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Nov 04, 2016 by [Markos Kounalakis](#)

Snowden, Capital Punishment and Why the U.S. Won't Get Him Back ^[1]

The heated debate surrounding NSA leaker Edward Snowden usually revolves around two extreme positions: Some consider him a hero and a whistle-blower worthy of clemency, while others consider his acts treasonous and believe he should be subject to the harshest punishment in our penal system.

Ironically, that very same penal system makes getting Snowden back to the United States nearly impossible.

The reason? The punishment meted to traitors can include death. And nearly all our allied nations and many others refuse to extradite criminal suspects to the United States if they are potentially subjected to capital punishment.

Which is why in the case of Snowden, Attorney General Eric Holder wrote a letter to the Russian Justice Minister last year saying that he would not seek the death penalty in his case. The letter, which accused Snowden of theft and espionage, was intended to erase the death penalty extradition hindrance. Holder went on to clarify that “the United States would not seek the death penalty even if Mr. Snowden were charged with additional death penalty-eligible

crimes.”

Snowden is not the first American fugitive to receive a get-out-of-capital-punishment free card. In case after case, and on a case-by-case basis, the United States engages diplomatically with other countries to provide assurances that some of the most heinous crimes committed by fugitives abroad will not be subject to capital punishment in the United States. It is usually the only way to get those criminals – some of them accused of terrorism – back to the United States to face any justice at all.

As a result, it creates a two-tier sentencing system for those committing horrendous crimes against Americans: one for those who get caught in the United States, such as Oklahoma City bomber Timothy McVeigh, who was executed by lethal injection; another for those who are captured outside our national territory, such as Abu Hamza, an Islamic militant kept in Britain for nearly eight years before he was extradited to the United States to face terrorist related charges. If guilty, he will never face the death penalty.

If non-U.S. forces had captured Osama bin Laden while alive, the fugitive might not have been extraditable to the United States. During the hunt for bin Laden in 2001, British Defense Secretary Geoff Hoon put the U.S. government on notice that had British troops found the world’s most wanted criminal, they would have required assurances that the United States would not seek the death penalty before handing him over.

The death penalty in the United States also creates the perverse reality that the more heinous the crime, the less likely a fugitive in a foreign land will see swift justice in the United States. The less consequential a felony – grand theft auto, for example – the more likely the extradition. “If you steal a car in the U.S., Mexico will return you to face prosecution and punishment. If you kill the driver, Mexico will protect you,” said Sen. Dianne Feinstein, D-Calif., in the Congressional Record at the end of 2003.

This is not theoretical. In April 2002, Los Angeles County Sheriff’s Deputy David March conducted a routine traffic stop. March was shot dead, execution style, by Armando Garcia, who then immediately fled south of the border to Mexico to join at least another 350 alleged murderers and criminals who were effectively non-extraditable to California. Garcia was eventually returned after years of legal and diplomatic engagement to satisfy the Mexican government and its restriction on extraditing to countries that practice the death penalty. Garcia received a life sentence in 2007.

In the last few years, Californians have become much more sophisticated about capital punishment. In 2012, voters in this state rejected Proposition 34, which would have banned the death penalty, but were actively engaged in the debate – a debate that raised serious questions about deterrence, cost and morality.

The capital punishment questions that all Americans now need to ask include: Why do we give up our chance to get back well-known criminals living overseas? Is it fair to have a system that requires an exemption for the most egregious crimes and criminals and no exemption for those criminals who act and are caught within U.S. territory? Why maintain an incentive for criminal acts against the United States and its citizens abroad, while maintaining the ultimate punishment for those who commit similar acts inside the country?

Our more globally integrated society requires increasingly expedient and assured justice. That

will be difficult to achieve as long as the death penalty remains on our books.

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