

Bringing in the Body: Personhood in the Shadow of the Death Penalty

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Abstract

In certain countries, the death penalty is used to punish individual criminals or those society deems to be undesirable. However, I state all individuals are ‘storied’ carrying with them complex narratives which go beyond simple labels. Thus, I state in this paper that there is a need to ‘humanise’ those on death row and to bring to light an acknowledgement of their personhood. I rely on an interview conducted with a photographer who specialises in images of death-row inmates as well as research from an organisation which emphasises on the need for a ‘biopsychosocial’ approach. Doing so allows us to ponder deeper questions as to the efficacy of capital punishment and whether its constant use is an indication of the failure of the state and of society to protect its most vulnerable members.

Keywords

death penalty, photography, biopsychosocial, materiality, punishment, power, narrative, narratives

It was only when I began work as a journalist that I came to know of the term *habeas corpus*.¹ Placed on the ‘political beat’ I followed the cases of several dissidents arrested through legislation which allowed for

1 Given that I was a journalist in Malaysia, see H.F Rawlings. 1983. “Habeas Corpus and Preventive Detention in Singapore and Malaysia.” *Malaya Law Review* 25, 2: 324-350.

arbitrary detention under the flimsy pretext of national security. Since they were essentially kidnapped by the state one of the measures employed by their lawyers was to force the state to present them in court as a way of guaranteeing their safety and well-being, thus to ‘show their bodies’. Though the Internal Security Act is no more, this concept of seeing the individual still carries currency as the government continues to use a slew of other laws to make individuals disappear.² While the law might paint these individuals as being terrorists, the sight of them brings their family and loved ones a certain amount of comfort and relief. Whatever crimes they might have been accused of, those detained are nonetheless interlinked into larger webs of social significance and are therefore storied individuals. The force of the law however seldom allows for such subjectivity, subsuming instead aspects of the human condition under powerful notions such as justice and punishment. The source of such power in turn comes through amorphous entities in forms we often refer to as ‘nation’, ‘state’ and ‘society’, wherein their survival and sovereignty take primacy above all else. Injurious/aberrant behaviour which threatens it must then illicit a response aimed at ‘returning’ a balance. This could mean incarceration, corporal punishment and even the imposition of death all of which affect the human body. As crime and the individual body become synonymous, states and authorities acquire a pathological focus, requiring social ills to be either removed or cured like a cancer.

This field report is inspired by a recently-concluded Asian Anti-Death Penalty Network (ADPAN) conference where I was given the opportunity to interact with the speakers and participants with the goal of gaining insights into the current state of death penalty activism in various national contexts. The report’s central theme, which arose from observations made during the conference, relates to the concept of habeas corpus, wherein I ask: where is the body?

I state in this paper that the body, and more importantly the human presence, is essential not only as one factor in the due process of law but also as an ‘artefact’ complete with its own individuality. On the other hand punishment is an essential part of a repertoire of official violence and therefore ignores and leaves out the nuances which colour human lives. This is because laws and by extension, punishment, form part of a larger structure,

2 See Malaysiakini.com “Suaram: Sosma detainees undergo deep psychological, financial trauma.” Sep 2023. <https://www.malaysiakini.com/news/680708>. Last accessed 30 September 2023.

a social institution that operates for a specific purpose. According to penal sociologist David Garland, punishment is a "...kind of technical apparatus which forms an instrumental means to an end..." (Garland 1990: 281). It also takes many forms in that it may be "...presented as legal procedure, a form of power, an instrument of class domination, an expression of collective feeling, a moral action, a ritual event or an embodiment of a certain sensibility" (1990: 281). In short as a social institution, punishment, like government bureaucracy is a living breathing organism with purpose and appetite. But Garland adds, "...they are only partly self-contained. They open up onto other worlds and connect into a social network which extends well beyond their particular domain" (1990: 283). That is to say that regardless of form, these institutions are not immune to change. Depending on how a particular society 'evolves', social institutions such as punishment must also change in tandem. Change in society takes place through any kind of disruptive force with a capacity to undermine values and to provide novel alternatives with which to replace them. One such example is the idea of human rights which has come to represent a 'globalised' form of consciousness, providing an alternative, to states and societies no matter how resistant they maybe to it. What is even more interesting is the growing trend in international civil society advocating for human rights based on the protection of the human body (Keck and Sikkink 1998). Therefore notions such as bodily integrity (in the case of sexual violence) and dignity (in the case of torture and the right to life) now provide the most cogent arguments in the mainstreaming of human rights.

In this paper, I will be concentrating on two distinct conversations I had between abolitionist activists with varying approaches in their anti-death penalty advocacy. These occurred over the course of ADPAN's conference in May 2023. One conversation is based on interactions with a prominent legal reform organisation based in India and the other is with a photographer focused on the lives of death row prisoners. The commonality between their approaches is an emphasis on the human element highlighting the absence of the body or the individual. Their approach, when considering current human rights trends mentioned above, can provide the strongest argument for abolition of the death penalty and possibly even change forms of punishment. In this paper I will be focusing on the idea of 'personhood' as understood by Project 39A³, based in New Delhi and photographer Toshi Kazama. In a

3 See <https://www.project39a.com>.

report by the former, Project 39A emphasises a legal process called mitigation where circumstances surrounding the life of the accused are brought to light to ‘humanise’ them.

In the case of Kazama his decades long photographic engagement with death row prisoners as well as the ‘tools of the trade’ used in the practise of the death penalty has given many a glimpse of the human drama taking place within the confines of highly securitised environments such as prisons. Exhibitions of his photographs have proven very effective in advocating for the end of the death penalty.

Invisibility

In many retentionist societies, the death penalty is a controversial topic of discussion, involving deep-seated beliefs and values held by large proportions of a society. Given its divisive nature, most societies would prefer that it remain unseen, kept away from the eye of a ‘civilised’ public. Maintaining this ‘veil of ignorance’ was not always the case. In the past, as Michel Foucault (1995) would state, public executions formed an important aspect of the state’s effort in disciplining its citizens. Showing that it could visibly control both the lives and deaths of its population was essential to the sovereign power held by the government. But as these states became modern and thus more ‘civilised’, punishment became less of a spectacle as the state sought to humanise punishment and shielded the public from such displays of its power. As Austin Sarat writes on the death penalty in the United States, when public access to such events was no longer available, the state instead moved executions into concealed spaces where it could continue to mete out the ultimate punishment without harming public sensibilities. In these carceral spaces, inmates on death row would be housed and prepared for the final phase of their lives before execution. As Sarat states, “...capital punishment becomes at best, a hidden reality” (Sarat 2001: 67).

The state, as Sarat adds, then began investing in new technologies to ensure that executions would be as humane as possible to separate its supposed targeted, rational action of punishment from that of murderers and criminals. The state preserves its sovereignty in the name of righteous justice while those who murder commit instead heinous acts of barbarity. As such, those exhibiting such aberrant behaviour challenging the state’s dominion over violence are to be separated from the rest of the population

in carceral landscapes so as to protect ‘normal’ people. Dominique Moran (2015), a human geographer points to a ‘field’ in which prisons and systems of imprisonment form part of a landscape signified by ‘hyper-incarceration’ where vulnerable communities from lower socio-economic backgrounds are targeted by the state’s criminal justice system. The prison becomes a symbol of power forewarning those outside but those within are disappeared from the larger moral universe. Questions of welfare and care then no longer apply, as those on death row are denied the access to dignity one might expect of ‘normal’ human beings. This is especially so in many countries in the world where a strong punitive culture exists only to be taken advantage of by politicians capitalising on this societal-wide desire for vengeance.

Even Taiwan, a signatory to the international bill of rights, continues to retain the penalty, with one presidential candidate openly calling for the end to the country’s moratorium on executions.⁴ This speaks to the presence of a strong culture of retribution within Asia, indicating larger values at play. An example of this is the notion of the rule of law often used to justify the pursuit of stability and control at the expense of individual liberties. The deleterious effect from this is the shrinking of space for a deeper engagement with society’s maladies thus allowing the death penalty to be constantly relied on as a cure-all. In the end, state violence provides no solution to the complex nature of crime. What it does in fact is to place on the family of the convicted a stigma, branded upon them by a vengeful state and society. In the end the death penalty becomes a deeply flawed mechanism unable to achieve its goal and further adding to the larger eco-system of violence.

The Ties and Pictures that Bind

Therefore, the author advocates for and seeks a perspective which calls for an enlarged ‘field of view’. This is to bring into light the lives of those whom society and state have so kept in the dark. This paper and the author believe that each human being is a ‘storied’ individual carrying their own narrative. But due to the complex nature of the human condition, we are also made of multiples levels of narratives, stories and identities that Kimberle Crenshaw (1991) states ‘intersect’ and come to the fore when faced with larger societal forces such as inequality and discrimination. Thus, while the state

4 See Jono Johnson. 2023. “Taiwan KMT candidate will uphold death penalty if elected.” Taiwan News 15 August 2023. in <https://www.taiwannews.com.tw/en/news/4971717>. Last accessed 1 September 2023.

and society system see ‘criminals’ in need of punishment, these individuals have bonds which link them further to a greater network, consisting of family and friends. Here they are not ‘perpetrators’ but rather are fathers, mothers, sons, daughters, lovers inhabiting roles which lead a deep imprint on the lives of others. While some may have committed heinous crimes, this does not mean that these perpetrators are bereft of meaningful ties to others. This is highlighted in how their memories carry on with those who had formed deep emotional ties with them.

The photographs of Toshi Kazama, a photojournalist who spent decades documenting the death penalty, range from haunting countenances of young juvenile death row inmates to eerily empty electric chairs.⁵ From his previous work as a commercial photographer, his project now details the mechanics of the death penalty from the time of incarceration until these individuals are no longer. Through stark black and white pictures, Kazama’s images seek to unnerve the public as he provides a look into how persons are to be killed. Doing so, I state, tears apart the cloak of invisibility the state places over its deadly practice, revealing the scale of human tragedies taking place. But the photographs also play an important role through their materiality within the private realm of these families. According to Kazama, the images were central to how the families were able to remember their loved ones after death. “It is important to them. What the Singapore government does is mugshots but my photographs are something different”.⁶ Described by some as being macabre the Singapore prison system has a practice where an official photographer will photograph death row prisoners one week before their slated execution.⁷ Inmates are then made to pose while dressed in newly-bought clothes brought in by their families. Nevertheless, Kazama believes that these photographs do not convey the full humanity of these incarcerated individuals. “I want to capture the person”.

In an edited volume on the power and influence of the photograph,

5 See Ezra Kyrill Erker. "Dead Child Waling." Bangkok Post July 2012. in <https://www.bangkokpost.com/thailand/special-reports/303692/dead-child-walking>. Last Accessed October 1 2023. For a profile of Kazama see Amnesty international Thailand. 2023. “The Value of Life: Getting to Know Toshi Kazama.” in [https:// www.amnesty.or.th/en/latest/blog/31/](https://www.amnesty.or.th/en/latest/blog/31/). Last Accessed August 31 2023.

6 Interview with Toshi Kazama May 2023.

7 See France 24. “Love Letters’ from death row: Singapore’s pre-execution photo shoots” in <https://www.france24.com/en/live-news/20230705-love-letters-from-death-row-singapore-s-pre-execution-photo-shoots-1> July 2023. Last Accessed September 30.

scholars have pointed out that, "...photographs are both images and physical objects that exist in time and space and thus in social and cultural experience...they occupy spaces, move into different spaces, following lines of passage and usage that project through the world" (Edwards and Hart 2004: 2). I would take this argument further to state that given their materiality, and their capacity to 'move', they do so also with a kind of 'weight'. Describing his experiences with judges, Kazama relates how, in the course of his work, he has met with powerful individuals, who despite their work as prison wardens and judges, have come to be deeply affected by his images.

"There was a judge in Mongolia who was well known for meting out the most death penalties. She had probably grown up in an authoritarian-like family with punishment and no love. But she was also unique in that she would visit the people she sentenced. I had never seen a judge like that. So I met her and then showed her pictures of other death prisoners I had photographed and then I saw a tear coming down her face. I hugged her and after that she told me she would no longer support the death penalty."⁸

Because the images within these images carry such psychic resonances, the viewer is then faced with the conundrum of being forced to acknowledge the individual in the photograph and realise that the life of the person will soon come to an end. Having to ponder over this then becomes a burden to the person juggling with the image before them and yet reaffirms the common humanity which they share. In the instance of the judge, it could be said that the system she was a part of placed a greater emphasis on the 'law' rather than human individuals. In that sense she had a 'duty' to 'uphold' the law and to punish those she found guilty. But it blinded her to the very 'stories' and 'narratives' they carried until of course she was shown the pictures of Kazama's death row inmates. If we were to extend this concept writ large, I would state that societies in general are also beholden to the 'spell' of the death penalty and other such punitive measures. Referencing her works on the public approval of extra-judicial killings in the Philippines, Nicole Curato (2016) states that populist politicians such as former Filipino president Rodrigo Duterte harness the 'latent anxieties' of the public to justify his policies. In the case of many Asian countries this same set of anxieties is exacerbated by sensationalist media-reporting further burying the realities of the death penalty.

⁸ Interview with Toshi Kazama May 2023.

Stories that they have

While photographs are an essential part of the abolitionist strategy, death penalty cases nonetheless occur within a courtroom setting ostensibly as a neutral forum where the accused faces the state with a judge serving as the final authority. Thus, the courtroom serves as a hermetically-sealed space where the fate of the accused will be decided upon as methodically and as sterile as possible. Because courts are ‘creatures’ of the law they are bound by procedures designed to minimize human drama to ensure that the accused receives his or her due amount of justice. Within this space, depending on the particular context, spectators enter, acknowledge the judge and thereafter witness the power of the law. The actions of the accused are then measured against these written standards and if he or she is to be proven to have broken them then, the individual is to be punished as naturally as how the physical laws of nature govern motion, action, and reaction. Therefore, under such conditions, the accused is reduced to the status of a mere atom within the grander legal universe, lacking any given sort of agency. In the context of many Southeast Asian legal systems, where possession of narcotics is a capital crime, a few mere grams could be the difference between life and death.⁹

The accused’s life essentially is a mere technicality measured through weight and numbers. It is easy to do so, as the accused already stands guilty given the antipathy some of these Southeast Asian governments have towards drugs and so-called ne’er-do-wells. As Pratima Murthy, a psychiatrist (2021) would state, “...we see the individual responsible for such criminal acts as an evil entity or an inherently demonic person” (2021:3). She adds that we often see offenders within a ‘vacuum’ just as we would have in the sealed spaces of a courtroom, making decisions to perform deeds of illegality and therefore as free agents choosing to consciously harm society. However, as Murthy would state, how an individual evolves as a ‘moral being’ is dependent on the forces within a given social context. Institutions such as healthcare, education, welfare, and state support are necessary if one is to be able to function within that given society. Therefore, Murthy argues, if the individual transgresses in terms of the

9 See CNN. 2023. “Singapore hangs woman over 30 grams of heroin in first execution of female prisoner in 19 years.” CNN 29 July 2023. in <https://www.9news.com.au/world/singapore-drug-execution-hanging-30-grams-of-heroin-death-penalty-asia-news/3e6835fe-1749-4fd0-af84-9334ffc06212>. Last accessed 6 October 2023.

law, the lack of structural and societal support is just as much to blame for the actions of the said individual. To punish with death those society has failed is in the truest sense, the ultimate irony, akin to ‘disappearing’ those it has failed to care for. Therefore, just as Kazama uses images to reflect this in the face of retentionist societies, the biopsychosocial approach must be taken to understand criminality especially when the death penalty is involved. The approach Murthy states is, “...multidimensional...” with an, “...outcome of a complex mix of biological, psychological factors” (2021:5).

This view is essential, given its potential within legal systems that are only now becoming more open to such notions.¹⁰ One such organization pushing for such an approach is Project 39A, a legal reform organization particularly concerned with the practice of the death penalty in India. The ideas elucidated above form the tip an iceberg in terms of a larger project published in a report on their website.¹¹

Conclusion

Having engaged with both Kazama and Project 39A, I now believe that there is now a more powerful method to approach abolitionist activism. Photographic images of an executed death row prisoner or one about to be executed have a powerful capacity to haunt viewers. The ‘hauntological’ aspect arises from the fact that anyone looking at the photographs is forced to recognize the fact that those doomed to die at the hands of the state are just as human as anyone else. Kazama’s photographs clearly exhibited these powers when the Mongolian judge become herself an abolitionist. But this is only one aspect. It is also important that death penalty litigation develops a holistic approach as in the case of Murthy’s ‘biopsychosocial approach’. Taken together, this is a project which has the capacity to reveal the personhood of those incarcerated within the walls of death row. And with that, these retentionist societies will be forced to face the legacy of punitive measures such as the death penalty they have so relied on in the name of values and stability.

10 Aside from India, I also include Malaysia as it has since abolished the mandatory death penalty for the trafficking of narcotics. See Nicholas Yong. 2023. “Malaysia ends mandatory death penalty for serious crimes.” BBC 3 April 2023. in <https://www.bbc.com/news/world-asia-65160091>. Last accessed 5 October 2023.

11 Project 39A. 2021. “Deathworthy: A mental health perspective on the death penalty” in <https://www.project39a.com/deathworthy>. Last accessed 1 October 2023.

Bibliography

- Crenshaw, Kimberle. 1991. "Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color." *Stanford Law Review* 43, 6: 1241-1299.
- Curato, Nicole. 2016. "Politics of Anxiety, Politics of Hope: Penal Populism and Duterte's Rise to Power." *Journal of Current Southeast Asian Affairs* 35, 3: 91-109.
- Edwards, Elizabeth and Janice Hart. 2004. "Introduction: Photographs as Objects." Elizabeth Edwards and Janice Hart Eds. *Photographs Objects Histories: On the Materiality of Images*: 1-15. London: Routledge.
- Foucault, Michel. 1995. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Press.
- Garland, David. 1991. *Punishment and Modern Society: a study in social theory*. Oxford: Oxford University Press.
- Keck, Margaret E. and Katryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press.
- Moran, Dominique. 2015. *Carceral Geography: Spaces and Practices of Incarceration*. Burlington VT: Ashgate Press.
- Murthy, Pratima. 2021. *Looking Beyond the Crime: Biopsychosocial Insights for Criminal Law*. Annual Lecture Series in Criminal Law, Project 39A, National Law University, Delhi India.
- Sarat, Austin. 2001. *When the state kills: capital punishment and the American condition*. Princeton: Princeton University Press.

帶入肉體：在死刑陰影下的人格

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摘要

在本文中，我將懲罰視為一個強大的社會制度，旨在維護國家或社會所定義的價值觀。在某些國家，死刑作為一種懲罰可視為是對犯罪個體或不受社會歡迎個體的最強大武器。然而，本文認為所有個體都具有豐富的背景故事，超越了簡單的死刑犯身分。因此，本文指出有必要用「人性化」的角度看待那些在死刑囚室中的人並凸顯對他們人格的肯認。本文討論所依據的資料有二，包括和專門替死刑犯拍攝影像的攝影師所進行的訪談，以及和強調應運用「生物心理社會」途徑的非政府組織的訪談。根據前述資料的討論，促使我們能更深思熟慮去思考死刑的成效，以及不斷使用死刑是否顯示國家和社會未能保護最弱勢的人。

關鍵字

死刑、攝影、物質性、懲罰、敘事
