

Comparative criminal justice system assignment

Law



**ASSIGN
BUSTER**

It is very difficult to explore the history behind North Korea and its sentencing. The majority of information is based on knowledge gathered from refugees from the country. This paper will explore the history behind capital punishment in South Africa and North Korea. The similarities and differences between the two countries will be discussed as well as the pros and cons of using capital punishment as a sentence. Capital punishment, better known as the 'death penalty,' occurs when a person is sentenced to death by the state for committing a crime.

The death penalty in South Africa as a sentence for murder, rape, robbery with aggravating circumstances, kidnapping, child stealing, and treason in time of war. In the past, capital punishment has been a part of many societies. In South Africa, capital punishment had been removed from the criminal code on June 6, 1995 in the case of State versus Mycenaean and McHugh. The President of the Constitutional Court of South Africa, Arthur Shalloo, stated that capital punishment is unconstitutional because everyone has the right to life (Babe, 2005, p. 9). Each judge of the court had issued a written document backing Collation's decision to remove capital punishment. The removal of the death penalty from this country shocked the world since Pretoria, a capital city in the northern part of South Africa, was once called the "hanging capital of the world" (Babe, 2005, p. 50). Before the removal of capital punishment, racial discrimination played a significant role in the death penalty. Capital punishment was used to implement punishment to those of apartheid.

Apartheid was the system of racial segregation in South Africa. It was enforced through legislation by the National Party governments. The death

<https://assignbuster.com/comparative-criminal-justice-system-assignment/>

sentences were unfair and unequal towards races due to the apartheid society in South Africa. An article written by Kinsman Babe (2005), specifies that, "... For the period between June 1982 and June 1983, of the 81 blacks convicted of murdering whites, 38 were hanged. By comparison, of the 52 whites convicted of killing whites, only one was hanged, while none of the 21 whites convicted of murdering blacks was hanged" (p. 52).

These statistics show that it was more likely for a black offender to be sentenced to death when the victim was white. Once the case of State versus Mycenaean and McHugh had occurred, capital punishment in South Africa had been removed. Today, there is still talk about whether South Africa should reinstate the death penalty, although the chances of that happening are very slim. Since the Mycenaean case, there have been no major changes to the constitution. Unless the constitution is modified, the death penalty will remain as an unconstitutional form of punishment.

Many argue that capital punishment is used to control crime. In David Johnny's (2010) article, he address that in Asia, a Chinese Communist party claims that capital punishment is needed to control a serious growth in criminal activity (p. 343). By the end of World War , Korea had been divided into North and South. To this day, they remain separated. Capital punishment is still used in North Korea, although due to the country's isolation from the world, it is hard to say how many executions have happened and when the most recent one was.

Although, the International Federation for Human Rights affirms that, " According to the Anti Death Penalty Asia Network (DEADPAN), an Asian

network of Mangos campaigning for the abolition of the death penalty, there were more than 60 reported cases of executions in 2010 and 30 cases in 2011” (p. 22). With this information it can be assumed that executions North Korea are decreasing, however this assumption can only be made based on the executions that have actually been reported. FIDE (2013) report declares, “ States that retain the death penalty not only violate the right to life, but also the prohibition of arbitrary deprivation of life” (p. 3). In North Korea the current constitution does not guarantee the right to life, or restrict the use of the death penalty. FIDE states that the North Korean criminal code had revisions made in 1987 that reduce the number of crimes punishable by death. The number of crimes decreased to 5, from the original 33. In 2009 the list of crimes punishable by death had increased to 6 when “ treacherous destruction” was added (p. 18). After many revisions, 24 crimes are punishable by death today, in North Korea.

Such crimes include kidnapping, theft, damage or destruction Of State or military property, currency counterfeiting, smuggling, and introducing narcotics into the black market (FIDE, 2013, p. 19). It has been reported that prison camps have executions frequently. The prisoners are punished for attempting to escape or breaking the camps rules. Stephan Haggard and Marcus Nolan found that in the lower-level criminal facilities and prison camps, 75% of abuse results in execution (2012, p. 675). FIDE has also touched on this by reporting that, “... In the provinces of North Hamgyong, South Hamgyong, Arrang, and South Pyongyang...

These regions have been particularly affected by food shortage and are the main routes for escapees attempting to cross the border’ (FIDE, 2013, p. 23).
<https://assignbuster.com/comparative-criminal-justice-system-assignment/>

North Korea continues to use the death penalty unlike South Africa where it remains removed. The use of capital punishment in a country can be used as a form of deterrence. Deterrence is used to implement a sentence that one would receive by committing certain crimes. If individuals know that the death penalty is a sentence for committing specific crimes then they are less likely to commit those crimes.

The fear of a punishment alone can alter an individual's decision to act criminally. In the case of North Korea where capital punishment is still used today, one may argue that it is a positive form of punishment due to this prevention factor. Having said this, relying solely on deterrence to decrease the crime rate is unrealistic. Most crimes are committed in the heat of the moment, therefore, all crimes cannot be prevented. As stated above, a Chinese Communist party claims that capital punishment is needed to control a serious growth in criminal activity (Monsoons, 2010, p. 343).

As in North Korea, criminal activity can be decreased by the threat of capital punishment, but it cannot be eliminated completely; and therefore, other ways of decreasing crime through punishment or consequence without the threat of death should be sought after. In South Africa, capital punishment's use contributed to racial segregation. Each country's reason for implementing capital punishment differs: North Korea's objective is to maintain order and control crime, and in South Africa the purpose of capital punishment was applied through racial discrimination by the apartheid.

Other than the obvious difference between the two countries, being that South Africa no longer uses capital punishment and North Korea does,

another difference is each country's Constitutional rights. In South Africa, capital punishment is unconstitutional because everyone has the right to life. In North Korea however, the constitution does not guarantee the right to life and, therefore, here is no justifiable reason to remove capital punishment (FIDE, 2013, p. 13).

Despite the differences between the past South Africa and the present North Korea in relation to their capital punishment laws, there are similarities that can be understood: some crimes that were punishable by death in South Africa overlap the crimes punishable by death in North Korea. Crimes include, murder, treason and kidnapping. Furthermore, the use of capital punishment and the history behind it varies from country to country around the world. The death penalty is a serious sentence anywhere around the world.

In North Korea, because capital punishment still exists, being sentenced to death is an intimidating sentence. One would assume that people would not commit the crimes that are mandatory punishable by death, although many criminals still do. In South Africa, the removal of capital punishment in 1995 by Shalloo was viewed as a step forward for the country. The *State versus Mycenaeen* case is one of the most important cases in the South African Constitutional Court. The use of capital punishment is still used in many countries today, though it is becoming increasingly less common.