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Trends. Terrorism and the Death Penalty

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The United States (US) Attorney General has apparently authorized federal prosecutors to seek the death penalty against a defendant implicated in bombings of US Embassies in Kenya and Tanzania. The lawyers representing this defendant are (perhaps understandably) against this authorization. But the question remains whether seeking the death penalty against this defendant is prudent.

First of all, seeking the death penalty may have pre-conviction benefits: e.g., facilitating the obtaining of information that can have antiterrorist and counterterrorist value (in return for later seeking a reduced sentence), increasing the probability of a justified conviction (again, in return for later seeking a reduced sentence), deterring some further acts of terrorism (if the sentence sought is not later reduced), and providing some immediate sense of obtaining a "pound of flesh" among family and friends of the victims and various "societies" (that may prove transient if the sentence is reduced).

As can be surmised from the above, a post-conviction death penalty may also have benefits as to deterrence of some terrorist acts of some terrorists and as to the "pound of flesh" (assuming that the pound is ethically congruent with the crime and, indeed, is ethical at any time.) However, in the present case, a post-conviction death penalty can have a downside in the context of the deterrent, rehabilitation, and punishment consequences of any penalty. For example, the defendant allegedly expected to die during the terrorist operation. Is the death penalty a deterrent against suicidal terrorists or an attraction? Rehabilitation is not an issue for a suicidal terrorist--although some analysts may claim that rehabilitation efforts might be the best punishment for this sort of perpetrator, while others claim that suicidality is a transient or cyclic phenomenon and, thus, rehabilitation would be a germane aspect of a penalty. Finally, even if punishment--in the sense of a death penalty that would be aversive to many people--may not be aversive to the defendant, it still can reinforce the notion of the linkage of social sanctions and a social sense of the rule of law even within the context of a calculus concerning the death penalty as a human rights violation.

In conclusion, one must not be too quick to discount the death penalty for a suicidal terrorist. Even a "glorious death" for the perpetrator may still have useful and ethical consequences for the survivors. (See Byman, D. (1998). The logic of ethnic terrorism. *Studies in Conflict & Terrorism*, 21, 149-169; Florian, V., & Mikulincer, M. (1998). Symbolic immortality and the management of the terror of death: The moderating role of attachment style. *Journal of Personality & Social Psychology*, 74, 725-734; McPherson, S.B. (1992). Death penalty mitigation and cult membership: The case of the Kirtland killings. *Behavioral Sciences & the Law*, 10, 65-74; Weiser, B. (May 10, 2000). U.S. to seek death penalty in embassy attacks, defense says. *The New York Times*, p. A27.) (Keywords: Death Penalty, Terrorism.)