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the most part they either endorse executions or remain silent." The only way to make the death penalty more "cost effective" than imprisonment is to weaken due process and curtail appellate review, which are the defendant's (and society's) only protection against the most aberrant miscarriages of justice. Any savings in dollars would, of course, be at the cost of justice. In nearly half of the death-penalty cases given review under federal habeas corpus provisions, the murder conviction or death sentence was overturned. In 1996, in response to public clamor for accelerating executions, Congress imposed severe restrictions on access to federal habeas corpus and also ended all funding of the regional death penalty "resource centers" charged with providing counsel on appeal in the federal courts. (Carol Castenada, "Death Penalty Centers Losing Support Funds," USA Today, Oct. 24, 1995) These restrictions virtually guarantee that the number and variety of wrongful convictions and death sentences will increase. The savings in time and money will prove to be illusory. It is commonly reported that the American public overwhelmingly approves of the death penalty. More careful analysis of public attitudes, however, reveals that most Americans prefer an alternative; they would oppose the death penalty if convicted murderers were sentenced to life without parole and were required to make some form of financial restitution. In 2010, when California voters were asked which sentence they preferred for a first-degree murderer, 42% of registered voters said they preferred life without parole and 41% said they preferred the death penalty. In 2000, when voters were asked the same question, 37% chose life without parole while 44% chose the death penalty. A 1993 nationwide survey revealed that although 77% of the public approves of the death penalty, support drops to 56% if the alternative is punishment with no parole eligibility until 25 years in prison. Support drops even further, to 49%, if the alternative is no parole under any conditions. And if the alternative is no parole plus restitution, it drops still further, to 41%. Only a minority of the American public would favor the death penalty if offered such alternatives. An international perspective on the death penalty helps us understand the peculiarity of its use in the United States. As long ago as 1962, it was reported to the Council of Europe that "the facts clearly show that the death penalty is regarded in Europe as something of an anachronism...." 1962) Today, either by law or in practice, all of Western Europe has abolished the death penalty. In Great Britain, it was abolished (except for cases of treason) in 1971; France abolished it in 1981. Canada abolished it in 1976. The United Nations General Assembly affirmed in a formal resolution that throughout the world, it is desirable to "progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment." By mid-1995, eighteen countries had ratified the Sixth Protocol to the European Convention on Human Rights, outlawing the death penalty in peacetime. Underscoring worldwide support for abolition was the action of the South African constitutional court in 1995, barring the death penalty as an "inhumane" punishment. Between 1989 and 1995, two dozen other countries abolished the death penalty for all crimes. Since 1995, 43 more abolished it. All told, 71% of the world's nation's have abolished the death penalty in law or practice; only 58 of 197 retain it. International Law A look at international trends and agreements sheds light on the peculiarity of the United States' continued imposition of capital punishment. Today, over 140 nations have abolished the death penalty either by law or in practice and, of the 58 countries that have retained the death penalty, only 21 carried out known executions in 2011.[35] Furthermore, capital punishment has compelled the United States to abstain from signing or ratifying several major international treaties and perhaps to violate international agreements to which it is a party: In 1989, the General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), one of the UN's primary human rights treaties.[36] Parties to the Protocol must take all necessary measures to abolish the death penalty and protect their citizens' right not to be executed, although signatories may reserve the right to apply the death penalty for serious military criminals during wartime.[37] The United States has yet to join the 35 signatories or 75 parties to the Protocol, trailing behind the world's leading democracies in the protection of human rights. Although the Second Protocol to the ICCPR is the only worldwide instrument calling for death penalty abolition, there are three such instruments with regional emphases. Adopted by the Council of Europe in 1982 and ratified by eighteen nations by mid-1995, the Sixth Protocol of the European Convention on Human Rights (ECHR) provides for the abolition of capital punishment during peacetime. In 2002, the Council adopted the Thirteenth Protocol to the ECHR, which provides for the abolition of the death penalty in all circumstances, including times of war or imminent threat of war. In 1990, the Organization of American States adopted the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, which provides for total abolition but allows states to reserve the right to apply the death penalty during wartime.[38] The United States has ratified the Vienna Convention on Consular Relations (VCCR), an international treaty setting forth a framework for consular relations among independent countries. Under Article 36 of the VCCR, local authorities are obligated to inform all detained foreigners "without delay" of their right to request consular notification of their detention and their right to demand and access opportunities to communicate with their consular representatives.[39] Local authorities have repeatedly disregarded this obligation, resulting in the International Court of Justice holding in 2004 that states had violated the VCCR by failing to inform 51 named Mexican nationals of their rights. All 51 were sentenced to death. When the State of Texas refused to honor this judgment and provide relief for the 15 death-row inmates whose VCCR rights it had violated, President George W. Bush sought to intervene on the prisoners' behalf, taking the case to the United States Supreme Court. The Court denied the President's appeal, and Texas has gone on to execute inmates whose VCCR rights it had failed to honor. In 1994, the United States signed the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[40] The treaty, which has now been ratified or signed by 176 nations, outlaws the imposition of physical or psychological abuse on people in detention. While it does not explicitly prohibit capital punishment, the treaty does forbid the intentional infliction of pain. Since 1976, however, more than 20 executions in the United States have involved prolonged, painful, or shocking errors, such as an inmate's head catching fire or a lengthy and torturous search for a vein suitable for lethal injection. Additionally, accidents aside, our methods of execution—lethal injection, electrocution, firing squad, gas chamber, and hanging—may be inherently painful. The CAT also forbids the infliction of pain and suffering "based on discrimination of any kind," [41] yet racial inequality is endemic to our death rows. Also in 1994, the United States ratified the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), a treaty intended to protect against racial discrimination, whether intentional or resulting from seemingly neutral state policies. To meet its obligations as a party to ICERD, the United States must take steps to review and amend policies and procedures that create or perpetuate racial discrimination, including capital punishment.[42] Once in use everywhere and for a wide variety of crimes, the death penalty today is generally forbidden by law and widely abandoned in practice, in most countries outside the United States. Indeed, the unmistakable worldwide trend is toward the complete abolition of capital punishment. In the United States, opposition to the death penalty is widespread and diverse. Catholic, Jewish, and Protestant religious groups are among the more than 50 national organizations that constitute the National Coalition to Abolish the Death Penalty. The Case Against the Death Penalty was first published by the ACLU as a pamphlet in 1973. The original text was written by Hugo Adam Bedau, Ph.D., who also contributed to several subsequent editions of the pamphlet. This version was most recently revised by the ACLU in 2012. [2] Liebman et. al, Los Tocayos Carlos, 43 Colum. Hum. Rts. L. Rev. 711, 1104 (2012). [7] See Carol J. Williams, Maker of Anesthetic Used in Executions is Discontinuing Drug, L.A. Times, Jan. 22, 2011, John Schwartz, Death Penalty Drug Raises Legal Questions, N.Y. Times, Apr. 13, 2011, . [8] See Brandi Grissom, Texas Will Change its Lethal Injection Protocol, Tex. Tribune, July 10, 2012, www.texastribune.org/texas-dept-criminal-justice/death-penalty/texas-changing-its-lethal-injection-protocol/; Rob Stein, Ohio Executes Inmate Using New, Single-Drug Method for Death Penalty, Wash. 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[12] See Michael Kiefer, State is Sued Again Over Its Lethal-Injection Procedure, USA Today, Feb. 7, 2012, 20&%20state/2012-02-07-PN10207met-executionsART_ST_U.htm; Court Gives Arizona Warning About Execution Protocol, Associated Press, Feb. 28, 2012, available at ◆ Notably, however, the panel did not halt Arizona's scheduled executions. Id. [16] See Eder, supra note 3; Steve Olfason, Oklahoma to Execute Man Who Killed Ex-Girlfriend and Her Two Kids, Chicago Tribune, Aug. 14, 2012, Steve Eder, Oklahoma Execution Set After Lethal Injection Challenge Fails, Aug. 13, 2012, WSJ Law Blog, . [17] See Grissom, supra note 3; Ed Pilkington, Texas Executions Threatened As Stocks of Death Penalty Drug Run Low, Guardian, Feb. 14, 2012, John Schwartz, Seeking Execution Drug, States Cut Legal Corners, N.Y. Times, Apr. 13, 2011, Kiefer, supra note 7. [19] See Jeremy Pelofsky, U.S. Wants Lawsuit Over Execution Drug Dismissed, Reuters, Apr. 20, 2011, Michael Kiefer, Execution Drugs: Arizona Inmate Lawsuit Seeks FDA Policing, Ariz. Republic, Feb. 3, 2011, Kevin Johnson, Lawsuit Seeks to Block Imports of Key Execution Drug, USA Today, Feb. 2, 2011, Ryan Gabrielson, Lethal Injection Drug Tied to London Wholesaler, California Watch, Jan. 7, 2011, Ryan Gabrielson, California Lethal Injection: Prison Officials Refuse to Hand Over Lethal Injection Drug, California Watch, May 30, 2012, available at . [20] Pelofsky, supra note 14. [22] See Elizabeth Rapaport, A Modest Proposal: The Aged of Death Row Should be Deemed Too Old to Execute, 77 Brook. L. Rev. 1089 (Spring 2012); Michael J. Carter, Wanting to Die: The Cruel Phenomenon of "Death Row Syndrome", Alternet, Nov. 7, 2008, 3A the_cruel_phenomenon_of_%22death_row_syndrome%22/; Dr. Karen Harrison and Anouska Tamony, Death Row Phenomenon, Death Row Syndrome, and Their Affect [sic.] on Capital Cases in the U.S., Internet Journal of Criminology 2010, available at 20Death_Row_Syndrome%20IJC_Nov_2010.pdf. [24] See Harrison and Tamony, supra note 25. [28] Lackey v. Texas, 115 S. Ct. 1421, 1421 (1995) (Stevens, J., concurring in the denial of certiorari). [29] Stephen Blank, Killing Time: The Process of Waving Appeal - The Michael Ross Death Penalty Cases, 14 J.L. & Pol'y 735, 738-39 (2006). [32] Smith supra note 30. (quoting Soering, 11 Eur. H. R. Rep. at 475-76). [36] UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, Dec. 15, 1989, A/RES/44/128, available at: [accessed 15 August 2012] [hereinafter Second Optional Protocol]. [37] See Pierre Desert, Second Optional Protocol: Frequently Asked Questions, World Coalition Against the Death Penalty, June 27, 2008, Pierre Desert, Second Optional Protocol: The Only Global Treaty Aiming at the Abolition of the Death Penalty, World Coalition Against the Death Penalty, June 24, 2008, www.worldcoalition.org/UN-Protocol-the-only-global-treaty-aiming-at-the-abolition-of-the-death-penalty.html; Second Optional Protocol, supra note 21. [38] Desert, Second Optional Protocol: Frequently Asked Questions, supra note 22. [42] International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, available at 20660/v660.pdf.