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WHEN ONE LIVES IN A GLASS HOUSE, ONE SHOULD NOT THROW STONES: HOW CONTINUING TO ALLOW CAPITAL PUNISHMENT WHILE TRYING TO FOSTER HUMANITARIANISM ON A GLOBAL SCALE CAN NO LONGER CO-EXIST

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The use of capital punishment has been a part of America's criminal justice system since the seventeenth century when colonists brought the practice from Europe where it was generally morally acceptable.¹ Similarly, when drafting the United States Constitution, specifically the Eighth Amendment's prohibition against "cruel and unusual punishment,"² our discerning forefathers intimated that the death penalty did not violate the Eighth Amendment, because the punishment, at least at the time, was neither cruel nor

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¹ Harold Hongju Koh, *Paying "Decent Respect" to World Opinion on the Death Penalty*, 35 U.C. DAVIS L. REV. 1085, 1092 (2002).

² U.S. CONST. amend. VIII.

unusual.³ Ever consistent with our country's long-standing tradition of borrowing both law and policy from other nations, it was not seen as a public policy issue or an illegality to prescribe death for a host of crimes including, but not limited to the following: adultery, witchcraft, sodomy, and, of course, murder.⁴ Nevertheless, the United States of America has evolved and what may not have been seen as cruel or unusual in the eighteenth century very well may be in the twenty-first.

Abolition of capital punishment has subsequently become a vogue issue and a popular debate topic.⁵ This changing tide notwithstanding, the United States has failed to wholeheartedly embrace an abolishment of the death penalty and the Supreme Court has yet to completely rule against the death penalty within the context of the Eighth Amendment.⁶ Because of this, the United States has pitted itself against many international communities and, at least to some extent, this rift has given way to a renewed debate among the Supreme Court Justices concerning what impact, or lack thereof, international pressure or law or sentiment should have on future decisions relating to the death penalty.⁷

In *Roper v. Simmons*, an eighteen-year-old defendant was convicted and sentenced to death for a murder he committed as a juvenile.⁸ After successfully petitioning for a writ of habeas corpus, the Missouri Supreme Court granted relief and the Supreme Court of the United States ultimately granted certiorari.⁹ The Court held that to execute a person who was a minor at the time of the crime's commission does not fit within the parameters of the Eighth and Fourteenth

³ Koh, *supra* note 1, at 1091-92.

⁴ *Id.* at 1092.

⁵ *Id.* at 1093.

⁶ Franklin E. Zimring, *Postscript: The Peculiar Present of American Capital Punishment in, Beyond Repair?*, AMERICA'S DEATH PENALTY 212, 213 (Stephen P. Garvey ed., 2003).

⁷ William A. Schabas, *International Law and the Abolition of the Death Penalty in, Beyond Repair?* AMERICA'S DEATH PENALTY 178, 210 (Stephen P. Garvey ed., 2003).

⁸ 543 U.S. 551, 558 (2005) (the defendant was only seventeen when he committed the murder).

⁹ *Id.* at 559.

Amendments, and is, therefore, cruel, unusual, and unconstitutional.¹⁰

The *Roper* opinion is noteworthy for many reasons, but within the context of this article, it signifies the Court's willingness to consider the "overwhelming weight of international opinion" against use of the death penalty in some situations¹¹. Justice Kennedy wrote the majority opinion and stated that while international sentiment was certainly not controlling, it was a "respected and significant confirmation for the Court's determination"¹² This case, if nothing else, leaves the door open for future courts to not only consider domestic sentiment for or against capital punishment, but also to consider global sentiment when seeking to quantify standards of decency.

I. INTRODUCTION

Not only does capital punishment fail in its justification, but no punishment could be invented with so many inherent defects. It is an unequal punishment in the way it is applied to the rich and to the poor. The defendant of wealth and position never goes to the electric chair or to the gallows. Juries do not intentionally favour the rich, the law is theoretically impartial, but the defendant with ample means is able to have his case presented with every favourable aspect, while the poor defendant often has a lawyer assigned by the court. Sometimes such assignment is considered part of political patronage; usually the lawyer assigned has had no experience whatever in a capital case.¹³

Debates regarding the death penalty are naturally predicated on both the content and the meaning of the Eighth Amendment to the United States Constitution, and "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man."¹⁴ The Eighth Amendment derives "its meaning from the evolving standards of decency that

¹⁰ *Id.*

¹¹ *Id.* at 554.

¹² *Id.*

¹³ *Furman v. Georgia*, 408 U.S. 238, 251 (1972) (quoting the Warden of Sing Sing, James E. Lawes).

¹⁴ *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

mark the progress of a maturing society.”¹⁵ Much jurisprudence regarding the death penalty within the framework of an Eighth Amendment argument has been centered around the ever elusive evolving standards of decency concept. For many, the argument is such that only the American evolving standards of decency are applicable. Others argue the net should be cast wider such that it would, at a minimum, consider evolving standards of decency for the human race at large.

At least for the Supreme Court, evolving standards of decency have been solely those held by the United States with very little deference given to international law. The opinion in *Trop* left little, if any, room for doubt on the subject holding that only the “American [notions] of decency . . . are dispositive and the sentencing practices of other countries are [not] relevant.”¹⁶ The Supreme Court opinion went further by establishing that the practices of other democracies can be relevant to whether the American people would view the practice as tolerable.¹⁷ The definitiveness in *Trop* notwithstanding, subsequent Supreme Court holdings concerning the use of capital punishment have been less definitive. This has at least left the door open, even if only slightly, for the counterargument that favors an international, human race based context when assessing the evolving standards of decency.

For purposes of this article, I contend that the counter argument must prevail. A global definition of these standards must be considered because the death penalty, within the context of the American system of justice, does not exist inside a vacuum. To believe otherwise would be to disregard variables such as: an ever shrinking global community, international pressure, international treaties prohibiting use of the death penalty, and rulings from International Courts regarding the American death penalty. It seems illogical to conclude that the United States, a country that profoundly embraces diversity and multiculturalism and readily embarks upon humanitarian missions in other countries when an injustice is being done to the citizenry of those countries,

¹⁵ *Id.* at 101.

¹⁶ *Stanford v. Kentucky*, 492 U.S. 361, 405 (1989).

¹⁷ *Id.*

continues to endorse such a narrow-minded view of what embodies the evolving standards of decency. Despite the apparent absurdity, this is indeed the case. International law, policy, and procedure regarding the death penalty had traditionally been given only tangential reference within the American system of justice.

This article will seek to establish that the United States cannot continue, without ever increasing difficulty, to both encourage democracy on a global scale and participate in the sanctioning of those countries that have, in the opinion of our nation's leaders, committed crimes against humanity, while at the same time allowing capital punishment in its own backyard. This article will seek to establish the practices of encouraging democracy on a global scale and sanctioning those countries that have, in the opinion of our nation's leaders, committed crimes against humanity. These practices whether via humanitarian aid or military force, cannot continue at all, or at least without immense difficulty, if the United States continues to allow capital punishment. Then, once it has been established that capital punishment in the United States cannot continue, at least not while also seeking to further humanitarianism, this article will look towards justifying the abolishment of capital punishment via three separate premises: One, borrowing that which is being done or has been done by other like-minded nations or democracies and appears successful, desirable, and achievable to the United States is not a novel idea and it is logical to do the same when assessing the evolving standards of decency. Two, the death penalty cannot be sustained because it is unconstitutional for reasons that span well beyond the Eighth Amendment's prohibition against cruel and unusual punishment. Finally, from a textual standpoint, the mother of the United States Constitution, that is the Declaration of Independence, requires that the dignity of life for all men must be protected.

II. ENCOURAGING DEMOCRACY ON A GLOBAL SCALE AND SANCTIONING THOSE COUNTRIES THAT HAVE COMMITTED CRIMES AGAINST HUMANITY CANNOT CONTINUE WITHOUT IMMENSE DIFFICULTY, IF THE UNITED STATES CONTINUES TO ALLOW CAPITAL PUNISHMENT.

The United States is geographically and judicially isolated from the international opinion of the death penalty as a form of criminal punishment. A March 2012 survey revealed that one hundred and forty-one countries (141) had completely banned the use of capital punishment in both law and practice, whereas only fifty-seven countries continued to allow use of the death penalty.¹⁸ In addition to those countries banning capital punishment outright, another thirty-six countries have done so in practice despite having no formal legislation renouncing their use of the death penalty.¹⁹ In sum, as of 2012, the number of countries that do not execute prisoners was nearly five times higher than the number of countries that practice capital punishment.²⁰ Suffice it to say that the global trend has clearly been to extinguish capital punishment as a practice and the United States has not kept pace with the trend.²¹

Europe has prohibited use of the death penalty due to pressure from the Council of Europe which requires abolishment of the death penalty for any country wishing to become or remain a member of the European Union.²² Asia and the Middle East, like the United States, still practice capital punishment.²³ Specifically, in 2012, the United States, China, Iran, North Korea and Yemen ranked as the top five

¹⁸ VICTOR STREIB, *DEATH PENALTY IN A NUTSHELL* 280-81 (4th Ed. 2013).

¹⁹ *Id.* at 281.

²⁰ Simon Rogers & Mona Chalabi, *Death Penalty Statistics, Country by Country*, THE GUARDIAN DATA BLOG (Dec. 13, 2013, 7:00 AM), <http://www.guardian.co.uk/news/datablog/2011/mar/29/death-penalty-countries-world#> (citing statistics from Amnesty International).

²¹ STREIB, *supra* note 18, at 280.

²² *Id.* at 281.

²³ *Id.*

nations based on the number of executions performed.²⁴ Excluding China, because government secrecy precludes an accurate representation of the true number, at least six hundred and eighty (680) executions occurred in 2012.²⁵ Of these, 314 occurred in Iran, 129 in Iraq, 79 in Saudi Arabia, and 43 in the United States.²⁶

Two American idioms frame the issue at hand: those that live in glass houses ought naught throw stones and if one lies down with dogs, one is likely to get up with fleas. The threshold question is: How can the United States continue to police the world against what our nation collectively, legislatively, or judicially views as immoral or illegal activity (i.e., throw stones), subject the rest of the world to America's evolving standards of decency, and then contradict this same practice (i.e., living in a glass house) in terms of the death penalty? The second question is, if the United States continues to be one of the top countries executing prisoners (lie down with dogs), will we not, at some point, be viewed in the same light from a human rights perspective as the other members of the group (wake up with fleas)?

In short, the United States cannot live in a glass house and then throw stones at all the evils in the world because doing so will destroy our own house. The answer to the threshold question is quite simple; continuing with capital punishment in the United States cannot continue without substantial change because such blatant hypocrisy will continually lessen the credibility of our nation. When seeking to further advance our values of freedom, democracy, and the veneration of human rights in spite of the obvious contradiction will only allow the reputation of the United States as a world leader to continue to fall from grace. This is obviously not an acceptable answer, but neither is the converse, which is to continue our slumber with the dogs, resulting in a flea infestation rendering the United States as a nation to be avoided by those without fleas. Accordingly, the only option available is to change the company we keep and become a nation fully supportive of the policies that we preach

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

by abolishing the use of capital punishment in the United States.

III. BORROWING LEGAL PRINCIPLES AND POLICIES USED BY OTHER COUNTRIES IS NOT A NEW PRACTICE, AND IT IS LOGICAL TO DO THE SAME WHEN ASSESSING STANDARDS OF DECENCY.

The Court in *Roper* has proven to be very insightful as this argument too is best begun by again quoting from the opinion. "The [constitution] sets forth...innovative principles original to the American experience...These doctrines and guarantees...remain essential to our present-day self-definition and national identity."²⁷ However, we do not honor the Constitution because "we know it to be our own. It does not lessen our fidelity to [it] or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage freedom."²⁸

Both the Supreme Court and the Legislature have not only given due deference to the international consciousness, and even to the laws and policies of other nations when ruling or enacting laws because, quite frankly, our Nation was founded upon borrowed principles. In fact, the first ten amendments to the United States Constitution came from the English Bill of Rights.²⁹ The Eighth Amendment to the United States Constitution is nearly identical to that of the English Bill of Rights which states, "excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."³⁰ The English Bill of Rights reflected the ideals surrounding the laws of Edward the Confessor who, in turn, was influenced by France as he spent most of his childhood in Normandy.³¹

²⁷ *Roper*, 543 U.S. at 577-79.

²⁸ *Id.*

²⁹ Bill of Rights, 1688, 1 W. & M., c. 2 (Eng.).

³⁰ 1 Wm. & Mary, 2d Sess., ch. 2, 3 Stat. at Large 267 440, 441 (1689).

³¹ *Recent Cases, Constitutional Law--Cruel and Unusual Punishment Provision of Eighth Amendment as Restriction Upon State Action Through the Due Process Clause*, 34 MINN. L. REV. 134, 135 (1950).

In short, the United States is, and always has been, a hodge-podge of different cultures spanning far beyond just that of our English origins, which include the often forgotten American Indian presence that was here long before the Colonists and the Spanish conquistadors. Lastly, our Nation is bordered by Canada and Mexico thereby making it a near impossibility not to at least purport to listen to the consciousness of those two countries specifically.

Even with the United States' longstanding tradition of borrowing jurisprudence from those countries that have undeniably influenced us, there remain staunch holdouts among the Supreme Court Justices that seem unwilling to give the tradition proper deference. Justices Thomas and Scalia joined Chief Justice Rehnquist in his dissenting view in the *Atkins* case where he said, "[w]hile it is true that some of our prior opinions have looked to the climate of international opinion to reinforce a conclusion regarding evolving standards of decency; we have since explicitly rejected the idea that the sentencing practices of other countries could serve to establish the Eighth Amendment prerequisite, that [a] practice is accepted among our people."³² Justice Thomas stood strong in this opinion, referencing it again in 2002 with a concurring opinion in support of the Supreme Court of Florida's denial of a writ of certiorari.³³ Similarly, in his dissenting view in a later case that, while not specifically dealing with the death penalty, did center around Eighth Amendment jurisprudence, Justice Scalia again downplayed the weight of consideration, if any, that should be afforded to international law. His dissent claimed that "[c]onstitutional entitlements do not spring . . . into existence . . . because foreign nations decriminalize conduct" and [t]he Court's discussion of . . . foreign views . . . is therefore meaningless dicta. Dangerous dicta, however, since 'this Court . . . should not impose foreign moods, fads, or fashions on Americans.'³⁴ Not surprisingly, Justices Rehnquist and Thomas both joined him in this dissenting view as well.

³² *Atkins v. Virginia*, 536 U.S. 304, 324-25 (2002) (quoting *Stanford v. Kentucky*, 492 U.S. 361 (1989) which emphasized that "American conceptions of decency ... are dispositive").

³³ *Foster v. Florida*, 537 U.S. 990 (2002).

³⁴ *Lawrence v. Texas*, 539 U.S. 558, 598 (2003).

Conversely, and more attuned to the rich tradition surrounding the practice, there are those that believe international law has an important place in the jurisprudence of the United States. Justice Ruth Bader Ginsburg, in an article that she co-wrote in 1999, said that “[e]xperience in one nation or region may inspire or inform other nations or regions . . . , as generally holds true for human rights initiatives.”³⁵ She went further by explaining how such countries as India, Germany, and the European Court of Justice have all referenced or borrowed decisions made by the Supreme Court of the United States in one form or another.³⁶ Yet, as Justice Ginsburg pointed out, the United States is not as willing to look “beyond one’s own shores.”³⁷ In response to the mere notion that the United States Supreme Court should look further than our own shoreline, the Court said, “[w]e think such comparative analysis inappropriate to the task of interpreting a constitution.”³⁸

In Justice Ginsburg’s opinion, “comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights.³⁹ We are the losers if we neglect what others can tell us about endeavors to eradicate bias For irrational prejudice and rank discrimination are infectious in our world. In this reality, as well as the determination to counter it, we all share.”⁴⁰

If abolishment of the death penalty in the United States is the bull’s eye, which I contend in this article that it should be, then recent Supreme Court jurisprudence surrounding the controversial topic is most certainly the dart, and the Court is beginning to narrow in on the target. In fact, the Court’s degradation of capital punishment began almost immediately after reinstating the practice in 1976. For example, in 1977, the Supreme Court held it unconstitutional to impose the death sentence for the crime of rape where the victim was an adult

³⁵ Ruth Bader Ginsburg & Deborah Jones Merritt, *Affirmative Action: An International Human Rights Dialogue*, 21 *CARDOZO L. REV.* 253, 282 (1999).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

and not killed during the commission of the crime.⁴¹ In 1982, the Court held that without proof that a killing occurred, or an attempt therein, regardless of whether the person intended to take a life, the death penalty cannot be sustained.⁴² In 1986, the Court disallowed further execution of any person declared to be insane;⁴³ in 2002, death as a consequence for a mentally retarded individual was declared unconstitutional;⁴⁴ and finally, in the 2005 *Roper v. Simmons* case, the Supreme Court held it violated the Eighth Amendment's prohibition against cruel and unusual punishment, and therefore unconstitutional, to execute a person who was, at the time the crime was committed, a juvenile.⁴⁵

In *Roper*, Justice Kennedy wrote that both a recent state trend toward abolition of capital punishment for juvenile offenders and an international trend toward the same goal played a role in the ultimate holding.⁴⁶ Understanding how domestic and international trends affect the United States' Government or Jurisprudence requires little more than an elementary level government or civics class; it is quite easy to see. Additionally, paying attention to our Nation's consciousness and ruling with it in mind, even slightly, is not a new notion for the Supreme Court; nor is it unusual for the Legislature to enact laws based on the pulse of our nation. One specific example, as it relates to the Eighth Amendment's cruel and unusual punishment provision, was referenced earlier but is equally as applicable to the argument at hand particularly when the preceding words are included. In *Trop*, writing for the majority, Chief Justice Warren said, "[where] the words of the Amendment are not precise, and...their scope is not static[,] the Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."⁴⁷

⁴¹ *Coker v. Georgia*, 433 U.S. 584, 592 (1977) ("We have concluded that a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment.").

⁴² *Enmund v. Florida*, 458 U.S. 782, 801 (1982).

⁴³ *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986).

⁴⁴ *Atkins*, 536 U.S. at 321.

⁴⁵ *Roper*, 543 U.S. at 578-79.

⁴⁶ *Id.* at 552-604.

⁴⁷ *Trop*, 356 U.S. at 100-01.

But how is one to establish that which is ever evolving? The opinion in *Coker* gives at least some insight into this question. The *Coker* court held that evolving standards of decency must be measured, wherever possible, using “objective factors.”⁴⁸ The factors elucidated by the opinion included: public attitudes regarding a particular punishment, legislative attitudes, and jury trends as reflected in their sentencing decisions.⁴⁹ Yet, nowhere in the opinion does it specifically say these criteria must be American notions or ideas. Of course, jury trends would likely involve those trends occurring within our own justice system, but even major trends or shifts in other democratic societies with similar justice systems would be, at the very least, relevant to a discussion about the death penalty being within a human rights context. Even if the jury trend argument is a stretch, and I do not believe that it is, the remaining two factors given by the *Coker* opinion, public attitudes and legislative attitudes are equally more important on a global scale than they would be if viewed only from the American perspective.

IV. THE DEATH PENALTY CANNOT BE SUSTAINED BECAUSE IT IS UNCONSTITUTIONAL FOR REASONS SPANNING WELL BEYOND THE EIGHTH AMENDMENT.

According to the United States Constitution, it, along with “the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁵⁰ Further, redress is statutorily available, generally in the form of a habeas corpus petition, for any person “in custody in violation of the Constitution or laws or treaties of the United States.”⁵¹ Thus,

⁴⁸ *Coker*, 499 U.S. at 592.

⁴⁹ *Id.*

⁵⁰ U.S. CONST. art. VI, cl. 2 (capitalization intentionally left as it appears within the document).

⁵¹ 28 U.S.C. § 2254(a) (West, WestlawNext current through P.L. 113-49, 2013).

it is unconstitutional to execute any individual in violation of any treaty to which the United States is a party, and even for textualists such as Justices Scalia and Thomas, who believe that interpretation of the Constitution can be done only through an understanding of its original public meaning, this interpretation would be difficult to circumvent.

Such treaties do exist although they are very often shrouded with administrative and interpretive hyperbole. Particularly applicable to a current day argument against use of the death penalty in violation of an international treaty is that the death penalty is discriminatory which violates the International Convention of the Elimination of All Forms of Racial Discrimination (ICERD).⁵² The treaty, which called for all ratifying nations to review their laws and policies in an effort to identify any that have a discriminatory effect and then to take appropriate remedial action was ratified by the United States in 1994.⁵³ In so doing, our nation was bound to the terms just as a citizen would be bound to a constitutional provision. Although a thorough and exhaustive discussion of discrimination within the American death penalty scheme is not possible within the confines of this paper, suffice it to say that there is a great deal of evidence to support a finding that it is rampant and very likely unavoidable. Allowing it to continue is in violation of the Constitution.

Additionally, in 1948, battered from having recently endured two World Wars and with a renewed sentiment towards the globalization of human rights on their side, the United Nations General Assembly adopted the Universal Declaration of Human Rights.⁵⁴ The Declaration, which was drafted by a committee of nine members, including former first-lady Eleanor Roosevelt as the committee's chairperson, proved to be the springboard for what is modern day human rights jurisprudence.⁵⁵ One of the major objectives of the

⁵² See STREIB, *supra* note 18, at 287-88.

⁵³ *Id.*

⁵⁴ The United Nations, Website Regarding the Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/history.shtml> (last visited March 12, 2013).

⁵⁵ *Id.* (listing the other drafters as: Dr. Charles Malik (Lebanon), Alexandre Bogomolov (USSR), Dr. Peng-Chang (China), Rene Cassin (France), Charles Dukes (United Kingdom), William Hodgson

document was an initiative to globally abolish capital punishment.⁵⁶ To this end, the drafters desired to unequivocally set forth the idea that every human being, regardless of nationality or race or gender, has a right to life and must not be forced to endure torture or inhumane treatment. The Universal Declaration of Human Rights is a tangible representation of “the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights.”⁵⁷ As a result of this document and our nation’s involvement in its development, it is not surprising that many of the laws affecting the use of capital punishment are generally derived from the Universal Declaration of Human Rights (“UDHR”).

Where the United States is concerned, the treaty was ratified but only with conditions that were clearly included to avoid any entanglement with the American death penalty.⁵⁸ Adding further fuel to the fire, President Clinton, in 1998, issued an executive order which stated that any treaty enforcing human rights would be fully recognized and implemented by the United States, including the larger treaty of which the UDHR is a part, the International Covenant on Civil and Political Rights (ICCPR). To date, both have been little more than lip service, but the time may be ripe for a constitutional challenge in this area.

V. THE DECLARATION OF INDEPENDENCE IS SPECIFIC: ALL MEN ARE CREATED EQUAL AND ALL MEN POSSESS CERTAIN UNALIENABLE RIGHTS, INCLUDING THE RIGHT TO LIFE. THIS RIGHT BELONGS TO ALL MEN, NOT ONLY AMERICAN MEN.

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty

(Australia), Hernan Santa Cruz (Chile), and John P. Humphrey (Canada)).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See STREIB, *supra* note 18, at 284.

and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men[.]”⁵⁹

Admittedly, the Declaration of Independence does not contain a provision regarding enforcement. Nonetheless, as an important historical document, and the physical representation of the birth of the United States, it “set forth the constitutional obligation to protect life, liberty, and the pursuit of happiness” as well as the requirement that these rights, applicable to all men, be protected on an equal basis.⁶⁰ Simply stated, the Declaration of Independence elucidated that men form governments in an effort to “secure their coequal interests in ‘unalienable rights[.]’”⁶¹ As such, the drafters of the document necessarily meant that the rights are “innate, rather than created by states or nations [and] the Declaration recognize[d] that some dignity interests precede the Constitution.”⁶²

Any argument suggesting that there is a dignity interest more important or deserving of protection than life is doomed to fail. Without life, there is no reason to strive for anything else because, quite obviously, there is nothing left. The birth of the United States of America was predicated upon the notion that all men are equal and deserving equally of certain rights, one of which is life. The Declaration did not specify that only Americans are created equally, that only American life should be protected, and only American rights protected. Quite the opposite, the Declaration was specific in applying these rights, and the protection thereof, to all men. Consequently, when pontificating about whether or not to include international law in any dialogue about evolving standards of decency, the United States Supreme Court must remember that the mother of the Constitution, the Declaration of Independence, applies the rights and protection of them to all men and the Court should do the same.

⁵⁹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁶⁰ Alexander Tsesis, *Self-Government and the Declaration of Independence*, 97 CORNELL L. REV. 693, 694-95 (2012).

⁶¹ *Id.*

⁶² *Id.* at 698.

VI. CONCLUSION

As an adolescent, I could not fully appreciate that the choices one makes today are the seeds of a flower called consequence and, once planted, they bloom for one's entire life. As adults, we understand this because our seeds were long ago planted and we live with the bloom of consequence, be it good, bad, or indifferent, on a daily basis. Thus, collectively, we give adolescents a chance to act in a way that we would deem inappropriate, at least on certain issues, because they are still maturing and experiencing and growing and need the time to falter so that life's lessons will be impressionable ones. We offer advice, support, and even punishment in an effort to fully develop the gardening skills of our youth with the hope that, in the future, if allowed to bloom, their gardens will be brilliant.

America is a young country and our garden is still growing.

We stand shoulder to shoulder with powerful, exemplary nations, but we do so in spite of the fact that they, as the adults, tolerate certain policies and practices from the United States, those which stand in opposition to their own, because we are still growing. This tolerance, much like that which we give to the adolescent is short lived. The United States must evolve and begin to act in a responsible and civilized manner before too many of the seeds we have planted in the past turn out to be bad consequences in the future and we find ourselves left only with the company that we did not mean to keep.