

Darrow's Dream

by: Greg Westfall

There is no doubt whatever that the world is growing more humane and more sensitive and more understanding. The time will come when all people will view with horror the light way in which society and its courts of law now take human life; and when that time comes, the way will be clear to devise some better method of dealing with poverty and ignorance and their frequent byproducts, which we call crime.

Clarence Darrow, "*The Futility of the Death Penalty*," 1928 (collected in *Verdicts Out Of Court* (Weinberg & Weinberg, eds., 1963) at 232 [Hereafter Darrow].

These words are from a speech that Clarence Darrow delivered in September, 1928, eighty-two years ago. This speech, given in the fall before the beginning of the Great Depression, is written with such hope and positive language that it seems Darrow expected to see this miraculous evolution before he died.

He pointed out as proof that "[i]n England, the criminal code has consistently grown more humane, until the offenses punishable by death are reduced to practically one." *Id.* As pertains England, Darrow was prescient, if quite a bit ahead of his time. In 1998, England officially abolished all that was left of the death penalty in that country, as have all but 2 countries in Europe. See http://en.wikipedia.org/wiki/Capital_punishment_in_Europe#cite_note-0. In fact, a country cannot join the EU without agreeing to prohibit capital punishment. See *id.* Our neighbor to the north abolished capital punishment in 1976. See http://en.wikipedia.org/wiki/Capital_punishment_in_Canada. Our neighbor to the south in 2005 (although it had not carried out a civil execution since 1937). See http://en.wikipedia.org/wiki/Capital_punishment_in_Mexico.

Certainly it appears that the world is indeed growing more humane. The rest of the world, that is.

Not so us. In 2009, with 52 executions to our credit, the USA came in fifth in the world for the number of our own citizens we put to death. See <http://www.amnesty.org/en/death-penalty/death-sentences-and-executions-in-2009>. And the company we keep is rather curious, to say the least. According to Amnesty International, only 58 countries worldwide still have capital punishment and only the following countries performed executions of their own citizens in 2009: Bangladesh, Botswana, China, Egypt, Iran, Iraq, Japan, Libya, Malaysia, North Korea, Saudi Arabia, Singapore, Sudan, Syria, Thailand, USA, Viet Nam, and Yemen. See *Death Sentences and Executions 2009*, Amnesty International, available at <http://www.amnesty.org/en/library/info/ACT50/001/2010/en>.

Heading the list with an unknown number of executions, but probably in the low thousands, is the People's Republic of China. Next up is Iran with at least 388. After Iran is Iraq with 120 or so. The number 4 slot is occupied by Saudi Arabia with 69.

Take a long look at this list of countries. Capital punishment is the common denominator in this list. Tell me, is there anything else about the other governments on this list you would like to adopt as our own? Perhaps we could be a little more like Sudan? Hell, we and Japan are the only ones on the list considered "developed."

During the speech cited above, Darrow raised the same rhetorical question we hear from today's abolitionists: "How can the state censure the cruelty of the man who -- moved by strong passions, or acting to save his freedom, or influenced by weakness or fear -- takes human life, when everyone knows that the state itself, after long premeditation and settled hatred, not only kills, but first tortures and bedevils its victims for weeks with the impending doom?" Darrow, *supra*, at 262.

To me, it takes some pretty fancy thinking to get past the cognitive dissonance triggered by our government's killing someone to show it's wrong to kill. Apparently the vast majority of the developed world agrees. I wonder if Darrow would be happy at that. Or would he be ashamed that the United States of America persistently refuses to join it?

Probably both, but ever looking for that time "when all people will view with horror the light way in which society and its courts of law now take human life."

Let's all hope.

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http://en.wikipedia.org/wiki/Capital_punishment