



Facultad de Ciencias Humanas y Sociales

Grado en Relaciones Internacionales

**“THE DEATH PENALTY UNDER SCRUTINY BETWEEN
STATE SOVEREIGNTY AND INTERNATIONAL HUMAN
RIGHTS LAW: THE CASE OF THE UNITED STATES OF
AMERICA”**

Public International Law, Human Rights, and International Criminal Law

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ABSTRACT

This dissertation examines the tension between state sovereignty and international human rights law through the case of the death penalty in the United States. While international law has progressively evolved towards the restriction and abolition of capital punishment through treaties, judicial decisions, and regional human rights systems, the United States continues to retain and apply the death penalty, positioning itself as an exception among Western democracies.

The study aims to assess the compatibility of U.S. capital punishment practices with contemporary international human rights standards and to explain this situation through the concepts of sovereignty, federalism, and compliance with international law. Using a qualitative and doctrinal methodology, the research analyses international legal instruments, jurisprudence, and academic literature. The findings show that, although no universal prohibition of the death penalty currently exists, a clear international abolitionist trend has emerged. The study concludes that international human rights law increasingly limits state discretion in criminal justice matters, challenging traditional notions of sovereignty and reinforcing the progressive protection of the right to life.

Keywords: Death penalty; International Human Rights Law; State Sovereignty; United States; Right to Life; Abolitionism.

RESUMEN

Este Trabajo de Fin de Grado analiza la tensión entre la soberanía estatal y el Derecho Internacional de los Derechos Humanos a través del caso de la pena de muerte en EEUU. Aunque el Derecho Internacional haya evolucionado progresivamente hacia la restricción y abolición de la pena capital mediante tratados, decisiones judiciales, y sistemas regionales de protección de los derechos humanos, EEUU continúa manteniendo y aplicando esta sanción, situándose como una excepción entre las democracias occidentales.

El objetivo del estudio es evaluar la compatibilidad de la pena de muerte en EEUU con los estándares contemporáneos de derechos humanos y explicar esta situación a la luz de los conceptos de soberanía, federalismo y cumplimiento del Derecho Internacional. Mediante una metodología cualitativa y doctrinal, basada en el análisis de instrumentos jurídicos,

jurisprudencia y literatura académica, la investigación concluye que, aunque no existe una prohibición universal de la pena de muerte, sí se ha consolidado una clara tendencia internacional abolicionista. Asimismo, demuestra que el Derecho Internacional de los Derechos Humanos limita cada vez más la discrecionalidad estatal en materia penal y refuerza la protección progresiva del derecho a la vida.

Palabras clave: Pena de muerte; Derecho Internacional de los Derechos Humanos; Soberanía estatal; Estados Unidos; Derecho a la vida; Abolicionismo.

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CHAPTER I: GENERAL INTRODUCTION

1. CONTEXTUALIZATION AND JUSTIFICATION OF THE RESEARCH TOPIC

The Universal Declaration of Human Rights, adopted in 1948, proclaimed that “all human beings are born free and equal in dignity and rights” (Art. 1), “everyone is entitled to life, liberty and security of person” (Art. 3), and “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Art. 5). However, the continued existence of practices such as capital punishment raises fundamental questions regarding their compatibility with these core human rights principles. In 1948, the political and legal context of the international community did not allow for an explicit prohibition of the death penalty within the Universal Declaration of Human Rights. At the time, a significant number of States retained and actively applied capital punishment, and there was no international consensus supporting its abolition. As a result, the General Assembly avoided directly addressing the legality of the death penalty and instead formulated broader principles, such as the right to life and the prohibition of cruel, inhuman or degrading treatment, which would later serve as the normative foundation for abolitionist interpretations.

Nevertheless, an underlying compromise gradually emerged within the international community, grounded in an evolving interpretation of the right to life and the prohibition of cruel, inhuman or degrading treatment, as reflected in subsequent treaty practice and the jurisprudence of international monitoring bodies (Schabas, 2002; Human Rights Committee, 2018). This understanding contributed to the development of an international trend towards the progressive abolition of capital punishment (The Death Penalty Project, EU). International lawmakers have sought to limit and ultimately eliminate the practice of capital punishment through a series of progressive restrictions. These efforts initially focused on excluding certain categories of individuals, such as juveniles and pregnant women, from the scope of the death penalty, as well as on narrowing the range of offences for which it could be imposed to an increasingly limited list of the most serious crimes (Shabas, 2002).

In parallel, numerous international and regional treaties were adopted to encourage States to move towards the abolition of capital punishment. Among the most significant instruments in this regard are the International Covenant on Civil and Political Rights (ICCPR) (1966), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) , and the American Convention on Human Rights (1969), the African

Charter on Human and Peoples Rights (1986) all of which reflect a broader normative commitment to the restriction and eventual abolition of the death penalty (Hood & Hoyle, 2015).

By 1997, considerably more than half of the States worldwide had abolished the death penalty either *de facto* or *de jure*, reflecting the growing strength of the international abolitionist trend (Schabas, 2002). In some cases, international pressure has been exerted in a direct manner, notably through the refusal by certain States to grant extradition where the individual concerned would face a capital sentence, a practice that has become increasingly common in international cooperation in criminal matters (Amnesty International, 1999).

The abolition of the death penalty is widely regarded as an important element of democratic development, particularly for States seeking to break with past practices characterised by terror, injustice, and repression (Hood & Hoyle, 2015). In certain instances, abolition has been achieved through explicit constitutional references to international treaties prohibiting capital punishment. In others, it has resulted from judicial interpretation, whereby courts have applied constitutional provisions that, while not expressly addressing the death penalty, enshrine the right to life and prohibit cruel, inhuman, or degrading treatment or punishment (Human Rights Committee, 2018).

This evolving legal landscape has been further shaped by ongoing debates within international organisations, including the United Nations and European institutions, as well as by discussions surrounding sentencing in the context of the establishment of the International Criminal Court. Additionally, the growing reluctance of States to extradite individuals to the United States in cases where they may be subjected to the death penalty illustrates the continuing impact of international abolitionist norms on State practice (Koh, 1997).

The death penalty remains one of the most contested practices in contemporary international human rights law. Over the past decades, international institutions and legal scholars have documented a decisive global trend toward abolition. The United Nations has repeatedly reinforced this movement, most recently through the General Assembly's 2022 resolution calling for a worldwide moratorium on executions.

Extradition has become one of the most significant mechanisms through which States have sought to indirectly restrict the application of capital punishment. Contemporary extradition treaties frequently include clauses allowing the requested State to refuse

extradition for capital offences in the requesting State unless satisfactory assurances are provided that the death penalty will neither be imposed nor carried out (Schabas, 2002).

Such clauses are not a recent development. Early examples can be found in instruments such as the South American Convention on Extradition of 1892, as well as in bilateral extradition treaties, including the extradition treaty concluded between the United Kingdom and Portugal. Over time, these provisions have evolved into a standard feature of international extradition law and are now commonly included in model extradition treaties adopted within international organisations, notably the United Nations (United Nations Office on Drugs and Crime, 2004).

Judicial practice has played a crucial role in consolidating this trend. Several significant cases concerning extradition to the United States have been adjudicated by courts in Europe and Canada, contributing to the development of restrictive standards. In the European context, extradition to the United States has become virtually contingent upon the provision of diplomatic assurances excluding the application of the death penalty, largely shaped by the jurisprudence of the European Court of Human Rights, beginning with *Soering v. United Kingdom* (1989) and subsequently reinforced in cases such as *Kirkwood v. United Kingdom* (1984) and *Çınar v. Turkey* (2011). In *Soering*, the Court held that a Contracting State may violate Article 3 ECHR when extraditing an individual to a non-Convention State if there are substantial grounds for believing that the person would face a real risk of inhuman or degrading treatment, including the so-called “death row phenomenon”. *Kirkwood* is relevant because the Commission had already accepted that prolonged exposure to death row conditions could raise an issue under Article 3, even though the case was declared inadmissible. In *Çınar*, the Court further confirmed that the death penalty and the conditions associated with death row may engage Article 3, thereby reinforcing the idea that European human rights protection operates extraterritorially when removal would expose the individual to such treatment.

In contrast, the Canadian position has evolved in a more nuanced manner. While earlier case law accepted extradition without assurances in certain circumstances, subsequent decisions have reflected a growing sensitivity to the risk of capital punishment, most notably in *United States v. Burns and Rafay* (Supreme Court of Canada, 2001), where the Supreme Court of Canada emphasised the importance of fundamental justice and the right to life (Schabas, 2002). These judicial developments illustrate the increasing influence of

international human rights norms on extradition practice, a body of jurisprudence that will be examined in greater detail in later chapters of this study (Hood & Hoyle, 2015).

Despite this global momentum, the United States continues to retain and apply the death penalty, positioning itself as an outlier among Western democracies. Scholars have highlighted how U.S. capital punishment persists at the intersection of federalism, political identity, and constitutional interpretation. In particular, David Garland argues that the American death penalty survives not merely as a legal institution, but as a “peculiar institution” shaped by the country’s decentralized federal structure, racial history, and politicized culture of punishment (Garland, 2010). This structural tension renders the United States a critical case for examining how states justify practices that are increasingly questioned under evolving international human rights norms.

In January 2025, the United States administration stated an executive order where the use of the death penalty at the federal level was not only reaffirmed but strengthened. Capital punishment is being presented as a ‘legitimate and necessary instrument for ensuring public safety and delivering justice in cases involving serious violent crimes.(White House, 2025)’ The document represents an instruction for federal authorities, in particular the Attorney General, to use this practice in cases where federal law authorizes such punishment, representing a disconnection with the abolishing path the international law and community has been following. This policy reflects a clear political commitment to maintaining the death penalty as an integral component of the U.S. criminal justice system.

This domestic stance stands in marked contrast to prevailing international trends. While the United States is a party to several core international human rights treaties, such as the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), it has not ratified the Second Optional Protocol to the ICCPR, which explicitly aims at the abolition of the death penalty. The United States has, however, ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), thereby accepting international obligations related to the humane treatment of individuals subjected to criminal punishment. Nevertheless, the absence of commitment to the abolitionist protocol highlights a selective approach to international norms governing capital punishment.

Moreover, substantial evidence suggests that the application of the death penalty in the United States is affected by racial and socioeconomic inequalities. Statistical analyses indicate that defendants are significantly more likely to receive a death sentence when the

victim is white, highlighting persistent racial bias within the system. Socioeconomic status also plays a decisive role, as defendants with limited financial resources often lack access to high-quality legal representation. The vast majority of death row inmates are unable to afford private counsel, and court-appointed attorneys may be inexperienced, overburdened, or inadequately prepared to handle complex capital cases. These deficiencies have led scholars and legal commentators to characterize capital trials in certain regions as unpredictable and inconsistent, undermining fundamental guarantees of due process.

In comparative perspective, the U.S. position diverges sharply from developments in other regions of the world. The European Union, for instance, requires the complete abolition of the death penalty as a condition of membership, reflecting a strong normative commitment to the protection of the right to life. This contrast reinforces the perception of the United States as an outlier among developed democracies with respect to capital punishment and underscores the tension between its domestic practices and evolving international human rights standards (Amnesty International, 2022).

2. STATE OF THE ART AND THEORETICAL FRAMEWORK

2.1. International legal debates on capital punishment

Capital punishment has been the subject of sustained academic attention within international law, particularly since the consolidation of international human rights law in the aftermath of the Second World War. Scholar debates have been centered for the past years on how compatible is capital punishment with the current human rights standard granted by the international community, and to what extent has international law moved towards an abolitionist orientation. Rather than framing abolition as a purely moral or political aspiration, much of the literature emphasizes its gradual legal institutionalization through treaties, interpretative practices, and normative developments.

One of the most important contributions to this topic is given by William A. Schabas, in his work, “The Abolition of the Death Penalty in International Law”, 2002, tracing the evolution of international legal norms governing capital punishment. Schabas argues that while early international instruments tolerated the death penalty as a lawful form of punishment, subsequent developments have progressively narrowed its scope. In particular, the adoption of the International Covenant on Civil and Political Rights (ICCPR) marked a significant shift by embedding the right to life within a binding legal framework that imposes substantive and procedural constraints on the use of capital punishment. He highlights Article

6 of the Covenant, where it does not explicitly prohibit the death penalty; however, it does establish multiple limits and restrictive conditions under which it may be imposed. Limits such as readjusting its use to “most serious crimes”, or requiring full respect for due process guarantees. The Article 6 is formed by a flexible wording, which has allowed the Human Rights Committee to interpret it through an abolition oriented path. The Committee has developed an understanding that the abolition of the death penalty is the progressive promotion they want to follow. Beyond treaty interpretation, Schabas situates the death penalty debate within the broader framework of customary international law and normative change. He notes that the steady decline in the number of states that actively carry out executions, combined with the growing number of abolitionist states, contributes to the formation of an international consensus against capital punishment. Although this consensus has not yet crystallized into a universally binding customary norm prohibiting the death penalty, Schabas suggests that the direction of travel is unmistakably toward abolition.

At the same time, Schabas acknowledges that international law remains characterized by a degree of normative pluralism. Retentionist states continue to assert their sovereign right to determine criminal penalties within their domestic legal systems, often invoking cultural, political, or security-based justifications for maintaining the death penalty. This has resulted in an uneven landscape in which international legal standards coexist with divergent state practices. Nevertheless, the growing density of international norms, coupled with sustained scrutiny by international monitoring bodies, has significantly narrowed the space within which capital punishment can be defended as compatible with human rights obligations (Henkin, 1979).

Taken together, the academic literature highlights a fundamental shift in the legal framing of capital punishment. Rather than being treated as an ordinary aspect of criminal justice, the death penalty is increasingly viewed as a residual and contested practice that stands in tension with the core principles of international human rights law. This understanding provides the normative and legal backdrop against which the continued use of the death penalty by certain states, including the United States, must be assessed. As such, the international legal debates outlined in this section form a necessary foundation for examining how specific domestic systems engage with, resist, or reinterpret evolving global standards on capital punishment.

2.2 The United States in the academic literature

Within the broader international movement toward the restriction and abolition of capital punishment, the United States occupies a distinctive and frequently contested position in academic literature. While many democratic states have either abolished the death penalty or ceased its use in practice, the United States has maintained capital punishment across multiple jurisdictions. This persistence has prompted scholars to examine not only legal doctrine, but also the deeper political, cultural, and institutional factors that sustain the American death penalty.

David Garland's analysis provides one of the most influential explanations for the exceptional character of capital punishment in the United States. Rather than attributing its persistence to a simple disregard for international human rights norms, Garland situates the American death penalty within a broader socio-political context shaped by federalism, racial history, and shifting political meanings. He argues that capital punishment in the United States functions as a "peculiar institution," whose survival reflects internal dynamics that differ markedly from those of other Western democracies (Garland, 2010).

A central element of Garland's argument concerns the fragmented structure of the U.S. legal system. Criminal justice authority in the United States is largely decentralized, allowing individual states to retain and apply the death penalty even as national and international attitudes evolve. This decentralization has resulted in pronounced geographical disparities, whereby the death penalty is concentrated in a relatively small number of states, particularly in the South. As Garland observes, capital punishment in the United States is not a uniform national practice, but rather a localized one, shaped by regional political cultures and historical legacies.

Garland further emphasizes the role of race in shaping the contemporary meaning of the death penalty. He traces the historical connections between capital punishment, racial hierarchy, and the legacy of slavery and segregation, particularly in Southern states. According to this perspective, the death penalty cannot be fully understood without acknowledging its symbolic and political function in reinforcing social boundaries and responding to perceived threats to social order. Over time, capital punishment has become entangled with broader debates over crime, punishment, and racial justice, contributing to its resilience in certain regions despite mounting legal and moral criticism.

Another key dimension of Garland's analysis concerns the changing political meanings attached to capital punishment. During the latter half of the twentieth century, the death penalty was transformed into a powerful symbol within broader "law and order" politics. Garland argues that political actors increasingly mobilized support for capital punishment as a response to anxieties about crime, social change, and declining trust in state authority. In this context, the death penalty acquired significance that extended beyond its practical function as a criminal sanction, becoming a marker of political identity and moral resolve.

From this perspective, the persistence of the death penalty in the United States reflects not only legal choices but also political incentives. Garland highlights how capital punishment has been repeatedly re-legitimized through electoral politics, judicial appointments, and public discourse, even as empirical evidence has cast doubt on its deterrent effect and fairness. This process has contributed to a situation in which the death penalty remains formally available, despite its declining use and growing contestation within American society itself.

In the academic literature, Garland's work is frequently invoked to explain why international legal pressure alone has proven insufficient to bring about abolition in the United States. Unlike states where abolition was driven by elite consensus and incorporation into supranational legal frameworks, the American case is characterized by strong internal resistance rooted in domestic political structures. As a result, the United States illustrates the limits of international norm diffusion when confronted with entrenched national institutions and identities.

This body of scholarship provides essential context for analyzing the relationship between the United States and international human rights law. Rather than portraying U.S. retention of the death penalty as an anomaly or simple violation, academic literature emphasizes the need to understand how domestic political culture mediates the reception of international norms. This insight is crucial for assessing the extent to which international legal standards on capital punishment can influence state practice in systems marked by deep internal fragmentation and political polarization.

2.3 Sovereignty, Compliance, and International Human Rights Law

The analysis of capital punishment within an international legal framework requires engagement with broader theoretical debates concerning state sovereignty and compliance with international law. Traditionally, criminal justice has been regarded as a core domain of sovereign authority, closely linked to the state's monopoly on legitimate punishment. From this perspective, decisions regarding the retention or abolition of the death penalty have often been framed as matters of domestic jurisdiction, insulated from external legal constraints.

Louis Henkin's influential work challenges this traditional conception by reconceptualizing sovereignty in the context of an increasingly legalized international order. According to Henkin, modern sovereignty does not imply absolute autonomy, but rather operates within a network of legal obligations voluntarily undertaken by states. He argues that participation in international treaties and institutions reflects an acceptance that state authority is exercised subject to international legal norms, particularly in areas concerning fundamental rights (Henkin, 1979).

Henkin further contends that compliance with international law is not exceptional, but constitutes a normal pattern of state behavior. Contrary to realist assumptions that states obey international law only when it aligns with their immediate interests, Henkin maintains that most states comply with their international obligations most of the time. This insight is particularly relevant in the field of human rights law, where compliance is often gradual, uneven, and shaped by domestic legal and political processes rather than by direct enforcement mechanisms.

Building on this understanding of sovereignty, Harold Hongju Koh offers a dynamic theory of compliance that moves beyond binary notions of obedience and violation. In his seminal article "Why Do Nations Obey International Law?", Koh argues that compliance should be understood as the product of a transnational legal process, involving repeated interactions between international and domestic actors. Through these interactions, international norms are interpreted, internalized, and eventually embedded within domestic legal systems .

Koh identifies three key stages in this process: interaction, interpretation, and internalization. First, states engage with international norms through diplomatic negotiations, treaty ratification, and participation in international institutions. Second, these norms are

interpreted by courts, administrative bodies, and political actors at both the international and domestic levels. Finally, norms may become internalized through incorporation into domestic law, judicial practice, or administrative routines, thereby shaping state behavior over time (Koh, 1997).

This theoretical framework is particularly useful for analyzing the relationship between the United States and international human rights law. Although the U.S. has been reluctant to accept certain binding obligations related to the abolition of the death penalty, international norms nonetheless exert influence through judicial reasoning, advocacy by civil society, and engagement with international monitoring bodies. From Koh's perspective, the absence of formal compliance does not necessarily imply irrelevance; rather, it reflects an incomplete or contested process of norm internalization .

Taken together, the approaches developed by Henkin and Koh provide a nuanced lens through which to assess state behavior in relation to international human rights obligations. They allow for an analysis that acknowledges the enduring importance of sovereignty while recognizing the transformative potential of international legal norms. Applied to the issue of capital punishment, this framework makes it possible to examine how international standards interact with domestic legal structures, political incentives, and cultural narratives.

Accordingly, this study adopts a theoretical framework that views capital punishment in the United States as situated at the intersection of domestic sovereignty and evolving international human rights law. Rather than assuming either full compliance or outright rejection, the framework emphasizes processes of tension, resistance, and partial accommodation. This approach provides a coherent foundation for the subsequent examination of how the United States engages or disengages with international legal standards on the death penalty, and how these standards shape—directly or indirectly—state practice.

3. RESEARCH OBJECTIVE AND CENTRAL RESEARCH QUESTION

The Research's general objective is to examine how the international community is turning into an abolishing environment for the capital penalty, using the case study of the United States, to assess the incompatibility between the continued use of this punishment and the international legal framework on human rights. The study seeks to express how international norms regulating the death penalty interact with domestic criminal legal

frameworks and political dynamics in a State that continues to retain and apply capital punishment.

Specifically, this study pursues the following objectives:

- Analyse and identify the main international legal standards that govern and dictate the use of the death penalty, as developed through international treaties and their authoritative interpretation
- To examine the legal, political, and institutional factors that explain the persistence of capital punishment in the United States despite global abolitionist trends.
- To assess the extent to which U.S. practices align with or diverge from international human rights obligations concerning the right to life.

Aligning these aims, the central question of the study is the following: to what extent is the continued application of the death penalty in the United States compatible with contemporary international human rights law, and how can this compatibility, or lack thereof, be explained in light of principles of sovereignty and compliance with International Human Rights Law?

4. Methodology and Structure of the Thesis

This study is fundamentally grounded in an extensive literature review, which serves as its primary qualitative methodological tool. This study adopts a qualitative and doctrinal research methodology grounded in a deductive analytical approach. The research begins from established theoretical frameworks in international law and international relations, particularly theories of sovereignty and compliance and applies them to the specific case of capital punishment in the United States in order to assess the compatibility of domestic practices with contemporary international human rights standards.

The primary sources examined include international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR), relevant Optional Protocols, resolutions of the United Nations General Assembly, treaty-body interpretations (notably the Human Rights Committee's General Comment No. 36), and jurisprudence from international and domestic courts, including the European Court of Human Rights and the Supreme Court of the United States. These materials provide the normative foundation for assessing the legal evolution of international standards on capital punishment.

Secondary sources consist of leading academic literature in public international law, human rights law, and international relations theory, including scholarly works addressing the abolitionist movement, theories of norm diffusion, and analyses of the American death penalty.

In addition, the study incorporates selected qualitative interviews aimed at gaining insight into domestic perceptions of capital punishment within the United States. These interviews serve a complementary analytical function, helping to contextualize the political and cultural factors that influence resistance to abolitionist norms.

Methodologically, the research proceeds through three interrelated components. First, a normative legal analysis examines the development and interpretation of international standards governing the death penalty. Second, a structured case-study approach applies this framework to the United States as a retentionist state. Third, the findings are evaluated through the lens of theories of sovereignty and transnational legal process in order to explain patterns of alignment, resistance, or partial internalization of international norms.

The structure of the study reflects this methodological approach. Following this introductory chapter, Chapter II outlines the international legal framework governing capital punishment, focusing on the development of human rights standards related to the right to life. Chapter III examines the United States as a case study, analyzing its domestic legal framework and recent policy developments in light of international obligations. Chapter IV provides a critical analysis of the tensions between U.S. practices and international human rights law, integrating the theoretical framework discussed earlier. Finally, Chapter V presents the main conclusions of the study and reflects on the broader implications for the future of international regulation of the death penalty.

CHAPTER II: INTERNATIONAL NORMATIVE FRAMEWORK AND THE ABOLITIONIST EVOLUTION OF CAPITAL PUNISHMENT

This chapter examines the evolution of the international normative framework governing capital punishment, tracing the transition from conditional tolerance to an increasingly abolition-oriented legal regime.

1. UNIVERSAL FOUNDATIONS: THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

In December 1948, the Universal Declaration of Human Rights, from now on UDHR, was adopted by the United Nations General Assembly, marking a foundational moment in the history of international human rights protection.

The origins of the United Nations itself are inseparable from the geopolitical tensions that surrounded the end of the Second World War. The founding conference of the United Nations, held in San Francisco in April 1945, was dominated by the priorities of the major Allied powers, whose primary preoccupation was the maintenance of international peace and security rather than the articulation of individual human rights (Glendon, 2001).

The question of capital punishment occupied an ambiguous position in the text of the Declaration. The drafters of the UDHR considered and rejected proposals that would have explicitly referenced the death penalty as a recognized exception to the right to life. Nevertheless, the omission of the capital punishment was calculated; including an explicit exception might have appeared to legitimize the practice and would have posed an obstacle to the growing abolitionist trend.

As mentioned before, the UDHR addressed capital punishment through deliberate ambiguity. Instead of giving an explicit reference to the death penalty, the drafters of the UDHR rather than explicitly prohibiting or permitting the death penalty, its drafters laid down broad protective principles, such as the right to life (Article 3) and the prohibition of cruel, inhuman or degrading treatment (Article 5), without expressly determining if those principles were compatible with the continued use of capital punishment. It kept the abolitionist direction alive while recognising that, in 1948, most states still maintained the death penalty.

Although the UDHR lacks formal treaty-binding force, its provisions on the right to life have become the foundational reference for all subsequent treaty-based developments, regarded as expressions of customary international law. The declaration was expected to become a bigger moral authority to the world, progressively shaping state behavior even without enforcement mechanisms.

The Declaration's significance for capital punishment is therefore structural rather than prescriptive, creating the normative architecture within which subsequent instruments, notably the ICCPR and its Second Optional Protocol, would progressively restrict the permissible scope of the death penalty.

2. A TURNING POINT: THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

The International Covenant on Civil Rights and Political Rights, from now on ICCPRI, adopted on December 16th 1966 and entering into force on March 23rd 1976, marked a turning point in the legal treatment of the death penalty. It gave more binding aspirations for the obligations for the States Parties, clarifying the legal scope of the right to life while placing the death penalty within a structured framework of legal safeguards and restrictions

Article 6 of the ICCPR constitutes “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. It establishes an internal architecture of the compromise of the International Community to put an end to capital punishment. The term “arbitrarily” is quite importa since implies that

Paragraph 1 proclaims that the right to life is inherent to every person and requires that it be protected by law, prohibiting anyone from being arbitrarily deprived of it. The relevance of the term "arbitrarily" is considerable: the provision leaves limited normative space for the death penalty, provided that it is imposed under defined legal conditions (Joseph & Castan, 2013). This formulation was deliberate, reflecting the political impossibility of reaching consensus around the explicit abolition of capital punishment in 1966.

Paragraph 2 of Article 6 articulates those conditions. Countries that have not abolished the death penalty, its application is restricted to the "most serious crimes", requires that proceedings be conducted in accordance with the law in force at the time of the

commission of the offence, and demands that the sentence be handed down by a competent court following full fair trial guarantees (ICCPR, 1966, Art. 6.2). Rather than authorizing the death penalty, it conditionally tolerates it, subjects its use to a standard of exceptionality, and teleologically orients the Covenant toward progressive abolition (Schabas, 1998).

Paragraphs 4 and 5 are important because they introduce special protections for certain groups, especially by prohibiting the death penalty for offences committed by minors and for pregnant women. Marking an early step toward narrowing the personal scope of capital punishment and foreshadowed later abolitionist developments (Schabas, 1998).

Paragraph 6 of Article 6, establishes that “nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” Article 6 as a whole configures a legal regime that tolerates capital punishment as an existing practice, as in the past, while orienting the present and future toward abolition.

The importance of the ICCPR in this area is not limited to the text of Article 6. The treaty also established the Human Rights Committee (HRC) as a supervisory body, whose competence to examine individual communications under the Optional Protocol has generated a body of jurisprudence of great relevance in capital punishment matters. This body has developed increasingly restrictive interpretations of Article 6, contributing decisively to the configuration of the "most serious crimes" standard and to the establishment of minimum procedural guarantees applicable in capital proceedings. This interpretive work has been recognized as one of the determining factors in the process of progressive restriction of the death penalty at the international level (Nowak, 2005).

The ICCPR marked a major shift in international law on capital punishment, moving from the UDHR's non-binding principles to binding legal obligations with international supervision and complaint mechanisms. This framework later allowed for further abolitionist developments, especially the Second Optional Protocol on the abolition of the death penalty.

3. INTERPRETIVE EVOLUTION: GENERAL COMMENT NO. 36 (2018)

General Comment No. 36 is the Human Rights Committee's most important modern interpretation of Article 6 ICCPR regarding capital punishment. Replacing earlier comments from 1982 and 1984, it develops a broader and more progressive understanding of the right to life, clearly moving the interpretation of the death penalty toward abolition.

The General Comment opens by situating the right to life as the supreme right from which no derogation is permitted, even in situations of armed conflict or public emergency, and affirms that this right must not be interpreted narrowly but extends to the entitlement of individuals to be free from premature death and to live with dignity (Human Rights Committee, 2018, para. 2-3). This interpretive framing sets the normative context within which the Committee's approach to capital punishment must be understood.

On the specific question of the death penalty, General Comment No. 36 adopts a markedly restrictive position. Paragraphs 2, 4, 5, and 6 of Article 6 are characterized as establishing conditions designed to ensure that the death penalty is applied "only in the most exceptional cases, for the most serious crimes and under the strictest limits" (Human Rights Committee, 2018, paragraph 5). The Comment specifies that the phrase "most serious crimes" must be read restrictively and understood as pertaining exclusively to crimes of extreme gravity that involve intentional killing (Human Rights Committee, 2018, paragraph 39). Offences such as drug-related crimes, armed robbery, corruption, economic crimes, attempted murder, piracy, abduction, and sexual offences cannot, within the framework of Article 6, ever justify the imposition of the death penalty (Human Rights Committee, 2018, paragraph 39).

Procedural guarantees receive extensive attention. Violations of the fair trial requirements of Article 14 in proceedings resulting in a death sentence may render the execution arbitrary and thus in violation of Article 6. The Comment further affirms that the application of the death penalty in a discriminatory manner, including where statistical data indicate that racial, ethnic, or other minorities are disproportionately likely to face execution raises concerns under Articles 2. 1 and 26 of the Covenant.

Perhaps the most politically significant dimension of General Comment No. 36 is its normative statement on abolition itself. Paragraph 54 asserts that States parties not yet fully abolitionist should be understood as being on an irrevocable path toward complete abolition of the death penalty, both *de facto* and *de jure*, in the foreseeable future. The Comment states explicitly that the death penalty cannot be reconciled with full respect for the right to life, and that its abolition is both desirable and necessary for the enhancement of human dignity and the progressive development of human rights. The Comment further notes the growing number of ratifications of the Second Optional Protocol and the increasing practice of *de*

facto moratoria as evidence of substantial progress toward treating the death penalty as a form of cruel, inhuman, or degrading punishment under all circumstances (Human Rights Committee, 2018, paragraph 55).

4. A DECISIVE STEP: THE SECOND OPTIONAL PROTOCOL TO THE ICCPR (1989)

While Article 6 of the ICCPR established a framework of conditional tolerance toward capital punishment oriented teleologically toward abolition, the adoption of the Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty, by the United Nations General Assembly on 15 December 1989 (Resolution 44/128) represented the first binding universal treaty instrument to impose a direct legal obligation to abolish the death penalty. Its entry into force on July 11th 1991 marked a shift in the international normative landscape since for the first time, States were not merely encouraged to restrict capital punishment but were legally obligated to eliminate it entirely within their jurisdictions.

State Parties undertake to ensure that no person within their jurisdiction is executed, and to adopt all measures necessary to abolish the death penalty (United Nations General Assembly, 1989, art. 1). Unlike the ICCPR, abolition is the direct and immediate obligation, not a distant aspiration. It is the decisive normative step that the ICCPR's drafters had been unable to take three decades earlier. It is the representation of the first desire drafters had with the UDHR (Schabas, 1998).

States may retain the right to apply the death penalty in time of war for the most serious crimes of a military nature, provided this reservation is entered at the moment of ratification or accession (United Nations General Assembly, 1989, art. 2). Representing the sole exception available to States Parties and that its scope is deliberately confined, reflecting the drafters' commitment to treating abolition as a near-absolute obligation rather than a negotiable standard (Schabas, 1998). Furthermore, once a State has ratified the Protocol, abolition becomes legally irrevocable: as the Human Rights Committee (2018) clarifies in General Comment No. 36, States Parties that have abolished the death penalty through accession to the Second Optional Protocol are barred from reintroducing it under any circumstances, since neither the Covenant nor the Protocol contains termination provisions.

In the late 1990s, the steady growth in ratifications of the Protocol, alongside the increase in the number of abolitionist States more broadly contributed to the formation of an international consensus against capital punishment (Schabas, 1998). Amnesty International (2022) records that the number of States that have abolished the death penalty has grown considerably in the decades since the Protocol's adoption, representing a clear majority of the international community. The existence of binding abolitionist treaty obligations has accelerated the domestic reform processes of States considering abolition by providing an authoritative external standard against which domestic legal reform could be measured and legitimized (Hood and Hoyle, 2015).

The position of the United States is particularly illustrative in this context. The United States has not ratified the Second Optional Protocol and has given no indication of intending to do so, a stance that reflects its broader pattern of selective engagement with international human rights treaty obligations in the area of capital punishment (Schabas, 1998).

5. REGIONAL CONSOLIDATION OF ABOLITIONIST NORMS

The progressive restriction and eventual prohibition of capital punishment has not been confined to the universal treaty framework developed under the auspices of the United Nations. Parallel to these developments, regional human rights systems have played a decisive role in consolidating abolitionist norms within specific geopolitical communities, often moving further and faster than the universal framework in restricting or prohibiting the death penalty.

5.1 The European System

The European regional framework represents the most advanced and comprehensive consolidation of abolitionist norms in international law. The starting point was the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted by the Council of Europe in 1950, which in its original form allowed the death penalty as an implicit exception to the right to life. The normative evolution that followed was gradual but ultimately categorical. The first decisive step came with the adoption of Protocol No. 6 to the ECHR by the Council of Europe in 1983, which abolished the death penalty in peacetime while permitting States to retain it for acts committed in time of war or imminent threat of war (Council of Europe, 1983). Protocol No. 6 was a key milestone in the

global abolitionist movement. As an optional treaty under the ECHR, it allowed States to voluntarily strengthen their obligations and reflected the growing European consensus that the death penalty was incompatible with democratic values. It also served as a model for later abolitionist instruments within the UN and the OAS.

The process of European consolidation was completed with the adoption of Protocol No. 13 to the ECHR in 2002, which abolished the death penalty in all circumstances without exception, including in time of war (Council of Europe, 2002). Unlike Protocol No. 6, Protocol No. 13 admits of no reservation and permits no exception whatsoever, making the prohibition of capital punishment absolute within the European human rights system.

The ECtHR has also strengthened the European abolitionist framework through its case law, particularly in *Soering v. United Kingdom* (1989). As will be explained in Chapter III, this judgment was crucial because it allowed European human rights standards to limit cooperation with retentionist States, such as the United States, when there is a risk that the death penalty may be imposed.

Within the EU, abolition has become a core constitutional value. The EU Charter of Fundamental Rights expressly prohibits the death penalty, and full abolition is also a condition for EU accession. As a result, the EU has acted as a strong driver of abolitionist reforms in candidate States, requiring legal and constitutional changes before membership (Schabas, 1998).

5.2 The Inter-American System

The Inter-American system offers a more uneven model of regional abolition than the European one. The American Convention on Human Rights protects the right to life in Article 4 and adopts a restrictive approach to capital punishment: it limits its use to the most serious crimes, prevents its expansion to new offences, and prohibits States that have abolished it from reintroducing it (Organization of American States, 1969). This non-reintroduction rule is especially important because it makes abolition legally irreversible for those States (Schabas, 1998).

The 1990 Protocol to the American Convention to Abolish the Death Penalty goes further by requiring full abolition, but its impact has been limited by the relatively low number of ratifications and by the fact that key States, especially the United States, remain

outside the Convention system (Organization of American States, 1990). Therefore, although abolition has advanced significantly in Latin America, the Inter-American framework remains more normatively diverse than Europe's, with some retentionist jurisdictions still persisting (Amnesty International, 2022).

Even so, the Inter-American Commission on Human Rights has examined death penalty cases involving the United States through the American Declaration of the Rights and Duties of Man. Although its decisions are not binding like those of the Inter-American Court, they have increased regional scrutiny of U.S. capital punishment and contributed to broader international pressure for reform (Hood & Hoyle, 2015).

5.3 African Charter on Human and Peoples' Rights (1986)

Although the African Charter on Human and Peoples' Rights does not explicitly prohibit the death penalty, it has contributed to the gradual consolidation of abolitionist norms across the African continent. Article 4 of the Charter establishes that every human being is entitled to respect for his or her life and personal integrity and prohibits the arbitrary deprivation of life, thereby providing the normative foundation for the protection of the right to life within the African human rights system (Organization of African Unity, 1981).

The abolitionist orientation of the African system has been further developed through the interpretative work of the African Commission on Human and Peoples' Rights. In its General Comment No. 3 on Article 4, the Commission emphasized that the right to life constitutes a foundational and non-derogable right and should be interpreted broadly in light of the objective of ensuring a dignified life for all individuals (African Commission on Human and Peoples' Rights, 2015).

More significantly, the Commission explicitly linked the protection of the right to life with the progressive abolition of capital punishment. It noted that the African Charter contains no provision expressly recognizing the death penalty and observed that the majority of African States have already abolished it either in law or in practice. The Commission further stated that retentionist States should take steps towards abolition and, in the meantime, restrict the use of capital punishment to the most serious crimes and subject it to strict procedural safeguards (African Commission on Human and Peoples' Rights, 2015). Consequently, while the African human rights system has not yet established a binding regional prohibition comparable to that existing in Europe, its interpretation of the right to

life reflects a clear movement towards the restriction and eventual abolition of capital punishment. This development reinforces the broader international trend whereby regional human rights mechanisms increasingly regard abolition as the preferred means of protecting human dignity and the right to life.

6. SOFT LAW, POLITICAL CONSENSUS, AND THE ROLE OF UN RESOLUTIONS

The progressive development of international norms on capital punishment has not been driven exclusively by binding treaty instruments.

Shelton (2006) defines soft law instruments as “those lacking the formal binding force of treaties or customary international law but nonetheless exerting normative influence through their moral authority and their capacity to generate expectations of compliance”. Soft law enables the international community to articulate normative aspirations and build consensus around standards not yet capable of attracting sufficient support for formal treaty codification (Chinkin, 1989). There is an importance between binding and non-binding law; however, states generally comply with international standards not because of formal enforcement mechanisms but because of the reputational and normative pressures generated by participation in the international legal order (Henkin, 1979). International norms become internalized into domestic legal systems through repeated interactions between international and domestic actors, a process in which soft law instruments play a central role by establishing the normative benchmarks against which state conduct is assessed (Koh, 1997).

The most significant early soft law instrument specifically addressing capital punishment is the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the United Nations Economic and Social Council in Resolution 1984/50. The Safeguards go beyond the Covenant by defining the scope of the "most serious crimes" threshold, specifying procedural guarantees in capital cases, and extending the categories of protected persons to include new mothers and individuals with mental illness.

The United Nations General Assembly has served as the primary arena for the construction of political consensus around abolition. The breakthrough came in 2007, when the General Assembly adopted its first resolution calling for a worldwide moratorium on executions with a view to abolition. Inaugurating a series of biennial moratorium resolutions adopted with progressively larger majorities. The most recent, Resolution A/RES/77/222,

was adopted in 2022 by 125 votes in favor with 37 against and 22 abstentions — the strongest showing yet for the abolitionist position (United Nations General Assembly, 2022). Amnesty International (2022) sees this result within the broader global trend, noting that the number of States actually carrying out executions continues to decline even among those formally retaining the death penalty.

The Revised United Nations Model Treaty on Extradition (United Nations Office on Drugs and Crime, 2004) includes provisions allowing requested States to refuse extradition for capital offences unless satisfactory assurances are provided that the death penalty will not be imposed or carried out. Such clauses have become standard features of international extradition law, operating as a mechanism through which abolitionist States project their normative commitments beyond their own borders (Schabas, 1998). For the United States specifically, this has meant that extradition from European and other abolitionist States has become effectively conditional upon diplomatic assurances excluding capital punishment.

CHAPTER III: INTERNATIONAL JURISPRUDENCE AND THE LEGAL CONTROL OF THE DEATH PENALTY

1. THE HUMAN RIGHTS COMMITTEE: MONITORING COMPLIANCE AND DEVELOPING STANDARDS

The Human Rights Committee, HRC from now on, is the treaty body established under the ICCPR to monitor States Parties' compliance with their Covenant obligations. The HRC has evolved over decades into one of the most institutionally sophisticated and normatively influential bodies within the international human rights system, developing working methods and jurisprudential innovations that have served as models for other treaty bodies (Buergethal, 2006). Its significance in the context of capital punishment derives from three interrelated functions: the examination of periodic State reports, the issuance of general comments providing authoritative interpretations of Covenant provisions, and the consideration of individual communications under the Optional Protocol. Through each of these mechanisms, the HRC has progressively developed and refined the international legal standards applicable to the death penalty, contributing decisively to the restriction of its permissible scope.

1.1 State Reporting and Concluding Observations

The periodic reporting procedure has provided the HRC with a regular opportunity to scrutinize the capital punishment practices of retentionist States and to articulate the standards with which they are expected to comply. While the reporting procedure lacks formal enforcement mechanisms, its significance lies in the constructive dialogue it generates between the Committee and States Parties, creating a sustained accountability relationship that shapes domestic legal discourse and policy over time (Alston and Crawford, 2000). Even though the conclusions are formally non-binding, they are considerable authoritative interpretations with a considerable normative weight (Nowak, 2005).

In relation to the United States, the HRC has used the reporting procedure to articulate sustained and detailed concerns about multiple dimensions of U.S. capital punishment practice. In its concluding observations on the third periodic report of the United States, the HRC expressed concern about racial disparities in the application of the death penalty, inadequate legal representation for indigent capital defendants, and the imposition of capital punishment on persons with mental disabilities (Human Rights Committee, 2006). These

concerns were reiterated and elaborated in the concluding observations on the fourth periodic report, which additionally addressed the use of certain methods of execution and the absence of adequate safeguards against wrongful convictions in capital cases (Human Rights Committee, 2014). The United States has consistently resisted the Committee's recommendations in the area of capital punishment, invoking its reservations to the ICCPR and the principle of domestic sovereignty in criminal justice matters.

1.2 Individual Communications: Landmark Cases

The individual communications procedure under the Optional Protocol has generated a substantial body of jurisprudence that has progressively defined the procedural and substantive standards applicable to persons under sentence of death. The jurisprudence mechanism works as a central to the HRC's standard-setting function, noting that the Committee's Views in individual cases have elaborated the meaning of Covenant provisions with a specificity and concreteness that general comments alone cannot achieve.

There have been several decisions that have established an important path for us to investigate. In *Kindler v. Canada*, the HRC addressed the extradition of a U.S. national facing the death penalty, finding no violation in those circumstances but establishing important principles regarding the need for fair trial guarantees and compliance with the "most serious crimes" standard in the receiving State (Human Rights Committee, 1993). This relatively permissive approach was subsequently reconsidered in *Judge v. Canada*, where the HRC found that Canada had violated Article 6 by extraditing an individual to face the death penalty without first securing assurances against its imposition, reasoning that abolitionist States must not expose individuals to a real risk of violation of their Covenant rights through cooperation with retentionist States. This evolution is seen as a core hardening of the Committee's positions, establishing a deeper and brighter path into an alignment of the extradition jurisprudence and the standards developed by the European Court of Human Rights (Hood and Hoyle, 2015).

In *Johnson v. Jamaica*, the HRC found that prolonged detention under sentence of death in harsh conditions constituted cruel, inhuman or degrading treatment in violation of Article 7 of the Covenant, establishing that the manner and conditions of death row detention are independently subject to international human rights scrutiny (Human Rights Committee, 1996). The decisions in *Thompson v. Saint Vincent and the Grenadines* (Human Rights

Committee, 2000) and *Kennedy v. Trinidad and Tobago* (Human Rights Committee, 2002) further established that mandatory death sentences, the sentences were court does not leave any discretion to take into account any individual circumstances, are arbitrary in nature and incompatible with Article 6, a finding subsequently confirmed and elaborated in General Comment No. 36 (Human Rights Committee, 2018, paragraph 41).

This compilation of jurisprudence can be identifies as a paradigmatic illustration of transnational legal process: through repeated interactions between the HRC and States Parties, international norms on capital punishment are progressively interpreted, refined, and internalized, shaping domestic legal culture even where formal compliance remains incomplete (Koh, 1997). The HRC influences retentionist States not only through its formal decisions, but also through the continuous normative pressure created by international monitoring and criticism.

2. THE EUROPEAN COURT OF HUMAN RIGHTS: SETTING GLOBAL STANDARDS THROUGH REGIONAL ADJUDICATION

Capital punishment and extradition has been shaped in the global standards by what we could call the most influential international judicial body, the ECtHR. Landmark judgments have established a body of jurisprudence that has proceeded the abolitionist evolution on capital punishment. (Letsas, 2007) characterizes the ECtHR's interpretive methodology as inherently dynamic, treating the Convention as a living instrument whose meaning evolves in response to changing social and moral conditions, an approach that has proved decisive in the Court's progressive treatment of capital punishment.

2.1 *Kirkwood v. United Kingdom* (1984): Anticipating the *Soering* Doctrine

The foundations of the ECtHR's approach to capital punishment in the extradition context were laid in *Kirkwood v. United Kingdom* (European Commission of Human Rights, 1984). The case concerned a man facing extradition to the United States to face the death penalty in California, and the Commission examined whether such extradition could raise issues under Article 3 of the ECHR, the prohibition of inhuman or degrading treatment. Although the application was ultimately declared inadmissible on the facts, the Commission implicitly recognized that the Convention could in principle intervene to prevent extradition to a State where an individual would face conditions on death row amounting to inhuman

treatment, thereby anticipating the doctrine subsequently articulated in *Soering* (Schabas, 1998).

2.2 *Soering v. United Kingdom* (1989): A Foundational Judgment

The full elaboration of the European approach came with *Soering v. United Kingdom* (ECtHR, 1989), regarded as one of the most proceeding judgments in the history of international human rights law.

The case concerned a German national detained in the United Kingdom pending extradition to the United States, where he faced the death penalty for capital murder in Virginia. The Court found that extradition in those circumstances would expose the applicant to the phenomenon of death row syndrome, the severe psychological suffering caused by prolonged detention under sentence of death, constituting degrading treatment in violation of Article 3 of the ECHR. *Soering* shows a paradigmatic example of how the Court has developed positive obligations under the Convention, establishing that Contracting States bear responsibility not only for their own conduct but for the foreseeable consequences of transferring individuals to third States where their Convention rights would be violated (Mowbray, 2004).

The practical significance of the judgment is the following: the United Kingdom sought and obtained assurances from the United States that the death penalty would not be sought against *Soering*, who was subsequently extradited, tried, and sentenced to life imprisonment (Hood and Hoyle, 2015). The outcome can be represented as a textbook illustration of transnational legal process, international judicial pressure producing concrete behavioral change by a retentionist State through the mechanism of interstate cooperation (Koh, 1997). *Soering* effectively rendered extradition from European States to the United States contingent upon diplomatic assurances excluding capital punishment, fundamentally reshaping the framework of transatlantic criminal cooperation (Schabas, 1998).

2.3 Subsequent Developments: *Öcalan*, *Al-Saadoon*, and *Trabelsi*

The ECtHR has progressively built upon the *Soering* foundations in subsequent decisions. In *Öcalan v. Turkey* (ECtHR, 2005), the Grand Chamber made significant observations about the evolution of European standards on capital punishment, noting that the near-universal ratification of Protocols No. 6 and No. 13 reflected a strong consensus that

capital punishment was incompatible with the values of democratic society, suggesting that the imposition of a death sentence following an unfair trial might itself constitute inhuman treatment under Article 3. Greer (2006) situates this development within the broader trajectory of the Court's institutional evolution, arguing that the ECtHR has increasingly positioned itself as the guardian of a distinctively European public order in which the prohibition of capital punishment occupies a central and non-negotiable place.

In *Al-Saadoon and Mufdhi v. United Kingdom* (ECtHR, 2010), the Court went further, finding a violation of Article 3 arising from the transfer of individuals to Iraqi custody where they faced the death penalty, and observing that the prohibition of capital punishment had effectively achieved the status of a norm of customary international law within the Council of Europe. The Court's increasing willingness to treat abolitionist standards not merely as treaty obligations but as expressions of a broader European legal order (Schabas, 1998). In *Trabelsi v. Belgium* (ECtHR, 2014), the Court extended its protective reach further still, finding a violation arising from extradition to the United States without adequate assurances against the imposition of an irreducible life sentence, a punishment treated as analogous in its severity to the death penalty.

An interpretation of this line of jurisprudence is a coherent expression of the Court's evolutive interpretive methodology: by reading Article 3 in light of evolving European consensus, the ECtHR has progressively expanded the protective scope of the Convention's prohibition of inhuman treatment, creating an increasingly robust barrier against cooperation with retentionist States (Letsas, 2007). This jurisprudential development has had concrete and lasting consequences for the relationship between European States and the United States in capital cases, establishing a framework of conditionality that operates as a powerful external constraint on U.S. capital punishment practice even in the absence of any formal domestic legal obligation (Hood and Hoyle, 2015).

3. THE CANADIAN SUPREME COURT: A NATIONAL COURT IN DIALOGUE WITH INTERNATIONAL NORMS

Beyond the formal international and regional human rights institutions, national courts have played an increasingly significant role in the legal control of capital punishment, particularly in cases involving extradition to the United States. The Supreme Court of Canada occupies a distinctive position in this regard, having developed a body of jurisprudence that

exemplifies the phenomenon as transnational legal process: the progressive internalization of international human rights norms into domestic constitutional frameworks through the interpretive work of national courts. This dynamic goes within a broader theory of interactional international law, arguing that the legitimacy of international norms depends on their capacity to generate genuine engagement and internalization at the domestic level, a process in which national courts serve as crucial mediating institutions (Brunnée and Toope, 2010).

The Canadian constitutional framework provides a particularly receptive environment for this kind of norm internalization. The Canadian Charter of Rights and Freedoms guarantees the right to life, liberty, and security of the person under Section 7, and prohibits cruel and unusual punishment under Section 12. Canadian courts have consistently interpreted these provisions in light of Canada's international human rights obligations, treating international treaty standards and the jurisprudence of international monitoring bodies as relevant and persuasive sources of constitutional meaning (Brunnée and Toope, 2010). It represents a form of democratic dialogue between the Supreme Court and the international human rights community, through which global abolitionist norms have progressively shaped Canadian constitutional law (Roach, 2015).

The foundational case in this area is *United States v. Burns and Rafay* (Supreme Court of Canada, 2001), in which the Supreme Court delivered a unanimous judgment on the extradition of two Canadian citizens to the United States, where they faced the death penalty for aggravated first-degree murder in the State of Washington. The Minister of Justice had issued a surrender order without seeking assurances from the United States that capital punishment would not be imposed, and the Court was required to determine whether this decision was constitutionally permissible under the Charter. The Court held that surrender without assurances violated Section 7 of the Charter, finding that the principles of fundamental justice required Canada to seek and obtain such assurances before proceeding with extradition in capital cases. Authors such as Schabas had anticipated the direction of this jurisprudential evolution, noting the earlier British Columbia Court of Appeal judgment in *Burns* that Canadian courts were becoming progressively less willing to facilitate extradition to the United States in capital cases without meaningful procedural safeguards.

Particularly significant is the Supreme Court's engagement with international human rights standards in *Burns and Rafay*. The Court drew extensively on the jurisprudence of the

Human Rights Committee, the European Court of Human Rights, and the broader international trend toward abolition, treating these sources as relevant to the content of fundamental justice under the Charter. The methodological approach acts as a paradigmatic illustration of how national constitutional courts can serve as conduits for the internalization of international abolitionist norms, translating global legal standards into domestic constitutional obligations without requiring formal treaty incorporation. The Court's reasoning in *Burns* is foreseen as the kind of interaction through which international norms become embedded in domestic legal culture: by engaging seriously with international human rights jurisprudence, the Supreme Court both reflected and reinforced the growing international consensus against capital punishment.

The practical consequences of *Burns* and *Rafay* have been significant. Following the judgment, the Canadian government adopted the practice of routinely seeking and obtaining assurances from the United States before proceeding with extradition in capital cases, fundamentally reshaping the bilateral extradition relationship in this area. This development represents one of the clearest examples of how international human rights norms can produce concrete changes in the framework of interstate criminal cooperation, even in the absence of formal treaty obligations requiring a specific outcome (Currie, 2010). The contrast with the United States' own Supreme Court, which in *Medellin v. Texas* (2008) declined to give domestic effect to a binding ICJ judgment in a capital case involving consular notification, is striking, and illustrates the extent to which the receptivity of national legal systems to international human rights norms varies significantly across jurisdictions.

This contrast acts as reflecting deeper differences in the interactional legal cultures of the two States: Canada has developed a constitutional tradition of openness to international human rights standards that the United States has largely resisted, particularly in the politically charged domain of capital punishment (Currie, 2010). This divergence is ultimately a function not of formal legal structure alone but of the political and institutional choices through which States define their relationship with the international legal order.

4. THE INTER-AMERICAN SYSTEM AND U.S. CAPITAL PUNISHMENT

The Inter-American human rights system constitutes the regional framework most directly relevant to the legal assessment of capital punishment in the United States, yet it is also the framework within which U.S. engagement has been most conspicuously limited. The

United States has not ratified the American Convention on Human Rights, placing it outside the jurisdiction of the Inter-American Court of Human Rights and significantly constraining the formal reach of the regional system over its domestic practices. This situation is not unique within the OAS membership but is particularly significant given the scale and visibility of U.S. capital punishment practice, which has attracted sustained attention from the Inter-American Commission on Human Rights, from now on the IACHR, as the body competent to examine the conduct of all OAS member States regardless of their treaty commitments (Currie, 2010) .

The applicable legal framework in relation to the United States is the American Declaration of the Rights and Duties of Man (OAS, 1948), a non-binding instrument adopted in the same year as the UDHR that nonetheless serves as the primary human rights standard applicable to OAS member States that have not ratified the Convention. The IACHR has invoked the Declaration in a series of cases involving U.S. capital punishment practice, particularly in cases concerning foreign nationals on death row who were denied consular notification under Article 36 of the Vienna Convention on Consular Relations (1963). These cases formed part of a broader pattern of international scrutiny of U.S. compliance with consular notification obligations in capital cases that culminated in proceedings before the International Court of Justice.

The ICJ addressed this question directly in the LaGrand Case (ICJ, 2001) and the Avena Case (ICJ, 2004), both of which concerned foreign nationals, German and Mexican respectively, who had been sentenced to death in the United States without being informed of their right to consular assistance following arrest. In both cases the Court found that the United States had violated Article 36 of the Vienna Convention on Consular Relations and ordered review and reconsideration of the convictions and sentences of the affected nationals. These judgments are significant not only for their substantive findings but for their illustration of how international legal obligations in the area of consular notification intersect with capital punishment practice, creating specific and judicially enforceable duties that constrain state conduct even in the absence of broader abolitionist commitments (Hood and Hoyle, 2015).

The implementation of the ICJ's judgment in Avena proved deeply problematic, however, and revealed the structural limitations of international legal enforcement mechanisms when confronted with the domestic constitutional architecture of a federal

retentionist State. In *Medellin v. Texas* (United States Supreme Court, 2008), the Supreme Court held that the ICJ's judgment was not directly enforceable as domestic law without implementing legislation, and that a presidential memorandum directing State courts to comply with the judgment exceeded executive authority under the U.S. Constitution. This outcome can be perceived as a failure of norm internalization: the transnational legal process through which international obligations are embedded in domestic legal systems broke down at the critical juncture of judicial enforcement, leaving the ICJ's ruling without practical effect in the U.S. legal order. This resistance can be situated within a broader pattern of U.S. reluctance to engage in the kind of transnational judicial dialogue through which international norms are typically incorporated into domestic constitutional frameworks, arguing that the U.S. Supreme Court has been markedly less receptive to international legal standards than its Canadian or European counterparts (Slaughter, 2004).

Garland has provided a structural explanation for this pattern of resistance, locating it in the decentralized character of the U.S. criminal justice system and the political dynamics that insulate state-level capital punishment practice from both federal executive direction and international legal pressure. The *Medellin* saga illustrates this structural reality with particular clarity: even a binding judgment of the principal judicial organ of the United Nations proved incapable of overcoming the constitutional and political barriers that insulate U.S. capital punishment practice from external legal constraint. The outcome does not reflect a principled rejection of international law but a selective approach to compliance in which domestic constitutional arrangements are invoked to justify non-implementation of inconvenient international obligations a pattern that, as subsequent chapters will examine, characterizes U.S. engagement with international human rights law on capital punishment more broadly.

5. THE DEATH PENALTY AND THE PROHIBITION OF CRUEL, INHUMAN OR DEGRADING TREATMENT: CONVERGENT STANDARDS

One of the most significant developments in the international legal control of capital punishment has been the progressive convergence of standards across multiple human rights systems around the relationship between the death penalty and the prohibition of cruel, inhuman or degrading treatment or punishment. This convergence has unfolded through the parallel jurisprudential development of the Human Rights Committee, the European Court of Human Rights, and other international bodies, each approaching the question from within its own treaty framework but arriving at increasingly aligned conclusions. This is convergence

is seen as one of the defining features of contemporary international human rights law on capital punishment, arguing that the prohibition of cruel, inhuman or degrading treatment has effectively become an independent and expanding source of constraints on state resort to the death penalty, operating alongside and sometimes beyond the protections afforded by the right to life provisions examined in preceding sections (Rodley and Pollard, 2009).

The foundational instrument in this area is Article 7 of the ICCPR, which prohibits subjecting anyone to torture or to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee has interpreted Article 7 broadly and dynamically, recognizing that it applies not only to the act of execution itself but to the conditions and circumstances in which individuals are detained while awaiting execution. This interpretive approach has given rise to the doctrine of death row syndrome, explained earlier. In *Johnson v. Jamaica* (Human Rights Committee, 1996), the Committee found that detention of approximately eleven years under sentence of death in harsh prison conditions constituted cruel, inhuman or degrading treatment in violation of Article 7, establishing that the temporal and material circumstances of death row detention are independently subject to international human rights scrutiny irrespective of the lawfulness of the underlying sentence.

The question of execution methods has similarly attracted sustained attention. In *Ng v. Canada* (Human Rights Committee, 1993), the Committee addressed the extradition of an individual to the United States where he faced execution by gas asphyxiation in California, finding that this method caused prolonged suffering and agony and thus raised serious concerns under Article 7. The significance of this decision as establishing that the manner of execution, not merely the fact of it, is subject to international human rights assessment, a principle subsequently confirmed and elaborated in General Comment No. 36, which identifies stoning, injection of untested lethal drugs, gas chambers, and public executions as contrary to Article 7 (Human Rights Committee, 2018, paragraph 44). This jurisprudential development has particular relevance for the United States, where controversies over the composition and administration of lethal injection protocols have generated both domestic litigation and international criticism.

The European Court of Human Rights has developed a parallel and largely convergent body of jurisprudence through its interpretation of Article 3 of the ECHR. As examined in the preceding section, *Soering v. United Kingdom* (ECtHR, 1989) established that the phenomenon of death row syndrome could constitute inhuman or degrading treatment

sufficient to prevent extradition to a retentionist State. In *Öcalan v. Turkey* (ECtHR, 2005), the Court went further, suggesting that the imposition of a death sentence following an unfair trial might itself constitute inhuman treatment under Article 3, and observing that the evolution of European consensus pointed toward treating capital punishment as incompatible with the Convention's core values situating this development within a broader trajectory of European jurisprudence in which the protective scope of the prohibition of ill-treatment has been progressively expanded to encompass not only physical suffering but psychological anguish and the indignity inherent in awaiting execution.

The Judicial Committee of the Privy Council reached similar conclusions in *Pratt and Morgan v. Jamaica* (1993), holding that execution following prolonged delay on death row would constitute inhuman or degrading punishment, and establishing a presumption that delay beyond five years would ordinarily warrant commutation of sentence.

General Comment No. 36 synthesizes this convergent jurisprudence, affirming that violations of the fair trial guarantees of Article 14 in capital proceedings may render the execution arbitrary under Article 6, while certain methods of execution and conditions of death row detention independently violate Article 7 (Human Rights Committee, 2018, paragraph 44–45). This dual framework of protection through the right to life and through the prohibition of cruel treatment simultaneously significantly strengthens the international legal constraints on capital punishment and narrows the space available to retentionist States to defend their practices as compliant with international human rights obligations.

6. RACIAL DISCRIMINATION AND THE DEATH PENALTY IN INTERNATIONAL JURISPRUDENCE

The relationship between racial discrimination and capital punishment constitutes one of the most extensively documented and internationally scrutinized dimensions of the death penalty debate, particularly in the context of the United States. International human rights bodies have given increasing attention to statistical evidence of racial disparity in capital sentencing, treating such disparities as raising serious concerns under the non-discrimination provisions of international human rights instruments. This section examines the international jurisprudential response to racial discrimination in capital punishment, with particular attention to the tension between U.S. domestic constitutional standards and the requirements of international human rights law.

The empirical foundation for international concern is well established. Authors like Baldus, Woodworth, and Pulaski conducted the most comprehensive statistical analysis of racial disparities in capital sentencing in the United States, demonstrating that defendants whose victims were white were significantly more likely to receive a death sentence than those whose victims were Black, even after controlling for numerous non-racial variables. The Death Penalty Information Center (2020) confirms that this pattern has persisted in subsequent decades, with racial disparities in capital charging, sentencing, and execution remaining a consistent and documented feature of U.S. capital punishment practice. The racial character of American capital punishment cannot be understood without reference to the legacy of slavery, racial hierarchy, and the use of punishment as a mechanism of social control in the post-Reconstruction South—a structural dimension that renders racial disparity in capital sentencing not an aberration but a historically rooted feature of the practice (Garland, 2010).

Racial disparities have been located in capital punishment within the broader phenomenon of mass incarceration and the systemic over-representation of Black Americans at every stage of the criminal justice system. From this perspective, the racial dimension of the death penalty is not an isolated problem amenable to procedural correction but a manifestation of deeper structural inequalities that pervade the U.S. criminal justice system as a whole (Alexander, 2010). This structural analysis is increasingly reflected in international human rights assessments of U.S. capital punishment practice, with treaty bodies and special rapporteurs treating racial disparity not merely as a statistical anomaly but as evidence of systemic discrimination incompatible with international human rights obligations.

The international legal framework applicable to this question is clear. General Comment No. 36 explicitly affirms that the death penalty must not be imposed in a discriminatory manner contrary to the non-discrimination requirements of Articles 2.1 and 26 of the ICCPR, and that statistical data suggesting members of racial or ethnic minorities are disproportionately likely to face the death penalty may indicate unequal application in practice raising concerns under these provisions (Human Rights Committee, 2018, paragraph 48). The Committee on the Elimination of Racial Discrimination has similarly expressed concern about racial disparities in U.S. capital sentencing in its concluding observations, calling on the United States to ensure that the death penalty is not applied in a racially discriminatory manner and to adopt measures addressing systemic racial bias in the criminal

justice system (CERD, 2014). The UN Special Rapporteur on Extrajudicial Executions had also repeatedly identified racial bias as one of the central concerns regarding U.S. capital punishment practice, alongside inadequate legal representation and the execution of persons with mental disabilities.

The divergence between international standards and U.S. domestic constitutional law on this question is particularly stark. In *McCleskey v. Kemp* (United States Supreme Court, 1987), the Supreme Court rejected a constitutional challenge to Georgia's capital sentencing system based directly on the Baldus study, holding that statistical evidence of systemic racial disparity was insufficient to establish a violation of the Equal Protection Clause or the Eighth Amendment's prohibition of cruel and unusual punishment in an individual case. The Court reasoned that demonstrating purposeful discrimination in the specific case was required, a standard that statistical evidence of systemic patterns cannot by itself satisfy. There is a clear divergence between the US constitutional standards and international human rights, and we can see this through decisions like such, since international standards permit the use of aggregate statistical evidence to establish patterns of discriminatory application and place the burden on States to demonstrate that observed disparities have non-discriminatory explanations. *McCleskey* effectively insulated the racial dimensions of U.S. capital punishment from constitutional challenge, leaving international human rights mechanisms as the primary forum within which the systemic racial character of American capital punishment continues to be scrutinized and condemned.

CHAPTER IV: THE UNITED STATES AS A CASE STUDY: SOVEREIGNTY, FEDERALISM, AND SELECTIVE COMPLIANCE

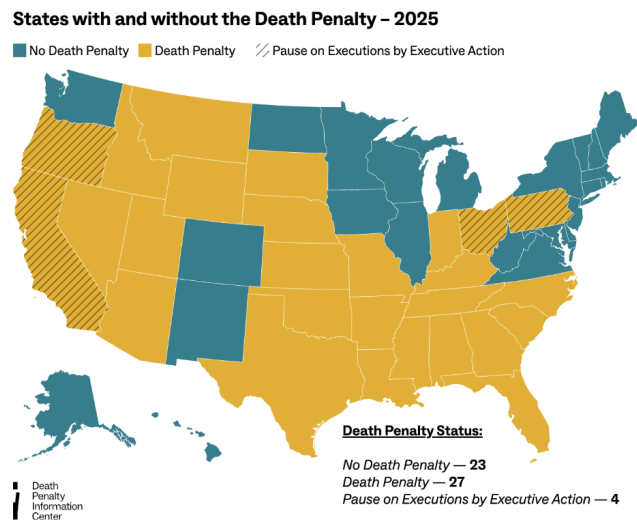
1. CONSTITUTIONAL FOUNDATIONS AND PENAL FEDERALISM

The continued use of capital punishment in the United States cannot be fully understood without considering the constitutional foundations of the American legal system. The federal nature of the United States grants substantial autonomy to individual states in matters of criminal justice, producing significant variations in the regulation and implementation of the death penalty. Consequently, capital punishment is not governed by a single national policy but by a complex interaction between federal authority, state sovereignty, and constitutional constraints (Marcus, 2007)..

First, we should take a look at the constitutional level, where the central provision governing capital punishment is the Eighth Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (U.S. Const. amend. VIII)” The Eight amendment does not provide an explicit prohibition to the Capital Punishment, but rather establish a constitutional standard through which courts assess if punishments, methods of execution or procedures are actually compatible with constitutional limits, shaping how procedural conditions under capital punishment have to be carried out and imposed (Cornell Law School, n.d.-b). Therefore, the question remaining in the United States is not if the death penalty should or should not be abolished, but if its application actually complies with the constitutional standards.

Federalism reinforces the constitutional arrangement, we can see that throughout the history of capital punishment in the US, which has been primarily on state criminal justice systems rather than the federal system (Marcus, 2007). Consequently, although federal death penalty legislation exists, the practical reality of capital punishment in the United States has historically depended much more on state law and state prosecutorial practices than on federal criminal law. This state-centered structure explains why capital punishment varies so significantly across the country. Some states have abolished the death penalty, others retain it but rarely use it, and others have historically applied it more actively. Currently, 27 states out of 50 states have yet not abolished the Death Penalty.

Figure 1: USA Map of states with and without the Death Penalty in 2025



Source: Death Penalty Information Center, 2026.

This geographical unevenness demonstrates that the death penalty is not merely a national constitutional issue, but also a matter of local legal culture, prosecutorial discretion, and state political identity. In this sense, penal federalism allows different states to maintain divergent approaches to punishment while remaining within the same constitutional order.

The role of state legislatures also confirms this decentralized structure. Following the Supreme Court's decision in *Gregg v. Georgia* (1976), which confirmed that capital punishment was not unconstitutional per se, many states enacted or reinstated death penalty statutes designed to comply with constitutional requirements (Marcus. P, 2007). These statutes generally attempted to narrow discretion by identifying specific aggravating circumstances and by creating separate sentencing procedures for capital cases. This legislative response shows that the constitutional permissibility of the death penalty did not itself create a uniform system. Instead, it opened space for states to design their own capital punishment regimes, provided that they complied with federal constitutional standards.

The interaction between the Eighth Amendment and federalism therefore produces a dual logic. On the one hand, the federal Constitution imposes minimum limits on punishment and requires that the death penalty not be administered in a cruel, arbitrary, or disproportionate manner. On the other hand, states retain significant autonomy to decide whether to preserve capital punishment and how to regulate its application. This combination of constitutional constraint and state discretion is essential to understanding why the death penalty persists in the United States despite the broader international abolitionist trend.

In this respect, the American model illustrates a tension between national constitutional oversight and decentralized penal sovereignty. The death penalty survives not simply because it is constitutionally permitted, but because the federal structure of the United States allows state governments to preserve distinct criminal justice policies. Thus, capital punishment in the United States is best understood as a product of constitutional permissibility, state autonomy, and penal federalism.

2. THE ROLE OF THE U.S. SUPREME COURT IN SHAPING CAPITAL PUNISHMENT

Although the Constitution provides the legal framework for capital punishment, the U.S. Supreme Court has played a decisive role in determining its constitutional limits. Through its interpretation of the Eighth Amendment, the Court has progressively shaped the scope, procedures, and categories of offenders eligible for the death penalty. While it has repeatedly refused to declare capital punishment unconstitutional *per se*, its jurisprudence has significantly restricted its application. The resulting body of doctrine has simultaneously constrained and legitimized the death penalty, producing a system that is neither effectively abolished nor consistently applied, and whose relationship with international human rights standards remains deeply ambivalent (Steiker & Steiker, 2016).

The start of a modern engagement between the Court and the Death Penalty came with the foundational case *Furman v. Georgia* (United States Supreme Court, 1972). A case that showed a very divided Court, where it was finally held that the application of the death penalty constituted a cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The five-justice majority produced nine separate opinions, reflecting profound disagreement about the constitutional basis for the decision, but the practical effect was to suspend capital punishment across the United States and to place the burden on state legislatures to devise new sentencing schemes that could survive constitutional scrutiny. At that moment, the complete elimination of the death penalty appeared constitutionally possible (Steiker & Steiker, 2016).

However, opinions changed through the years and so did the Court's. In 1976 it changed with *Gregg v. Georgia* (United States Supreme Court, 1976), in which the Court upheld revised Georgia capital sentencing procedures and changed the past vision establishing that the capital punishment was not prohibited by the Eighth Amendment. The plurality opinion laid the foundations for future constitutional review of capital punishment. It held that the death penalty could remain a lawful punishment if sentencing procedures

reduced arbitrariness, allowed consideration of mitigating factors, and provided adequate appellate safeguards. At the same time, the decision reflected the Court's recognition of the renewed public and political support for capital punishment that emerged in the mid-1970s amid growing concerns over crime and skepticism towards rehabilitation-focused criminal justice policies (Garland, 2010).

The following decades saw the Court develop a body of categorical exclusions from the death penalty that have progressively narrowed its permissible scope, though without questioning the core holding of *Gregg*. In *Atkins v. Virginia* (United States Supreme Court, 2002), the execution of persons with intellectual disabilities was held to constitute cruel and unusual punishment, relying in part on evolving standards of decency as reflected in legislative developments across the states. Authors like Bruce J. Winick mentions how the "Constitution requires a per se finding of diminished responsibility." In 2005, the Court agreed and reached the same conclusion in the case *Roper v. Simmons* (United States Supreme Court, 2005), in regard of minors. Minors lack the sufficient culpability and deterrability to permit execution consistent with the Eighth Amendment (Winick, 2009). The majority opinion made an explicit reference to international human rights standards and the near-universal practice of other nations as evidence of a global consensus against juvenile execution, a methodological openness to comparative and international human law identifying as particularly significant from the perspective of international human rights law (Hood and Hoyle, 2015). In 2008, there was another transcending case limiting the death penalty in the US; however, in this case, the limitation was not of the class of offenders subject to the capital punishment but on the types of crimes for which it may be imposed, it was *Kennedy v. Louisiana* (United States Supreme Court, 2008). The Court held that the Eighth Amendment prohibited the death penalty for the rape of a child where the crime "did not result, and was not intended to result, in death of the victim."

Although the Supreme Court has progressively narrowed the scope of capital punishment through procedural requirements and categorical exemptions, its jurisprudence has ultimately reinforced the legitimacy of the death penalty rather than challenged its existence. While these constitutional restrictions were intended to reduce arbitrariness and enhance fairness, substantial evidence suggests that systemic deficiencies persist.

In a landmark empirical study, Liebman (2000) found that nearly seventy percent of fully reviewed capital cases, over 26 years, contained serious reversible errors, indicating that concerns regarding reliability and consistency continue to affect the administration of the death penalty in the United States.

From the perspective of international human rights law, this jurisprudential landscape presents a paradoxical picture. Decisions such as *Roper* and *Atkins* have brought U.S. practice into closer alignment with international standards by eliminating some of the most widely condemned features of the American death penalty. Yet the Court's fundamental refusal to treat capital punishment as categorically unconstitutional places it at odds with the direction of international human rights law, which explicitly affirms that the death penalty cannot be reconciled with full respect for the right to life (Human Rights Committee, 2018).

3. DOMESTIC POLITICAL IDENTITY AND THE PERSISTENCE OF CAPITAL PUNISHMENT

As we have seen, the constitutional framework and criminal law federalism established by the US Supreme Court has its structural features as well as its divergences; however, the refusal of a complete abolishment of the death penalty in the US comes from a deeper root, it comes from the dynamics of political culture, collective identity, and the symbolic function of punishment in American Public life. Capital punishment has survived not only because of the persistence of long-established legal and institutional arrangements, but because it has been repeatedly re-legitimized through democratic politics, serving as a powerful vehicle for the expression of particular conceptions of justice, retribution, and the proper relationship between citizens and the state (Garland, 2010). The enduring political relevance of capital punishment in the United States is closely linked to a punitive culture that distinguishes the country from most other Western democracies. Throughout the second half of the twentieth century, the death penalty increasingly became associated with broader "law and order" agendas, serving as a political response to concerns over rising crime, social transformation, and perceived challenges to public authority (Garland, 2010). Within this environment, support for capital punishment evolved into a symbol of political conviction and commitment to public security, transcending its role as a mere criminal punishment. Consequently, advocating for abolition often entailed significant political risks, particularly for state-level politicians, thereby contributing to the persistence of legal and institutional obstacles to reform (Garland, 2010).

This punitive orientation shows the broad gap between the US and Europe on their approach on criminal punishment and how to provide a secure and low-rate crime society. While in Europe there is a profound rehabilitative and restorative orientation on criminal justice, the US has well-known developed a rather rough penal culture, with high levels of incarceration rates, long sentences (Whitman, 2003)... This cultural divergence is not accidental but reflects deep differences in the historical development of state authority, the role of local democracy in criminal justice governance, and the relationship between punishment and social solidarity in the two contexts.

This rooted punitive culture can not be inseparable from the racial dimension, as seen in chapter III, statistics have shown how race is a profound reflection of a pattern on the application of the capital punishment, reflecting racial inequality in the criminal justice system. At a deeper historical level, the contemporary death penalty cannot be fully understood without acknowledging its connections to the racial terror of lynching and the use of capital punishment as an instrument of racial domination in the post-Reconstruction South (Garland, 2010).

Public support for capital punishment in the United States, while declining from its peak in the 1990s, has remained substantially higher than in comparable Western democracies, and this popular backing has provided the political legitimacy necessary for its continuation (Unnever & Cullen, 2007). Research suggests that this support is not uniform across racial and social groups but is significantly shaped by racial attitudes, with racial resentment identified as one of the strongest predictors of support for capital punishment among white Americans (Unnever & Cullen, 2007). This finding underscores the extent to which the death penalty in the United States is embedded in structures of racial meaning that go beyond its formal legal character as a criminal sanction.

The cultural and political dimensions of capital punishment's persistence are directly relevant to understanding the United States' resistance to international abolitionist norms. International pressure, however sustained and authoritative, has proven insufficient to overcome the domestic political incentives that sustain the death penalty, because abolition would require not merely legal reform but a fundamental transformation of the political culture within which capital punishment has acquired its meaning and legitimacy (Garland, 2010).

4. U.S. ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS LAW

The United States occupies a distinctive position within the international human rights system. Rather than rejecting international human rights law altogether, it has generally adopted a strategy of selective compliance, accepting certain obligations while limiting or rejecting others that may constrain domestic policy choices. This pattern is especially visible in relation to capital punishment. Although the United States has ratified important human rights instruments, it has simultaneously employed legal mechanisms to preserve its discretion over the use of the death penalty. Understanding this selective approach is essential to explaining the country's continuing divergence from the broader international abolitionist trend.

a. Treaty Ratification and Reservations

The engagement of the US with human rights law in the international field, focusing on capital punishment, is understood with the ratification of the ICCPR; however, this ratification was deemed to some reservations to preserve that selective nature. The ICCPR was signed in 1977 and ratified in 1992, it took that long to ratify it because of a domestic political resistance to human rights treaties (Stewart, 1993). The delay on the ratification showed a profound concern among the US, the thought of a possible threat to federalism, state autonomy and domestic constitutional arrangements were a bigger concern rather than international human rights law obligations (Bradley & Goldsmith, 2000).

With this mindset taken into account, the ratification had to come with reservations and declarations. These mechanisms allowed the United States to participate formally in the international human rights regime while limiting the domestic consequences of that participation. The aim of these reservations were to make sure there was a reconciliation between the Covenant and the US constitution, its federalism system, and their criminal justice practices. Therefore, the ratification did not amount to a full internalization of the Covenant's standards, but rather to a controlled acceptance of international obligations (Stewart, 1993).

As it was mentioned in Chapter II, Article 6 of the ICCPr protects the right to life and establishes restrictions on the use of the death penalty. As mentioned earlier, the article does not explicitly prohibit the use of capital punishment; however, it does limit its application and excludes its imposition and some groups of people. The United States agreed on the exclusion of pregnant women from the death penalty but reserved the right to impose capital

punishment, subject to constitutional limits, including for crimes committed by persons below eighteen years of age (Stewart, 1993). This was significant because international bodies and foreign courts had begun to interpret prolonged death row detention and certain capital punishment practices as potentially incompatible with human rights standards. By tying Article 7 to domestic constitutional doctrine, the United States avoided accepting a broader international interpretation that might have restricted its capital punishment system more deeply.

The federal structure of the United States also shaped its treaty practice. Because criminal law, including capital punishment, is largely regulated at state level, the United States adopted an understanding that the Covenant would be implemented consistently with its federal system. This meant that federal authorities would act within their constitutional powers, while state and local governments would remain responsible for matters within their own jurisdiction (Stewart, 1993). Such conditions were designed to protect domestic institutional arrangements while still allowing the United States to appear engaged in the international human rights system (Bradley & Goldsmith, 2000).

From an international perspective, these reservations were controversial. The U.S. ratification of the ICCPR was accompanied by statements aimed partly at limiting the effect of international norms concerning the restriction and eventual abolition of capital punishment. He also observes that these reservations were challenged by treaty partners and by the Human Rights Committee, particularly because of their implications for the death penalty. Therefore, the U.S. position illustrates a form of selective compliance: the United States accepted the general framework of the ICCPR but resisted those elements that could undermine its domestic retention of capital punishment.

b. Resistance to the Abolitionist Protocol

The refusal of the United States to join the Second Optional Protocol illustrates the limits of its engagement with international human rights law. While the United States accepted the ICCPR through a system of reservations designed to preserve domestic autonomy, it has consistently rejected any treaty requiring the complete abolition of capital punishment. The Second Optional Protocol, adopted by the UN in 1989, constitutes the universal treaty that explicitly abolishes the use of the death penalty. The ICCPR in article 6

regulates and limits its use, but does not prohibit it; however, the Second Protocol requires the State parties to abolish the capital punishment and stop those executions within their jurisdiction (Neumayer, 2008).

For the United States, adherence to such an instrument would represent a fundamentally different commitment from ratification of the ICCPR itself. When the Covenant was being discussed, the American policymakers highlighted that their constitutional framework allowed the use of the death penalty as the most severe sentence for those most serious offences. When the ratification was in the making, 37 states, a majority, continued to support the use of capital punishment; moreover, the Supreme Court had upheld its constitutionality (Stewart, 1993). Consequently, the United States attached a reservation to Article 6 of the ICCPR preserving its right to impose capital punishment under domestic law rather than accepting the international trend toward abolition.

The significance of the Second Optional Protocol lies precisely in the fact that it goes beyond mere domestic abolition. Ratification entails a more demanding and irreversible commitment because States Parties cannot subsequently reintroduce or expand the use of the death penalty after accession. Furthermore, they become subject to international monitoring mechanisms, including reporting obligations before the Human Rights Committee and procedures through which states or individuals may raise concerns regarding compliance (Neumayer, 2008). Opposition to international human rights treaties in the US has much more to do with the concerns about the perseverance of federalism rather than the concern for human rights. Critics feared that international legal commitments could restrict the ability of citizens and state governments to determine their own criminal justice policies through democratic processes (Stewart, 1993). The Protocol also carries an important normative dimension. Its preamble presents abolition as a necessary step for the advancement of human dignity and the effective protection of the right to life. Ratifying states therefore undertake not merely a domestic reform but an international commitment to the abolitionist cause (Neumayer, 2008).

CONCLUSIONS

This thesis has analysed the tension between state sovereignty and the growing influence of international human rights law through the case of the death penalty in the United States. The starting point of this research was the recognition that capital punishment appears increasingly inconsistent with the values and principles promoted by contemporary international law. Nevertheless, despite this trend, many domestic legal systems continue to regard the death penalty as a lawful criminal sanction.

The study demonstrates that, although there is a clear international trend towards the abolition of capital punishment, abolition has not yet become a universally accepted practice. In other words, the death penalty is not universally prohibited, as a significant number of States still retain and apply it within their domestic legal systems.

Despite this reality, international human rights law has progressively contributed to the development of an increasingly abolitionist normative framework. Through international treaties, regional human rights systems, judicial practice, and the gradual consolidation of abolitionist standards, the international community has increasingly restricted the legitimate use of capital punishment. As a result, while some States continue to prioritise sovereign authority over criminal justice matters, their discretion is subject to growing limitations and scrutiny deriving from international human rights law authority.

Based on the above, the main findings of this research can be outlined as follows:

1- The relationship between state sovereignty and international human rights law should not be understood as a zero-sum conflict.

While States remain the primary actors responsible for criminal justice policy, international human rights norms increasingly influence the acceptable limits of punishment and shape expectations regarding the protection of fundamental rights.

2- The international legal framework demonstrates a clear global trend towards abolition.

Although no universal prohibition exists, the adoption of the Second Optional Protocol to the ICCPR, the abolitionist practice of an increasing number of States, and the

development of regional human rights systems reveal a progressive consolidation of abolition as the preferred international standard.

3- Regional human rights mechanisms have played a decisive role in advancing abolitionist norms.

The European system has established the most complete prohibition of capital punishment, while the Inter-American and African systems have progressively strengthened the protection of the right to life and promoted restrictions on the use of the death penalty. These developments illustrate how regional institutions can contribute to the evolution of international human rights standards.

4- The United States occupies an increasingly exceptional position within the international community regarding capital punishment.

While maintaining the legality of the death penalty under domestic law, it faces growing divergence from international trends and repeated criticism from international organisations and human rights bodies. This situation highlights the challenges that arise when domestic legal traditions conflict with evolving international norms.

5- Despite the absence of a binding universal prohibition, the cumulative effect of treaty obligations, international monitoring mechanisms, judicial decisions and state practice has progressively narrowed the scope of legitimate use of capital punishment. International law therefore functions not only through formal legal prohibitions but also through normative pressure capable of influencing state behaviour over time.

In conclusion, the case of the death penalty demonstrates that sovereignty in the contemporary international legal order can no longer be understood as unlimited discretion. The evolution of international human rights law suggests that the legitimacy of capital punishment is increasingly questioned, reinforcing a broader movement towards the universal protection of human dignity and the right to life.

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II. Jurisprudence

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ANEXO.- DECLARACIÓN USO IA



Curso 2025__ / __2026_

ANEXO: Declaración de uso de herramientas de IA generativa

Nombre Grado/Máster:	Derecho y Relaciones Internacionales E-5
Nombre Alumno:	Amanda Bueno Mars
Coordinador/a TFG/TFM:	Marta Paradés
Nombre Director/a de TFG/TFGM:	Alfredo Dos Santos Soares

Declaro que para la elaboración del presente Trabajo Fin de Grado / Trabajo Fin de Máster se ha utilizado inteligencia artificial generativa como herramienta de apoyo.	SÍ	NO
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1) Uso de la IA Generativo

Si tu respuesta ha sido SÍ, contesta a las siguientes preguntas. Si has contestado NO, pasa al apartado 2.

Uso ético

	SÍ	NO
¿A la hora de usar la herramienta IA, en los <i>prompts</i> utilizados has incluido datos de carácter sensible o de carácter personal (fotos de personas reales, datos personales, etc.)? <i>Si tu respuesta es afirmativa especifica cuáles.</i>		x
¿Has orientado tu uso a suplantar tu trabajo personal sin hacer una revisión crítica de la extraído en la herramienta IA? <i>Si tu respuesta es afirmativa especifica cuáles.</i>		x
¿Has tenido en cuenta las recomendaciones académicas que te han hecho específicamente en el Grado/Máster sobre lo que está permitido o no con la IA?	x	

Uso técnico realizado:

¿Qué herramientas has utilizado (ChatGPT, Copilot, Claude, Nano Banana...)? Especifica la versión o tipo de licencia. **Chatgpt Plus y Claude**

Marcar lo que corresponda:

X Generación de texto (*Especificar qué herramientas*): Batería de ideas inicial para ayudar en el enfoque del trabajo, en especial con los diferentes tratados y convenios sobre el “Death Penalty”. Ideas para

estructurar el índice inicial y las otras versiones y a su vez reagrupar contenidos de epígrafes más cohesionados.

X Reformulación (*Especificar qué herramientas*): Se realizaron sugerencias orientadas a mejorar la precisión de los epígrafes del índice, la coherencia interna de la argumentación y la claridad expositiva del texto. En particular, se señalaron posibles redundancias argumentativas y se identificaron oraciones excesivamente largas o complejas, proponiéndose alternativas de redacción más claras, cuya formulación final fue realizada por mí.

X Traducción / corrección (*Especificar qué herramientas*): Ayuda en algunos aspectos del trabajo al ser éste en inglés.

X Sugerencia de estructura (*Especificar qué herramientas*): Reorganización del índice inicial en epígrafes más cohesionados. Ayudas para la realización del Índice.

X Apoyo metodológico (*Especificar qué herramientas*): Orientación sobre cómo justificar la elección metodológica en términos académicos. Evaluación de si la extensión y distribución del contenido entre capítulos era equilibrada y proporcional a los objetivos planteados. Orientación sobre qué tipo de fuentes (normativas, jurisprudenciales, doctrinales, informes de organismos internacionales) eran más pertinentes para un análisis jurídonormativo de estas características. Valoración crítica del trabajo en su conjunto con estimación de calificación y señalamiento de las áreas que requerían mayor desarrollo o rigor analítico para alcanzar la mejor nota posible.

X Buscar o citar bibliografía (*Especificar qué herramientas*): Orientación sobre palabras clave para la búsqueda de fuentes primarias y secundarias relevantes para el tema. Indicación de bases de datos y repositorios donde localizar jurisprudencia, doctrina académica y documentos institucionales

Generar contenido audiovisual (videos, infografías, audios, imágenes, gráficos. *Especifica en concreto qué contenidos has generado con IA además de citarlo correctamente en el trabajo.*

Otros (*Especificar qué herramientas*)

Confirmando que el contenido final ha sido revisado, corregido y validado íntegramente por mí como autor/a y asumo la plena responsabilidad académica del mismo.

La utilización de la IA no ha sustituido el análisis crítico, la reflexión personal ni el trabajo intelectual propio exigido en un TFG/TFM.

Firma:

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, positioned below the 'Firma:' label.

