that as a people, our individual lives were inherently worthy of respect, without more, not because we were citizens of a country, but because we were human beings.

The Declaration of Rights was Universal because it did not recognize nor depend on national borders to instill value or worth in Human life.

Our Constitution, therefore, did not grant us those rights, the State instead gave a written declaration that it recognized their inherent nature and accepted a commitment to protect those rights, both domestically and internationally.

The death penalty existed in Trinidad and Tobago from the colonial era. It was part of our criminal law imported from Spain and then England. It was further expanded during slavery, in particularly savage ways, to instill fear in the slave population. Thus in Trinidad and more so in Tobago, the death penalty applied by way of example, to the marriage of slaves, insubordination and runaway slaves. Interestingly

if a runaway slave made it to England he was considered free and therefore not subject to the Death Penalty.

The point I am making, is that, as a region, we are in the unique position of understanding the degradation imposed by the failure to recognize our humanity. We therefore, one would think, would be more sensitive to the application of the death penalty than most. However, in a sense, our society, proves the presumption that violence begets violence. Is it that our past is reflected in our present day attitude to the death penalty?

Andrei Sakharov, Russian nuclear physicist, Nobel Peace Prize laureate stated:-

"I regard the death penalty as a savage and immoral institution that undermines the moral and legal foundations of society. I reject the notion that the death penalty has any essential deterrent effect on potential offenders. I am convinced that the contrary is true - that savagery begets only savagery."

Is this who we are? But more importantly, isn't our Constitution an expression of who we want to be, despite our past? As a people, shouldn't we be more determined to be different because of our past.

Many people argue that the Death Penalty has a deterrent effect, without realizing that crimes are committed by persons who believe in the success of the enterprise. A robbery is committed on a highway and a security guard is killed because the wealth to be gained outweighs the penalty for being caught, whatever that penalty may be. The penalty is not relevant to the commission of the crime except that it encourages an approach to ensure that the person is not caught.

By way of example V A C Gatrell in his book "The Hanging Tree: Execution and the English People 1770-1868" referred to the crime of pickpocketing, which at the time was classified as a felony, the punishment on conviction being death by public hanging. The highest rate of pickpocketing occurred at public executions.

The attitude towards the commission of crime is not a sudden process. It is an attitude based on the rejection of societal norms that have deep rooted bases, which, I suspect, most people would rather not face. The killer of today was a child of individual parents, was a member of a community or other social groupings, all of which, ought to have had a sense of responsibility for the well being of that child. The answers to those questions carry with them a real sense of guilt that, I suspect, we would rather not face. Instead we opt for a palliative that relieves that guilt.

"Capital punishment would be more effective as a preventive measure if it were administered prior to the crime." -- **Woody Allen**, actor, comedian, movie director.

Therefore the answer to crime is not the application of a penalty for commission, but the elimination of sins of omission. The sins of the absent parent, the failure to educate in the widest sense, the lack of caring at a familial and community level, the absence of State encouragement and infrastructure for the family unit; The practice of Politics and civil administration that fails to deepen and instill nation building values,

like honesty and integrity by failing to treat with deep seated corruption in an effective manner.

When, as a society, we deal with these sins of omission, then we uphold the values of our Constitution. We then acknowledge, by action not words, the inherent value of human life and promote the ideals that we say, form the bedrock of our society.

One of the most disturbing aspects of the death penalty, in my view, is that, human life appears to be valued according to the mood of society: Crime is high; hang them high, Crime is low, we then can afford to be charitable. The idea that the value of human life is dependent on the mood of society, undermines the very foundation of human rights. It makes human life subject to politics, media, public relations, lies, innuendo, fear, mauvais langue or simple ignorance.

Montesquieu, French political thinker and philosopher (1689-1755) again remarked:-
"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country."

The idea of acknowledging in the Constitution, the pre eminence of human rights in our individual relationship with the State, is to attempt to rise out of our base instincts into the realm of principle, doing what is right because it's the right thing to do.

I quote from two South African icons:-

Desmond Tutu, South African Anglican Archbishop of Cape Town, Nobel Peace Prize laureate:-

"I don't want a moratorium on the death penalty. I want the abolition of it. I can't understand why a country that's so committed to human rights doesn't find the death penalty an obscenity." His lack of understanding flows from the conflict between what is stated in the Constitution and the actions of society as a whole.

"The death sentence is a barbaric act."

-- **Nelson Mandela**, former President of South Africa, Nobel Peace Prize laureate.

Is it no wonder that the first act of the new South African Parliament after the savagery and barbarity of Apartheid, was to abolish the death penalty completely? In a South Africa that had and continues to have one of the highest rates of crime in the world.

Can we really consider ourselves so different that our humans deserve less?

As the calypsonian constantly says "I want to rise, I want to rise" In order to rise as a civilization, Trinidad and Tobago needs to make doing the right thing, its priority.