

A COMPARATIVE ANALYSIS OF THE JUVENILE DEATH PENALTY IN THE UNITED STATES, SAUDI ARABIA, IRAN, AND CHINA: WILL IT BE ABOLISHED?

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I. INTRODUCTION

Nations across the globe do not permit citizens to kill other citizens, so the question remains why governments of certain countries permit the lawful killing of its own citizens as a form of punishment. There remain only fifty-seven countries in the world which retain the death penalty, in that they permit the practice for ordinary crimes.¹ Many of these countries are located in Africa and the Middle East.² Thirty other countries are considered abolitionist in practice, meaning that they retain the death penalty for ordinary crimes such as murder, but “have not executed anyone during the past ten years and are believed to have a policy or established practice of not carrying out executions.”³ Countries in this group have

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1. *Abolitionist and Retentionist Countries*, DEATH PENALTY INFO. CTR. (Dec. 31, 2016), <https://deathpenaltyinfo.org/abolitionist-and-retentionist-countries?scid=30&did=140>.

2. *Id.*

3. *Id.*

made an international commitment to not use the death penalty.⁴ Issuing death sentences to juveniles is a relatively unaccepted practice in the countries that still retain the death penalty; however, Iran is the only known country to have executed or imposed death sentences for crimes committed by offenders who were under the age of eighteen at the time the offense was committed.⁵ Saudi Arabia and China have imposed the death penalty on juveniles in recent years as undercover news agencies have been able to document it covertly, despite that international law prohibits the use of the death penalty for crimes committed by children.⁶ The international human rights system is a “collection of international and regional treaties, non-binding declarations, resolutions, rules and guidelines,” giving offenders certain protections and giving them an opportunity to be heard all while complying with the law of that particular country.⁷ The practice of executing criminals who were under the age of eighteen at the time of their crime is directly prohibited by the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (UNCRC), and the American Convention on Human Rights.⁸ Article Six of the ICCPR ensures that the sentence of death be carried out in accordance with the individual country’s laws and not contrary to the provisions of the Covenant.⁹ Article Six states, in pertinent part,

1) Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life. 2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a

4. *Id.*

5. Michael Garcia Bochenek, *Doing Away with the Death Penalty*, HUM. RTS. WATCH (Apr. 11, 2017, 11:01 AM), <https://www.hrw.org/news/2017/04/11/doing-away-death-penalty>.

6. *Id.*; *Saudi Arabia: 3 Alleged Child Offenders Await Execution*, HUM. RTS. WATCH (Apr. 17, 2016, 12:00 AM), <https://www.hrw.org/news/2016/04/17/saudi-arabia-3-alleged-child-offenders-await-execution> [hereinafter *Saudi Child Offenders*].

7. Iraj Lotfi, *Criminal Responsibility of Children in International Documents and Comparative Study with Iranian Law*, J. POL. & L., June 1, 2017, at 98.

8. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 6(5) (Dec. 16, 1966); G.A. Res. 44/25, International Covenant on the Rights of the Child, art. 37(a) (Nov. 20, 1989).

9. G.A. Res. 2200A (XXI), *supra* note 8, art. 6(2).

competent court 5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.¹⁰

Although there is almost a unanimous international agreement that the juvenile death penalty violates international law, Amnesty International and other human rights organizations have reported that a few rogue nations continue to execute juveniles.¹¹ A majority of these death sentences are in Iran, where there are many children on death row.¹² Some third world countries do not have accurate record-keeping methods and are unable to definitively determine the age of persons.¹³ They use their best efforts to determine the age, but there is growing sentiment that persons ought not to be sentenced until their age can be definitely determined.¹⁴

However, around the world, efforts are underway to abolish the death penalty. The United Nations (U.N.) General Assembly voted on December 19, 2016, to adopt a resolution co-sponsored by eighty-nine countries, urging a worldwide moratorium on the death penalty.¹⁵ This was the world body's sixth resolution on the subject, and 117 nations voted in support of the proposal.¹⁶ The resolution also called upon all countries to respect international standards, providing for procedural safeguards for those facing the death penalty, to progressively restrict their use of capital punishment, and to make available data on how and against whom they apply the death penalty.¹⁷

This note will begin by giving a history of the juvenile death penalty in the nations of the United States (U.S.), Saudi Arabia, China, and Iran. With respect to each country, it will then explain in which instances the death penalty is used on juveniles and the progress being made in the international community to abolish it. A discussion will then follow with

10. *Id.*

11. *Juvenile Offenders and the Death Penalty*, CORNELL CTR. ON DEATH PENALTY WORLDWIDE, <http://www.deathpenaltyworldwide.org/juveniles.cfm> (last updated Oct. 31, 2011) [hereinafter *Juvenile Offenders*].

12. *Id.*

13. *Id.*

14. *Id.*

15. Elise Guillot et Aurélie Plaçais, *The UN General Assembly Voted Overwhelmingly for A 6th Resolution Calling for A Universal Moratorium on Executions*, WORLD COALITION AGAINST DEATH PENALTY (Dec. 20, 2016), <http://www.worldcoalition.org/The-UN-General-Assemblyvotedoverwhelmingly-for-a-6th-resolution-calling-for-a-universal-moratorium-on-executions.html>.

16. *Id.*

17. *Id.*

alternatives to the death penalty and what can be done to lessen or end its use. It will then discuss the reasoning behind why most of the countries in the world have chosen to abolish the juvenile death penalty and why the remaining countries should follow this same reasoning. This note will conclude that the juvenile death penalty should be abolished worldwide because of juveniles' lack of maturity and the possibility that they may contribute to society in a meaningful way at later points in their lives.

II. JUVENILE DEATH PENALTY IN DIFFERENT COUNTRIES

A. *United States*

Being a democratic republic, the United States has a President as its chief of state.¹⁸ The legal system is a common-law system, further codified by state and federal statutes, which is mostly based on English common law at the federal level and common law on the state level.¹⁹ The chief of state and head of the government is Donald J. Trump, who has been President since January 20, 2017.²⁰ The legislative branch is a bicameral Congress consisting of the Senate, which has 100 members who are elected for six-year terms and the House of Representatives, which has 435 members who are elected for two-year terms.²¹

The United States is the only country in the G7 and the most developed country to continue to execute criminals.²² The juvenile death penalty was a feature of the criminal justice system in the United States for some time.²³ English and American common law permitted execution of juvenile offenders.²⁴

Children under the age of seven were conclusively presumed to have no criminal capacity. [But,] that presumption was rebuttable for children aged seven to fourteen, and, if rebutted, [they] could be convicted and subjected to adult punishment,

18. *The World Factbook: United States*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited Oct. 13, 2017).

19. *Id.*

20. *Id.*

21. *Id.*

22. See *Abolitionist and Retentionist Countries*, *supra* note 1.

23. Curtis A. Bradley, *The Juvenile Death Penalty and International Law*, 52 DUKE L.J. 485, 492–93 (2002).

24. *Id.*

including execution. Individuals over the age of fourteen were treated as adults for purposes of criminal punishment.²⁵

In 1966, the United States signed and ratified the ICCPR, while also reserving its right to disregard the ban on executing juveniles.²⁶ “The United States is the only country of the 144 signatories with such a reservation.”²⁷ The United States further reiterated its reservation in 1995 by “exempting itself from the adherence to the juvenile death penalty ban.”²⁸ Between 1994 and 2004, the United States “executed more juvenile offenders than every other nation in the world combined.”²⁹

The major turning point in relation to the death penalty being imposed on juveniles came in 2005. In that year, the United States Supreme Court decided that it was unconstitutional to impose a death sentence on individuals who committed the underlying crime while under the age of eighteen.³⁰ This decision effectively overruled a prior decision which upheld the death penalty for offenders above or at the age of sixteen.³¹ The respondent in *Roper v. Simmons* relied on the Eighth Amendment’s³² protection against cruel and unusual punishment.³³ For the Court to determine if the juvenile death penalty was permissible, they referred to the “evolving standards of decency that mark the process of a maturing society” test in deciding if it was “so disproportionate as to be cruel and unusual.”³⁴

The Court in *Roper* noted that the death penalty should be used only for the most heinous crimes and was reserved for the worst offenders, and pointed to three main reasons why juvenile offenders cannot with reliability be classified among the worst offenders.³⁵ The first reason is that scientific and sociological studies have shown that “[a] lack of maturity and an

25. *Id.*

26. G.A. Res. 2200A (XXI), *supra* note 8; JOHN A. TUELL, CHILD WELFARE LEAGUE OF AM., JUVENILE OFFENDERS AND THE DEATH PENALTY: IS JUSTICE SERVED? 11 (2002).

27. TUELL, *supra* note 26.

28. *Id.* at 12.

29. *Juveniles and the Death Penalty*, AM. C. L. UNION, <https://www.aclu.org/other/juveniles-and-death-penalty> (last visited Oct. 13, 2017).

30. *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005).

31. *See Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

32. U.S. CONST. amend. VIII.

33. *Roper*, 543 U.S. at 560.

34. *Id.* at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958) (plurality opinion)).

35. *Id.* at 569.

underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young.³⁶ These qualities often result in impetus and ill-considered actions and decisions.”³⁷ The Court referred to the limitations placed on those under eighteen with respect to voting, serving on juries, and marrying without parental consent to show the comparative immaturity and irresponsibility of juveniles.³⁸ The second notable difference is that “juveniles are more vulnerable . . . to negative influence and outside pressures, including peer pressure.”³⁹ The Court stated that those under eighteen are most susceptible to influence and psychological damage and have less control over their own environment.⁴⁰ Further, the Court said that “the third broad difference is that the character of a juvenile is not as well formed as an adult[, and] the personality traits of juveniles are more transitory, [and] less fixed.”⁴¹ Noting these major differences between adults and juveniles, the Court reasoned that it is hard to “conclude that even a heinous crime committed by a juvenile is evidence of [an] irretrievably depraved character.”⁴² The Court concluded that due to a juvenile’s insufficient culpability, objective immaturity, vulnerability, and lack of true depravity, inflicting the death penalty on a person under the age of eighteen would be a cruel and unusual punishment.⁴³

Litigants and scholars have been attempting to incorporate international human rights laws into the legal system of the United States. For example, in *Roper*, the Court noted the international community’s almost universal opposition to the practice of the juvenile death penalty, and even cited the UNCRC as reflective of the growing standards of decency.⁴⁴ The success of the elimination of the juvenile death penalty will likely have a significant impact on other attempts to incorporate international human rights law in the United States.

36. *Id.*

37. *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

38. *Roper*, 543 U.S. at 569.

39. *Id.*

40. *Id.*

41. *Id.* at 570.

42. *Id.*

43. *Roper*, 543 U.S. at 572–73.

44. *Id.* at 576.

B. Saudi Arabia

Saudi Arabia is an absolute monarchy.⁴⁵ This means it is a “monarchy that is not limited or restrained by laws or a constitution.”⁴⁶ Saudi Arabia is governed by Islamic or Shari’a law, which is a legal system that mirrors Egyptian, French and customary law.⁴⁷ The legislative branch features a unicameral Consultative Council of 150 members, who are appointed by the monarch to serve four-year terms.⁴⁸ The executive branch has been led by Salman bin Abd al-Aziz Al Saud since January 23, 2015, who is both the chief of state and head of government.⁴⁹

Shari'a law is based on the teachings of the Prophet, with the Qur'an and Sunnah being the main sources of Shari'a law.⁵⁰ Morals, legal relationships and economic activity in Saudi Arabia are governed and regulated by judicial precedent and established practices of the kingdom.⁵¹

The penal law is not codified regarding criminal offenses and judges are given wide latitude to apply Shari'a law as they see fit.⁵² “Information about any prisoner or judicial proceeding in Saudi Arabia is hard to come by—the justice system in notoriously arbitrary and secretive, and the media often offers only sparse or fragmented details.”⁵³

45. *The World Factbook: Saudi Arabia*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sa.html> (last visited Oct. 13, 2017) [hereinafter *Saudi Arabia*].

46. *Absolute Monarchy*, DICTIONARY.COM, <http://www.dictionary.com/browse/absolutemonarchy?s=t> (last visited Oct. 13, 2017).

47. *Saudi Arabia*, *supra* note 45.

48. *Id.*

49. *Id.*

50. Marci Hoffman, *Saudi Arabia-Introduction*, BRILL ONLINE REFERENCE WORKS, http://referenceworks.brillonline.com/entries/foreign-law-guide/saudi-arabia-introduction-COM_162300# (last visited Oct. 13, 2017).

51. *Id.*

52. *Iran, Saudi Arabia, Sudan: End Juvenile Death Penalty*, HUM. RTS. WATCH (Oct. 8, 2010, 11:59 PM), <https://www.hrw.org/news/2010/10/08/iran-saudi-arabia-sudan-end-jvenile-death-penalty>.

53. Miriam Wells & Namir Shabibi, *These Are the Juvenile ‘Offenders’ Saudi Arabia Executed in January*, VICE NEWS (Apr. 26, 2016, 7:50 AM), <https://news.vice.com/article/these-are-the-juvenile-offenders-saudi-arabia-executed-in-january>.

“Under Saudi law, [those under the age of eighteen should be tried in juvenile court,] where the death penalty does not apply.”⁵⁴ However, the legal system does not operate or always run on established principles; events, where juveniles are sentenced to death, are not publicized. “On January 2, 2016, Saudi Arabia carried out a mass execution of forty-seven men convicted on terrorism-related charges,” and there are reports that at least one of the four Shia executed was under the age of eighteen at the time of the offense.⁵⁵ This shows that Saudi authorities will execute juveniles if they think no one is watching.⁵⁶

C. China

The government of China is a communist state.⁵⁷ The chief of state is the President, Xi Jinping, since March 14, 2013.⁵⁸ The legal system runs by civil law influenced by Soviet and continental European law systems.⁵⁹ The legislature is the unicameral National People’s Congress made up of 2987 members who are indirectly elected by municipal, regional, and provincial people’s congress and serve five-year-terms.⁶⁰

In 1983, there was a movement in the Chinese government called the “severe blows against serious criminal activities,” which hoped to put an end to the increasing crime trends.⁶¹ Throughout this time, many gang leaders and major criminals were executed, but at the same time, many minors were being executed along with those who were adults.⁶² Article Forty-Four of the Chinese Criminal Law states that, “[t]he death penalty is not to be applied to persons who have not reached the age of eighteen at the time the crime is committed.”⁶³ It went on to say that, “[p]ersons who have

54. Richard Spencer, *Minors Among 47 Executed by Saudi Arabia, Activists Say*, TELEGRAPH (Jan. 25, 2016, 3:02 PM), <http://www.telegraph.co.uk/news/worldnews/middleeast/saudi-arabia/12120230/Minors-among-47-executed-by-Saudi-Arabia-activists-say.html>.

55. *Id.*; Saudi Child Offenders, *supra* note 6.

56. Spencer, *supra* note 54.

57. *The World Factbook: China*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html> (last visited Oct. 13, 2017).

58. *Id.*

59. *Id.*

60. *Id.*

61. Børge Bakken, *Crime, Juvenile Delinquency & Deterrence Policy in China*, 30 AUSTRALIAN J. CHINESE AFF. 29, 50 (July 1993).

62. *Id.* at 52.

63. *Id.*

reached the age of sixteen, but not the age of eighteen may be sentenced to death with a two-year suspension of execution if the crime is particularly grave.”⁶⁴ During this campaign, the death penalty was handed down to those under the age of eighteen numerous times.⁶⁵ In 1997, the criminal law was revised in Article Forty-Nine and only stated that the death penalty should not be imposed on “persons who have not reached the age of eighteen at the time the crime is committed”⁶⁶

It is likely that thousands of people have been executed in China, but the numbers remain classified.⁶⁷ The death penalty data is treated as a state secret, so it is likely that the information released by the country is not the most accurate.⁶⁸ However, Amnesty International has recorded two specific incidents where a juvenile was executed when they were under eighteen at the time the crime was committed.⁶⁹ “Zhao Lin was reportedly killed in January of 2003 for committing murder when he was only sixteen years old.⁷⁰ In March 2004, Gao Pan was reportedly executed for murder during an attempted robbery he committed before the age of eighteen.”⁷¹ China signed on to the UNCRC in 1992, which prohibits the execution of juveniles, so they are clearly violating international law when this occurs.⁷²

D. Iran

The legal system of the Islamic Republic of Iran is a “religious system based on secular and Islamic law.”⁷³ The chief of state is the Supreme Leader Ali Hoseini-Khamenei, since June 4, 1989, and the head of the government is President Hasan Fereidun Ruhani, who has been in power

64. *Id.*

65. *Id.*

66. Bakken, *supra* note 61.

67. *Death Penalty*, AMNESTY INT’L (2016), <https://www.amnesty.org/en/what-we-do/death-penalty/>.

68. Bochenek, *supra* note 5.

69. *China Death Penalty Database*, CORNELL CTR. ON DEATH PENALTY WORLDWIDE, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=China> (last updated Apr. 10, 2014).

70. *Id.*

71. *Id.*

72. *Id.*

73. *The World Factbook: Iran*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> (last visited Oct. 13, 2017).

since August 3, 2013.⁷⁴ The legislative branch is a unicameral consultative assembly, which has 285 members that are elected in single and multi-seat constituencies by a two-round vote.⁷⁵

Iran continues to execute persons under the age eighteen when the crime was committed, which is a violation of international law.⁷⁶ From the period of 2004–2007, Iran is known to have executed at least seventeen individuals who were under eighteen at the time the crime was committed, which is eight times more than any other country in the world.⁷⁷ In addition, many of the death sentences violate Iranian domestic law requiring children under eighteen to be tried in special juvenile courts.⁷⁸

The Islamic Penal Code came into effect in 2013, and has more favorable conditions regarding juvenile justice, but has not fully ended juvenile executions.⁷⁹ The Islamic Penal Code allows the application of capital punishment to juvenile offenders “unless the offender is found to lack the mental capacity to understand the nature of the crime or its consequences.”⁸⁰ There have been reports that at least 160 juvenile offenders are on death row as of 2014 in Iran.⁸¹ Moreover, at least eight juveniles were executed in 2014 who were below the age of eighteen at the time the offense was committed.⁸² The United Nations High Commissioner for Human Rights (UNHCHR) has expressed its concern that this practice was still occurring in Iran.⁸³ They are in direct violation of the ICCPR and the UNCRC.⁸⁴ The High Commission has said that no matter the circumstances of the crime, Iran was violating international human rights

74. *Id.*

75. *Id.*

76. *Death Sentences and Executions in 2015*, AMNESTY INT’L, <https://www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/> (last visited Oct. 13, 2017).

77. *Iran Leads the World in Executing Children: New Executions Highlight Arbitrary Nature of Iranian Justice*, HUM. RTS. WATCH (June 19, 2007, 8:00 PM), <https://www.hrw.org/news/2007/06/19/iran-leads-world-executing-children>.

78. *Id.*

79. U.N. Secretary-General, *Situation of Human Rights in the Islamic Republic of Iran*, ¶ 14, U.N. Doc. A/HRC/28/26 (Feb. 20, 2015) [hereinafter A/HRC/28/26].

80. Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, ¶ 15, U.N. Doc. A/HRC/28/70 (May 28, 2015).

81. U.N. Secretary-General, *Situation of Human Rights in the Islamic Republic of Iran*, ¶ 17, U.N. Doc. A/69/306 (Aug. 12, 2014).

82. U.N. Secretary-General, *Situation of Human Rights in the Islamic Republic of Iran*, ¶ 7, U.N. Doc. A/69/356 (Aug. 27, 2014).

83. A/HRC/28/26, *supra* note 79, ¶ 15.

84. *Id.*

laws when executing those who committed their crimes under eighteen.⁸⁵ Iran has not denied that the practice was still occurring, but it has maintained that Iran has shown a great deal of leniency and flexibility in dealing with juvenile offenders, including encouraging victims' families to seek retribution, rather than execution.⁸⁶ Further, Iran has responded that although they do execute those under the age of eighteen, they will wait for execution until the juvenile matures to eighteen.⁸⁷ The U.N., however, has said that this is still in violation of human rights laws, which bases sentencing on the time when the offense is committed.⁸⁸ Iran has accepted a recommendation to halt juvenile executions, and the U.N. renewed its call in this report for Iran to take action and commute all juvenile death sentences.⁸⁹

Amnesty International has faced considerable difficulty in obtaining information regarding the juvenile death penalty and has not been able to conduct human rights research in Iran for the last thirty years.⁹⁰ Detailed information on child offenders is not readily available in Iran, and cases, where the death penalty is imposed on juveniles, is not regularly reported in Iran or by the judiciary until the Supreme Court has confirmed the death sentence or until after the execution has been carried out.⁹¹ Notwithstanding this, lawyers and families of those juveniles with death sentences are hesitant to provide information or court documents, fearing that this "could place them in jeopardy from Iranian security authorities" or they are unable to obtain the information themselves.⁹²

In one particular instance, the U.N. urged the Government of Iran to stop the execution of Saman Naseem, who was sentenced to death for a crime committed when he was only seventeen.⁹³ "He had been convicted of *moharebeh* (enmity against God) and *mofsed fel-arz* (corruption on Earth)

85. *Id.*

86. *Id.* ¶ 16.

87. *Id.*

88. A/HRC/28/26, *supra* note 79, ¶ 16.

89. *Id.* ¶ 17.

90. AMNESTY INT'L, IRAN: STILL EXECUTING CHILD OFFENDERS 8 (2015) [hereinafter Iran Report].

91. *Id.*

92. *Id.*

93. U.N. Secretary-General, Situation of Human Rights in the Islamic Republic of Iran, ¶ 15, U.N. Doc. A/70/352 (Aug. 31, 2015); *See Iran: UN Experts Urge Iran to Halt Immediately Execution of A Juvenile Offender, Scheduled for Tomorrow*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER (Feb. 18, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15582&LangID=E> [hereinafter *Iran: UN Experts*].

for alleged involvement in armed activities on behalf of the Party of Free Life of Kurdistan.”⁹⁴ He was tortured into confessing and the Iranian government stated that he was in prison and “his case was under review by the judiciary.”⁹⁵

In addition, serious shortcomings in the Iranian criminal justice system remain. Unfair trials are commonly conducted in situations where alleged child offenders face the death penalty.⁹⁶ These failings include:

[L]ack of access to legal counsel and to a lawyer of one’s choosing; torture and other ill treatment in pre-trial detention; allowing confessions extracted under duress to be used in trial proceedings; the use of detention centers outside the official prison system; denial of the right to call defen[s]e witnesses; failing to give adequate time to the defen[s]e to present its case; and imprisoning defen[s]e lawyers if they protest against unfair proceedings.⁹⁷

The current Code of Criminal Procedure in Iran only gives defendants “the right to a lawyer after investigations are complete and the offender has been formally charged. This allows for prolonged periods . . .” without the assistance of a lawyer and allows for interrogations to occur without a lawyer present, both of these will lead to the use of torture or other mistreatments to obtain confessions.⁹⁸

According to the 2016 Amnesty Report, seventy-eight juvenile offenders remained on death row.⁹⁹ Based on the 2013 Islamic Penal Code, many of those who were below the age of eighteen when the crime was committed were granted retrials, however, they were re-sentenced to death after the courts determined that “they had attained sufficient ‘mental maturity’ at the time of the crime.”¹⁰⁰ Many of the executions of the juvenile offenders were then stopped last minute due to “intense international pressure.”¹⁰¹

94. *Iran: UN Experts*, *supra* note 93.

95. *Id.*

96. *Iran Report*, *supra* note 90, at 16.

97. *Id.*

98. *Id.*

99. AMNESTY INT’L, DEATH SENTENCES AND EXECUTIONS IN 2016 GLOBAL REPORT 32 (2017) [hereinafter *Amnesty 2016 Report*].

100. *Id.* (internal citations omitted).

101. *Id.* at 33.

III. COMPARATIVE ANALYSIS OF LAW

A. *Similarities*

The United States, Saudi Arabia, China and Iran are all a party to or have signed on the UNCRC, but the United States and Somalia are the only ones that have not ratified the treaty.¹⁰² However, these countries have all been some of the slowest countries in their progression of abolishing the juvenile death penalty and the death penalty, generally.¹⁰³ It is clear, though, that Saudi Arabia, China and Iran are violating the terms of the Convention and breaking international law because the juvenile death penalty is still occurring in these countries, in fairly unknown circumstances. Although it is difficult to find out clear information about these countries regarding the juvenile death penalty, various media outlets and undercover agencies have been able to document several cases of the death penalty being imposed.¹⁰⁴ It is surprising that one of the most developed and rich countries in the world, the United States, is on the same level as under-developed countries such as Iran.

B. *Discussion*

In *Roper*, it is interesting to note Justice Kennedy's more societal reasons in advocating for the abolishment of the juvenile death penalty.¹⁰⁵ He makes the argument that it would not make sense to have a minor pay the ultimate price with his life if he has diminished culpability compared to an adult.¹⁰⁶ Further, trained psychiatrists with diagnostic testing tools normally refrain from assessing anyone under eighteen with antisocial personality disorder, so it would not make sense for juries to make the decision that a person under eighteen is so irreparable as an individual that they should face the death penalty.¹⁰⁷

It is also interesting to note that Justice Kennedy refers to the international community, even while acknowledging that the only issue in

102. *The Convention*, CHILD RIGHTS INT'L NETWORK, <https://www.crin.org/en/home/rights/convention> (last visited Oct. 13, 2017).

103. *See generally Abolitionist and Retentionist Countries*, *supra* note 1, at 2.

104. U.N. Doc. A/70/352, *supra* note 93; Amnesty 2016 Report, *supra* note 99; *see Saudi Child Offenders*, *supra* note 6.

105. *See Roper*, 543 U.S. at 568–75.

106. *Id.* at 573.

107. *Id.*

the case is whether the juvenile death penalty is cruel and unusual.¹⁰⁸ However, the Court has noted that previous Courts have referred to the laws of other countries and to international authorities as instructive, but not authoritative, for its interpretation of the Eighth Amendment.¹⁰⁹ In looking at the international community, the Court noted the UNCRC.¹¹⁰ At that time, in 2005, every nation in the world had ratified this treaty which contained a prohibition on juvenile capital punishment, except for the United States and Somalia.¹¹¹

The main reasons for any criminal punishment are retribution and deterrence, but it is not clear that the juvenile death penalty accomplishes either of these goals.¹¹² In *Roper*, Justice Kennedy points out that juveniles necessarily have lessened culpability than their adult counterparts and because of this we should hold them to a lower standard.¹¹³ The Court is correct in stating that if retribution is the way to express the community's moral outrage or an attempt to right the wrong done to the victim, it is not necessarily fair if there is lessened culpability.¹¹⁴ Retribution would then not be "proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished" due to age or incapacity.¹¹⁵ He also notes that the deterrent effect is less apparent, but it would lead one to believe that if there is lessened culpability and characteristic immaturity of juveniles, it would likely do little to deter other juveniles from committing the same crimes.¹¹⁶

As time progresses since *Roper*, the United States is going further in lessening harsh punishments for juveniles.¹¹⁷ In *Graham v. Florida*, the Court ruled that sentencing non-homicide, juvenile offenders to life imprisonment without parole "was unconstitutional under the Eighth Amendment's cruel and unusual punishment clause."¹¹⁸ Justice Kennedy

108. *Id.* at 575.

109. *Graham v. Florida*, 560 U.S. 48, 82 (2010). *See also Trop*, 356 U.S. at 102–03 (plurality opinion).

110. *Roper*, 543 U.S. at 576; G.A. Res. 44/25, *supra* note 8, at pt. 1, art. 37.

111. *Roper*, 543 U.S. at 576.

112. *Id.* at 572.

113. *Id.* at 572–73.

114. *Id.* at 571.

115. *Id.*

116. *Roper*, 543 U.S. at 571.

117. *See Graham*, 560 U.S. at 67–68 (2010).

118. *Id.* at 79–80; *see* Kallee Spooner & Michael S. Vaughn, *Sentencing Juvenile Homicide Offenders: A 50-State Survey*, 5 VA. J. CRIM. L. 130, 136 (2017).

wrote in his opinion while referring to developments in psychology and neuroscience, that juveniles are more capable of change than adults since “parts of the brain involved in behavior control continue to mature through late adolescence.”¹¹⁹ Additionally, Justice Kennedy stated that life without parole is not exactly equivalent to the death penalty, but both sentences share common attributes.¹²⁰ They are both irrevocable and diminish hope of release, except in cases of executive clemency, which is a “remote possibility of which does not mitigate the harshness of the sentence.”¹²¹

Other purposes of criminal punishment, which apply universally among all societies and legal systems are: 1) incapacitation, 2) rehabilitation, and 3) restitution.¹²² “Incapacitation refers to the technique of rendering a criminal powerless”¹²³ “Rehabilitation refers to the process by which attempts are made to help former criminals reenter society as productive citizens.”¹²⁴ This is done by ordering offenders to undergo certain things such as counseling, engaging in community service, or attending job training classes.¹²⁵ Restitution is aimed at making the victim whole at the expense of the criminal in a material, property based sense, and is done, for example, by ordering a criminal to return stolen property to the victim or ordering a vandal to pay for repair of her victim’s damaged property.¹²⁶

In addition to the conclusion that juveniles have lessened culpability, other important factors weigh against giving juveniles death sentences. Most juveniles who commit crimes suffer “unthinkable circumstances at the hands of parents, community members, and overwhelmed government agencies for years prior to landing in the adult criminal justice system.”¹²⁷ Juvenile offenders share many of the same common attributes: “robbed childhoods, disappointing circumstances, mistrust in adult role models and

119. *Graham*, 560 U.S. at 68.

120. *Id.* at 69.

121. *Id.* at 70.

122. Mohamed A. Arafa & Jonathan G. Burns, *Judicial Corporal Punishment in the United States? Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration*, 25 *IND. INT’L & COMP. L. REV.* 385, 388.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. Tiffani N. Darden, *Juvenile Justice’s Second Chance: Untangling the Retroactive Application of Miller v. Alabama Under the Teague Doctrine*, 42 *AM. J. CRIM. L.* 1, 3 (2014).

regretful choices.”¹²⁸ “Most juvenile delinquency stories demonstrate that governmental systems in place to protect these children fail to ensure their safe upbringing, but not for lack of trying.”¹²⁹ These convicted felons are forced to acknowledge what they did was wrong, show their redeemable qualities and ask for an opportunity to demonstrate how they can be rehabilitated.¹³⁰ Rehabilitation is not tailored to juveniles who are facing significant prison time and of course, not able to be shown if there is a death sentence.¹³¹ Further, if one is sentenced to death, we will never know their rehabilitative potential.¹³² In comparing adults versus juveniles, it is much more likely that a juvenile will have some small chance of rehabilitation.¹³³

“International human rights law has now become an established, essential, and universally accepted part of the life of the international community.¹³⁴ Individuals, including the citizens of the United States, are now understood to possess remediable rights based on international law.”¹³⁵ The remainder of the countries should follow and adapt and to this custom of looking at the international community in deciding what laws are appropriate for their own country.

“Many international legal scholars [agree] . . . that the prohibition on the juvenile death penalty now constitutes a rule of customary international law”¹³⁶ In order for a specific practice to become a customary rule of international law, four elements must be met.¹³⁷ Over time, the practice must have developed consistently in a number of countries and *opinion juris*—which is a collection of countries who feel a certain level of conduct is required by international law—must also exist.¹³⁸ Scholars have applied the circumstances to these four principles, noting the widespread and consistent rejection of the juvenile death penalty in the international

128. *Id.*

129. *Id.* at 4.

130. *Id.*

131. *Id.*

132. Darden, *supra* note 127, at 5.

133. *Id.*

134. Philip Sapsford, *An End to the Death Penalty for Juvenile Offenders*, 45 VA. J. INT’L L. 799, 804 (2005).

135. *Id.*

136. William Feldman, *Role of International Human Rights Law in the American Decision to Abolish the Juvenile Death Penalty*, 7 APPALACHIAN J.L. 89, 97–98 (2007).

137. *Id.*

138. *Id.*

community, the development of the practice over the past fifty years, and the behavior of countries showing the general recognition of the prohibition.¹³⁹ This has led to the conclusion that the prohibition on the juvenile death penalty is a customary norm.¹⁴⁰

Some scholars have stated that the prohibition on the juvenile death penalty is a *jus cogens* norm.¹⁴¹ *Jus cogens* is defined as “a norm accepted and recognized by the international community of states as a whole as a norm which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹⁴² A practice must satisfy three conditions in order to be considered a *jus cogens* under international law.¹⁴³ “First, a large number of states must consider it necessary for international public order.¹⁴⁴ Second, multilateral agreements must prohibit the derogation from the norm.¹⁴⁵ Finally, international tribunals must have applied the norm.”¹⁴⁶ Based on the ICCPR and the UNCRC, it appears that the juvenile death penalty would be classified as a *jus cogens* norm.¹⁴⁷ However, there was still much disagreement in the past as to whether the juvenile death penalty rose to the level of genocide, slavery, and torture, which are routinely condemned in the international community.¹⁴⁸

However, some of the countries discussed have a basis and rationale in their own law to prohibit the juvenile death penalty.¹⁴⁹ In Iran, the initial legislation having to do with children was the Formation of the Child Offenders Court Act, which said that minors convicted of crimes carrying a sentence of death or life imprisonment, should be held in a correctional and rehabilitative center.¹⁵⁰ In addition, the Islamic Penal Code states that crimes committed by children are an absolute mistake and remuneration

139. *Id.*

140. *Id.*

141. Feldman, *supra* note 136.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Feldman, *supra* note 136.

147. *Id.*

148. *Id.*

149. NISRINE ABIAD & FARKHANDA ZIA MANSOOR, CRIMINAL LAW AND THE RIGHTS OF THE CHILD IN MUSLIM STATES: A COMPARATIVE AND ANALYTICAL PERSPECTIVE 151–52 (2010).

150. *Id.*

should be done by their guardian.¹⁵¹ It further states that children lack responsibility for crimes, and the age of adulthood is often based on physical characteristics, rather than a defined age, which is determined region by region.¹⁵² Although the Protection of Children and Juveniles Act was ratified in 2003, stating that those under eighteen would benefit from children's rights, in practice, the law is not carried out regularly in Iran, and many judges have refused to accept that eighteen should be the age of legal protection and criminal responsibility.¹⁵³ In Saudi Arabia, the trouble is that the age of majority is not well-defined and as of 2010, they did not have a law prohibiting the death penalty for juveniles.¹⁵⁴ In China, children's rights are very limited and rights and freedoms are only granted if they are useful to the state or society, with the Communist party deciding what is favorable.¹⁵⁵ There has been little basis for children's rights in China, especially with the one child policy, severely limiting the benefits afforded to the child if he is not the first.¹⁵⁶

Furthermore, all jurists and those in the international community do not agree that the juvenile death penalty should be abolished in all circumstances. Justice Scalia was one of the detractors of the abolishment and wrote adamantly about it in his dissenting opinion in *Roper*.¹⁵⁷ Scalia felt that that the United States should not necessarily compare itself to other countries when deciding which laws to abolish.¹⁵⁸ Justice Scalia stated that:

The Court's special reliance on the laws of the United Kingdom is perhaps the most indefensible part of its opinion Instead, the Court undertakes the majestic task of determining . . . our Nation's current standards of decency. It is beyond comprehension why we should look, for that purpose, to a country that has developed, in the centuries since the Revolutionary War—and with increasing speed since the United Kingdom's recent submission to the jurisprudence of European Court dominated by continental jurists—a legal, political and

151. *Id.* at 152–53.

152. *Id.* at 153.

153. *Id.* at 153–54.

154. ABIAD & MANSOOR, *supra* note 149, at 21.

155. Timothy John Fitzgibbon, *The United Nations Convention on the Rights of the Child: Are Children Really Protected? A Case Study of China's Implementation*, 20 LOY. L.A. INT'L & COMP. L. REV. 325, 342–47 (1998).

156. *Id.*

157. *See Roper*, 543 U.S. at 624–27 (Scalia, J., dissenting).

158. *Id.* at 626–27.

social culture quite different from our own The Court should either profess its willingness to reconsider all these matters in light of the views of foreigners, or else it should cease putting forth foreigners' views as part of the reasoned basis of its decisions. To invoke alien law when it agrees with one's own thinking, and ignores it otherwise, is not reasoned decision-making, but sophistry.¹⁵⁹

At the time, no national consensus among legal scholars and individual citizens existed, and thus Justice Scalia believed this was reason enough for the Court to continue the possibility of executing juveniles.¹⁶⁰ This opinion was written in 2005 and must be viewed with some hesitation, but the United States and most of the international community have come a long way in reforming juvenile justice, although much remains to be achieved.¹⁶¹

There are still other arguments against the imposition of the juvenile death penalty, in addition to the traditional lack of maturity and diminished level of culpability arguments. An especially interesting argument reveals the conflict between a state or country's duty as *parens patriae* to protect children on the one hand, and its role in executing children on the other provides another reason why there should be no capital punishment of children.¹⁶² The concept of *parens patriae* refers to the state being the ultimate guardian of the child; and therefore, the state should be involved in providing for the child's welfare and setting standards for their care.¹⁶³ This concept is prevalent in other areas of juvenile justice and should "be applied in the context of the juvenile death penalty" if the best interests of the child are truly the goal of a society.¹⁶⁴ It is clearly not in the best interest of a child to be executed, so countries utilizing the juvenile death penalty cannot maintain that they are interested in the general welfare or that they are looking out for what is best for the child.

Although the United States has put an end to juvenile executions, Saudi Arabia, China, and Iran have not stopped the practice.¹⁶⁵ Many

159. *Id.* (emphasis removed).

160. Jacquelyn Giunta, *Roper v. Simmons: The Execution of Juvenile Criminal Offenders in America and the International Community's Response*, 22 ST. JOHN'S J. LEGAL COMMENT. 717, 725 (2008).

161. *See Roper*, 543 U.S. at 624–27 (Scalia, J., dissenting).

162. Suzanne D. Strater, *The Juvenile Death Penalty: In the Best Interests of the Child?*, 26 LOY. U. CHI. L.J. 147, 160–62 (1995).

163. *Id.*

164. *Id.*

165. *See Abolitionist and Retentionist Countries*, *supra* note 1.

factors weigh—even outside the United States—that the juvenile death penalty has a deleterious effect on children and should be ended.¹⁶⁶ “Reports on the death penalty’s deterrent effect consistently conclude that it is no more a deterrent than lengthy prison terms.”¹⁶⁷ In fact, many children do not like to be enclosed for long periods of time.¹⁶⁸ This would give weight to the idea that a life sentence would have more of a deterrent effect on a juvenile. Of all the arguments against the juvenile death penalty, the one that harms society the most is the execution of innocent offenders, and this continues to occur in the United States and throughout the world.¹⁶⁹ In Saudi Arabia, China, and Iran, it is troublesome that juveniles are being executed for low-level offenses, which are offenses not even criminalized in other countries.¹⁷⁰

Furthermore, “[t]he existence of a stringent life sentence[, such as the option of life without the possibility of parole,] can either partially or completely eliminate the need for the death penalty.”¹⁷¹ For example, after the state of Maryland instituted the option of a sentence of life without parole, there were only eight new defendants added to death row in the next five years.¹⁷² It is possible that juries believe that criminals may serve a shorter time than their sentence, and would opt for the death penalty if they feared the offender would be back in society.¹⁷³ In addition, many prison wardens report that those serving life sentences, commonly referred to as lifers, “are the best-behaved prisoners in the entire system.”¹⁷⁴ Lifers also have the possibility of giving back to society and intervening early on by mentoring others who are starting down the same path.¹⁷⁵ Executions of offenders would cut off the possibility of any restitution to society of the

166. See *Roper*, 543 U.S. at 604; Strater, *supra* note 162, at 156–58.

167. Richard C. Dieter, *Sentencing for Life: Americans Embrace Alternatives to the Death Penalty*, DEATH PENALTY INFO. CTR. (April 1993), <https://deathpenaltyinfo.org/sentencing-lifeamericans-embrace-alternatives-death-penalty>.

168. *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, HUM. RTS. WATCH (Oct. 10, 2012), <https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united>.

169. Dieter, *supra* note 167.

170. U.N. Doc. A/70/352, *supra* note 93; Amnesty 2016 Report, *supra* note 99, at 7; see *Saudi Child Offenders*, *supra* note 6.

171. Dieter, *supra* note 167.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

family of the victim.¹⁷⁶ The United States has decided that non-homicide, juvenile offenders should not receive a life sentence without the possibility of parole.¹⁷⁷ However, if the governments of Saudi Arabia, China, and Iran feel strongly that juvenile offenders need to be punished, they could use mandatory life sentences, and this would likely lead to a better behaved prison population and inmates that could pay part of their debt to society and to the victim's family.¹⁷⁸

IV. CONCLUSION

The death penalty has been a heavily debated topic across the globe for many years. The juvenile death penalty is even more controversial, and most would believe that it is not permitted anywhere in the world.¹⁷⁹ Although juvenile executions are infrequently occurring in some countries—notably, Saudi Arabia, China, and Iran—many are being done in secret so that the international community will not be aware.¹⁸⁰ However, Amnesty International and other undercover agencies have been able to highlight some of the instances where the death penalty has been imposed on juveniles.¹⁸¹

It is surprising to note that the United States took until 2005 to officially abolish the juvenile death penalty, which is much slower than comparably developed countries.¹⁸² The United States has followed a slow path of juvenile justice reform, including abolishing the juvenile death penalty, and the process of reform is still ongoing as it learns more about the maturity and psychology of individuals.¹⁸³

Saudi Arabia, China, and Iran are some of the countries of the world that have had the slowest progression in putting an end to the juvenile death penalty.¹⁸⁴ They are breaking international law and are not following the terms of the treaties, which each party signed, every time a juvenile is executed. Furthermore, most juveniles have been through a tough childhood and certain circumstances, through no fault of their own, have

176. Dieter, *supra* note 167.

177. *Graham*, 560 U.S. at 82.

178. Dieter, *supra* note 167.

179. See *Time to Stop Executing Children*, DEATH PENALTY INFO. CTR. (Oct. 19, 2004), <https://deathpenaltyinfo.org/node/1042#sedilia>.

180. Bochenek, *supra* note 5; Spencer, *supra* note 54.

181. *Juvenile Offenders*, *supra* note 11.

182. *Roper*, 543 U.S. at 578.

183. See *Graham*, 560 U.S. at 52–82.

184. See generally *Abolitionist and Retentionist Countries*, *supra* note 1.

led them down the path of juvenile criminal behavior.¹⁸⁵ The government of each country should have a parenting role in addition to the child's actual parents and should be looking out for the best interests of the child. If countries are imposing the death penalty on juveniles, there is no way they can have the best interests of the child at heart.

Saudi Arabia, China, and Iran should put an immediate end to the juvenile death penalty in their respective countries. The United States has not been a model country to follow regarding the abolition of the juvenile death penalty, but Saudi Arabia, China, and Iran should follow the general rationale that the United States used. The culpability and maturity levels of juveniles are less than their adult counterparts and, therefore, they should not face the most extreme form of criminal punishment.¹⁸⁶ Further, juveniles are not fully developed emotionally, socially, and physiologically, and do not understand all the implications of their criminal behavior.¹⁸⁷ Saudi Arabia, China, and Iran need to keep this in mind when sentencing criminal juveniles and should use less harsh forms of punishment other than the death penalty. There has been significant progress in the world toward the goal of abolishing the death penalty for adults, and the first step would be to abolish the cruel and inhumane practice of imposing the death penalty on the most vulnerable of individuals, juveniles.

185. Strater, *supra* note 162.

186. *See Roper*, 543 U.S. at 569–74.

187. *Id.*