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The Death Penalty: Is It a Deterrent?



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ABSTRACT

The death penalty, whether or not it is a deterrent in preventing capital murders, is relevant to law enforcement because it affects all of society regardless of points of view on the death penalty. The death penalty, at first glance, appears to be not performing the job that it was originally intended to do. Criminals continue to commit horrible violent crimes even in states that hold executions. Some research studies support the opinion that the death penalty does not deter crime (Bowers & Pierce, 1980; Sorenson, Wrinkle, Brewer, & Marquart, 1999; Radelet & Lacock, 2009). However, the research has not been convincing enough to abolish the death penalty as a form of punishment for heinous, violent crimes.

The intent of this paper is to explore contributing factors preventing the death penalty from deterring potential criminals. To support the position of this paper, a historical review of the death penalty was researched, along with research studies, internet sites, newspaper articles, and interviews. It is the position of this paper that currently, the death penalty is not an effective deterrent of crime but merely the most severe punishment one can receive for committing crimes of a heinous nature. The only entity that it really deters from committing future crimes is the actual person who receives the death penalty. Therefore, this paper recommends that court proceedings, such as sentencing, death row, and execution take place within a shorter time by removing unnecessary time delays so that executions are held more often. As a result, it will not only reduce expensive legal proceedings but also will positively impact deterrence, thus reducing overall crime rates.

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INTRODUCTION

The death penalty, as practiced in the United States today appears ineffective in doing the job of deterring crime. The sentence of death, otherwise known as the death penalty, is a severe punishment for violent acts of murder. The ultimate sentence of death by execution is supposed to deter others from committing those types of crimes. However, in recent times, the death penalty appears to have become ineffective in doing exactly that job. Nevertheless, the death penalty has a useful purpose in the criminal justice system as the appropriate punishment against criminals who commit heinous crimes. After all, the death penalty is a serious sentence, meant as a serious deterrent against heinous crimes. However, in order for the death penalty to be a serious deterrent to potential criminals, changes need to be done to make the death penalty sentence more ominous and threatening.

Historically, societies have had crime and punishment; this goes as far back as the eighteenth century B.C., when King Hammurahi of Babylon established the first death penalty laws for 25 different crimes. However, in today's society, the most controversial type of punishment is the death penalty, also known as capital punishment. The death penalty, as mentioned previously, has been around since biblical times, which includes the famous execution of Jesus of Nazareth. According to the Wikipedia Encyclopedia (2009c), executions methods have included crucifying, stoning, beheading, hanging, firing squads, electrocution, gas chambers, as well as, the most commonly used today, death by lethal injection.

In other countries, the death penalty's effectiveness is part of the culture or religious beliefs. For example, according to the Wikipedia Encyclopedia (2009a), the

death penalty punishes individuals for committing crimes such as kidnapping, rape, adultery, sodomy, murder, as well as for political reasons. In the United States, however, the death penalty is reserved for the crime of murder. In the state of Texas, for example, the death penalty or capital punishment, must meet specific requirements for murder. These requirements are murder of a public safety officer or firefighter in the line of duty, murder during the commission of specified felonies such as, kidnapping, burglary, robbery, aggravated rape, or arson. Capital punishment requirements also include multiple murders, such as, murder during a prison escape, murder of correctional officers, judges, state prison inmates, and murder of individuals less than six years of age (Texas Penal Code, § 19.03).

Even though there is much debate on whether or not the death penalty deters crime, the fact remains that most states have the death penalty in the United States and still hold executions. According to the Death Penalty Information Center (2009), 37 states in the United States still enforce the death penalty. The remaining 13 states are non- death penalty statute or have abolished it. In addition, according to the statistical information from the Death Penalty Information Center (2009), since 1976, the state of Texas holds the record for the highest number of executions. At the same time, however, Texas inmates remain on death row an “average of 10.26 years before execution” (Alsup, 2009, Texas Execution Facts section, para. 1).

Upon review of the literature and history of the death penalty, different nations and cultures have dealt with criminals in society rather quickly. According to the Death Penalty Information Center (2009), administrations of executions were swift and public in an effort to deter potential criminals from committing crimes. Protecting society from

criminals who commit murder was considered the job of governing authorities and, thus, morally acceptable. Throughout history, those in favor of the death penalty have used God and passages from the Bible to justify severe punishment for violent crimes.

A book written by Walter Berns, American Constitutional law and political philosophy professor, as well as winner of the National Humanities Medal from President George W. Bush in 2005, who supports capital punishment, mentioned in his book that people reference bible verses to justify and support the death penalty. For instance, the Book of Genesis 9:6, (New King James Version) said, “who so sheddeth man’s blood, by man shall his blood be shed for in the image of God made he man”, (as cited in Berns, 2005, p. 12). This bible passage clearly adds sustenance and support for the death penalty. Death penalty proponents also believe that God gives man the moral duty to execute those who choose to take the lives of others. The Book of Exodus 21:12, (New Kings James Version) is often also referred for support as well, and it says, “he that smiteth a man, so that he to, shall be surely put to death.”

Nevertheless, and in spite of all the religious, moral, and political reasons for defending the death penalty, by the early 1970s, the Supreme Court ruled that the death penalty, and particularly methods of execution, as “cruel and unusual punishment” and, therefore, unconstitutional. Pope John Paul II, of the Roman Catholic Church, also joined in stating that the death penalty was “cruel and inhuman punishment” (America Magazine, 2009, p.1). The death penalty, as a result, went through a decade of unpopularity with the public, judicial system, and the Roman Catholic Church, ultimately resulting in the U.S. Supreme Court’s moratorium on executions until reinstatement in 1976.

Twenty-five years later, in 2003, the death penalty was examined once more except on the issue of criminal deterrence. Janet Reno was referring and reacting at the time to a series of studies that offered, “mixed scientific evidence” on the deterrence effect of the death penalty prior to Mocan & Gittings’ study (2003, p. 454). The death penalty received another public criticism in early 2009, when Governor Martin O’Malley of Maryland, who long opposed the death penalty, said, “we should outlaw the death penalty because it is expensive, outdated, and utterly ineffective tool in deterring violent crime” (America Magazine, 2009, p. 1).

For historical information purposes, researchers Bowers and Pierce, in the 1980s, found and reported on one of the first statistical studies performed on executions and crime deterrence, giving early support to those in opposition to the death penalty. Robert Rantoul, Jr., a Massachusetts legislator, conducted this first study in 1849. Rantoul gathered data from different nations whose rates of executions were much smaller than the state of Massachusetts. Rantoul collected data from England, France, Prussia, Belgium, and other countries. Rantoul’s study revealed three very interesting observations, which are surprisingly not very different from opposing research studies today. First, executions did not decrease crime in society. Secondly, “in countries where the number of executions were low and/or not publicized, the numbers of murders actually declined” (as cited in Bowers & Pierce, 1980, p. 456). In addition, and most odd, was that Rantoul observed that, “violent murders and assaults, rose in the days prior to and after an execution were carried out” (p. 457). Another similar study along these lines appeared in 1971. This study suggested that after President John F. Kennedy’s assassination and other publicized murders, “violent crime rose significantly

in the months following the publicized assassination and executions” (as cited in Bowers & Pierce, 1980, p. 457). These first studies obviously suggested that murders and executions brought out the worst in people. These early studies based their conclusions on data, information, and resources available at that time and did not take into account all the variables that can make understanding the effects of the death penalty on deterrence very complicated to define. Therefore, it is possible that initial studies on murder and executions were not entirely accurate.

POSITION

The position of this paper is that the death penalty is an effective deterrent to capital crimes and the death penalty saves lives. The death penalty sentence is serious, and its intention is to punish offenders who commit murder and to deter possible offenders. This opinion is supported by new evidence since the middle of the 1990s, mainly in economic journals that, “executions have strong and powerful deterrent effects on homicide” (Fagan, 2006, p. 262). This new evidence actually started in 1975 with a study by Isaac Ehrlich, a distinguished Professor of Economics, who examined the effects of deterrence on criminals. He was the first researcher to find that the death penalty had a strong deterrent effect on criminals. Ehrlich developed a “theoretical model that explained crime as a process of rational choice between illegal and legal behavior” (as cited in Fagan, 2006, p. 256). This theory looked at how well the law responded to illegal activities, thus criminals knowing the consequences would avoid punishment. Ehrlich’s model gained much respect at the time and was cited in *Gregg v. Georgia*, the landmark U.S. Supreme Court decision, which helped restore the death penalty in 1976.

However, after 1976, those opposed to the death penalty published studies in professional journals that misinterpreted Ehrlich's findings and methods, thus creating confusion and criticisms of his work on criminal deterrence. As a result, opponents of the death penalty continued to take full advantage in claiming that executions did nothing to deter crime. Almost nine years later, in 1985, a study done by Professor Layson of the University of North Carolina at Greensboro reconfirmed Ehrlich's earlier findings. Nonetheless, those against the death penalty ignored Layson's study.

Those in favor of the death penalty tend to agree with what former Prime Minister of England, Margaret Thatcher, said in a television interview, in which journalist Gill Nevill, of Thames Television for Channel 4, asked her whether England should restore the death penalty:

I personally have always voted for the death penalty because I believe that people who go out prepared to take the lives of other people forfeit their own right to live. I believe that the death penalty should be used only very rarely, but I believe that no-one should go out certain that no matter how cruel, how vicious, how hideous their murder, they themselves will not suffer the death penalty. (as cited in Nevill, 1984, Conclusion section, para. 9)

Fortunately, in the past ten years, new research studies have appeared, confirming once again the connection between executions and deterrence. In 2003, a study published by Mocan & Gittings found a "significant relationship among the execution, removal, exonerations and commutation rates and the rates of homicide" (p. 494). They concluded that "each additional execution resulted in five fewer homicides and each commutation of a death sentence to a long or life prison term resulted in five additional homicides" (p. 494). In other words, with every removal of a criminal from death row through pardons, exonerations, or commutations, the rates of homicides tend

to increase because placement in death row is no longer a serious deterrence to would be criminals. At the time this significant study was published, most of the public ignored this information, including Attorney General Janet Reno because of the strong political climate against the death penalty.

In 2004, a study done by Professor Zhiqiang Liu, a well-known economics scholar, using econometric models, concluded that “executions not only deter murders, but they also increase the deterrent effects of other punishment” (as cited in Fagan, 2006, p. 258). Liu’s 2004 study helped reinforce a study done earlier in 1999, by Ehrlich and Liu (1999), which concluded, “the probability of conviction has a larger deterrent effect on the incidence of murder than the conditional probability of execution” (Ehrlich & Liu, 1999, p. 486). In other words, if potential murders realize that upon arrest and conviction, the chances of receiving the death penalty and scheduled execution is certain, they might think twice before killing a human being.

The following study speaks to the issue of long delays in death row inmates having a negative effective on crime. Katz, Levitt & Shustorovich (2003) stated in their study about current prison conditions, “given the rarity with which executions are carried out in this country, and the long delays in doing so, criminals are not deterred by the executions, they are not held often, this does not deter criminals” (p. 341). A year later, an information study done by Levitt (2004), exploring crime in the 1990s, concluded that, “it is hard to believe that the fear of execution would be a driving force in a criminal’s mind as it is practiced in modern America today” (p. 175). These three studies began to uncover factors getting in the way of state executions, causing the death penalty not to be an effective deterrent.

In 2004, Joanna Shepherd, PhD., Assistant Professor of Law and Economics at Emory University, explored long death row waits. Shepherd (2004) made a couple of interesting observations in her study. She stated that modern research methods could not use statistics to measure deterrence. The reason being that deterrence is not an immediate reality to criminals because of the long wait between sentencing and execution. Shepherd supported her statement by using the latest data and research methods to measure two items: deterrence on murders and the effects of execution delays on deterrence. According to Shepherd's study, there is a correlation between long death row waits and murder rates. In other words, the longer the wait is on death row before execution takes place, the higher the murder rate because deterrence effect is less of a reality and threat to would be criminals both in prison and outside. This is and continues to be a significant finding because it illustrated how deterrence can be determined in a criminal's minds if potential criminals see that inmates remain on death row for a decade or more. In response to this new evidence found on long death row waits and criminal deterrence, Professor Shepherd testified in 2004 before the Federal House of Judiciary Committee, claiming that, "based on new sound scientific evidence, each execution deters between three and eighteen murders" (as cited in Fagan, 2006, p. 259).

Finally, a study done by Dezhbakhsh & Shepherd (2006) used judicial experiments, meaning court cases were reviewed that lead to executions and the deterrent effect of capital punishment. Their study revealed that "capital punishment has a deterrent effect and executions deter murders in distinct ways and "each execution results on average, in eighteen fewer murders" (as cited in Fagan, 2006, p.

264). This study adds support to the theory that when executions are held on a regular basis, the deterrence effect does its job in saving lives.

These new studies have gone on to explore issues that have a negative impact on the death penalty. Delays such as long death row waits, pardons, commutations, and exonerations cause murder rates to increase because the death penalty becomes less of a real threat to would be offenders. Currently, inmates remain on death row for a decade or more before execution. Long death row waits do not help deter criminals from committing future offenses nor reduce crime rates. Furthermore, as stated earlier, the long wait period between sentencing and execution drains state budgets and taxpayers of millions of dollars in legal fees and inmate living accommodations. Reducing the number of years inmates spend on death row will restore respect for the death penalty and deter more offenders from committing murder.

COUNTER POSITION

Those in favor of the death penalty believe that the death penalty sentence is justified because it protects the greater good of society. This point of view was clearly illustrated and supported in a recent article published in a ProCon Organization (2009) article stating that the death penalty is an “important tool for pressuring law and order and that it deters additional crime thereby saving innocent lives” (p. 2). This statement, in all fairness, is sometimes difficult to understand by those against capital punishment because the entire idea of saving innocent lives by executing murderers touches society’s moral conscience. However, justice for all cannot be carried out if sanctions are not enforced. On the other hand, those opposed to the death penalty naturally support research studies that claim that executions do not reduce crime rates. One

study published by Sorenson, Wrinkle, Brewer, & Marquart (1999) speculated that, “if a deterrent effect were to exist, it would be found in Texas because of the high number of death sentences and executions within the state” (p. 490). In Texas, however, inmates sit on death row an average of ten years, and sometimes more, before execution takes place because of lengthy court trials and procedures. In addition, according to a study done by Cloninger and Marchesini (2001), “as the result of the unofficial moratorium on executions during most of 1996 and early 1997, the citizens of Texas experienced 90 additional innocent lives lost to homicide” (as cited in Fagan, 2006, p. 264).

To date, studies on deterrence and the death penalty against the death penalty are not convincing enough to warrant the complete abolishment of the death penalty. There are important issues to consider in obtaining a clear picture of what exactly is going on with the death penalty today. Items to take into consideration when looking at deterrence and executions is comparing capital punishment in the United States between pre-moratorium executions and post moratorium executions. Each period in history “is shaped by legislation, public opinion and judicial rulings that had powerful effects on the number of inmates on death row and the number of prisoners executed” (U.S. Department of Justice, 2000, p. 46). One such example is methods of execution used prior to execution moratorium. Today, lethal injection is used, which is more humane, instead of harsher methods such as, hanging, the gas chamber, or the electric chair. Secondly, and according the Crime and Justice Atlas statistics, the ratio of persons on death row and execution is different between the two time periods. In 1953, 131 persons were on death row, while 62 were executed, a ration of 2:1. In 1960, the ratio of death sentences to executions was 4:1, and by 1984, the ratio was 67:1. It is

clear that more persons are sitting on death row than were executed. To further validate these statistics, a 2003 study done by Dezhbakhsh & Shepherd (2006) using state-level panel data from 1960 to 2000, compared the relationship between executions and murder incidents before, during, and after the U.S. Supreme Court's death penalty moratorium. They found that executions had a significant relationship with murders, "every state that placed a moratorium on executions had an increase in murder rates" (p. 530). Another factor to take into consideration, since 1994, is that 37 states enacted the Truth-in-Sentencing and Three-Strike laws to deter criminals. According to RAND studies, "it is too early to fully understand the impact of these laws on crime" (U.S. Department of Justice, 2009, p.10). Finally, as mentioned earlier, criminals and society have a different perception of crime and punishment than they did before moratorium: "States have varied greatly in their policies regarding the execution of criminals and attitudes within individuals states and the national as a whole have changed through time" (U.S. Department of Justice, 2009, p. 46).

Opponents of the death penalty also use statistical reports prepared by both private and public agencies to add weight to the debate by comparing death penalty states with non-death penalty states. One example prepared by the Catholic Church Teaching on the Death Penalty (2009) claimed that the average murder rate in death penalty states is 5.3 compared to 2.8 in states without the death penalty. The murder rate is defined as murders per 100,000 inhabitants. Statistics from the 2004 FBI Uniform Crime Report (U.S. Department of Justice, 2004) also quoted by the Catholic Church Teaching on the Death Penalty, stating that the Southern states account for more than 80% of the executions and have the highest murder rates. In contrast, the

Northeastern states, which have less than 1% of the executions, have the lowest number of murder rates. Once again, statistics such as these are misleading because they fail to take into consideration the direct correlation between median household income and crime rate in those southern states. The southern states, according to the 2009 Uniform Crime Report published by the Federal Bureau of Investigation, also happen to have one of the lowest household incomes, far below the national median. The northeastern states, on the other hand, have the highest household incomes (Wikipedia Encyclopedia, 2009b, States section, para. 1). Obviously, having a huge percentage of a state's population unemployed or underemployed will have a negative impact on crime rate, as well as changes in drug problems. Each state has its own unique problems depending on its region, population, and culture. These are factors to consider when comparing crime rates from state to state.

In 2006, Radelet & Lacoock (2009) did a survey whereby 94 criminologists answered a questionnaire. Out of the 94 criminologists surveyed, 79 responded. The results were compared to a 1996 survey. The survey asked a series of questions to ascertain whether the death penalty was an effective deterrence compared to long-term imprisonment based on their understanding of the body of research on criminal deterrence. The results were very similar to the 1996 survey, 85% to 89% on each of the 12 questions felt that "the death penalty does not add any significant deterrence effect above that of long-term imprisonment" (Radelet & Lacoock, 2009, p. 503). The results of this study are questionable at best because of the small number of participants who returned the survey. This survey does not represent all the criminologists in the United States, making the study's creditability debatable.

Those against the death penalty are quick to point out how costly the death penalty is to adjudicate from start to finish. For instance, the Washington Coalition to Abolish the Death Penalty, on the facts of the cost of the death penalty, reference a study done by Duke University in 1993, comparing costs of adjudicating capital and non-capital cases. This study found that “capital cases cost at least \$2.16 million per execution” (as cited in the WCADP fact sheet, p. 1). The Duke University study is the only comprehensive cost analysis done in the country to date. This financial information is presently true; however, it does not take into consideration that the reason it costs millions of dollars per execution is the lengthy court trials and appeals process, which drags on for years. However, the Anti-Terrorism and Effective Death Penalty Act of 1996, if enforced uniformly, can complete this part of the capital punishment phase more rapidly. Death row inmates should not be allowed to live a decade or more by filing numerous appeals, causing unnecessary costly delays. The reduction of unnecessary costly delays would decrease time on death row, save taxpayers millions of dollars, and ultimately restore respect for the death penalty.

Those against the death penalty also bring up the issue of race and discrimination of the poor. Those against the death penalty state, like what Bryan Stevenson, Executive Director of the Equal Justice Initiative and Professor of Clinical Law at New York University, mentioned in his talk on “Racism and the Death Penalty” feel that “the poor, minorities, the mentally retarded and innocent people are often the ones most executed because of inadequate legal representation and discrimination” (FORA.TV, 2007). Statements such as these are not entirely true. The National Institute of Justice awarded the RAND Corporation a grant to determine whether racial

disparities exist in the federal death penalty system. Three independent teams of researchers worked independently. The RAND studies were significant because all three used the same data but different methods to reach the same conclusion. There is little evidence that the capital punishment system treats minorities unfairly (Klein, Beck & Hickman, 2006). Capital punishment is applied from the perspective of criminals who commit heinous crimes, regardless of race.

Lastly, opponents against the death penalty rely on surveys mailed to police chiefs. For example, police chiefs from all over the United States completed a survey in 2008. This survey is noteworthy to mention because it plainly illustrated the level of discontent and frustration with the current criminal justice system as it pertains to crime and punishment. This survey polled 500 U.S. police chiefs and was funded by the Death Penalty Information Center of Washington, D.C. The survey was conducted between October 29 and November 14 of 2008. Richard Dieter, Executive Director of the nonprofit capital punishment clearinghouse in Washington, D.C., discussed the results. According to the director, 83% of the police chiefs questioned still favor the death penalty. However, the vast majority at present rank it near the bottom of crime-fighting strategies. As a result, the police chiefs added that fighting drug abuse, longer prison sentences, and improved crime databases are higher priorities (Johnson, 2009). The results of this survey clearly pointed out that the death penalty is not working as practiced today. It has become a huge drain on state budgets because the entire death penalty process takes too long to be effective. It becomes apparent that the death penalty process needs restructuring, not the removal of the death penalty itself.

In summary, the death penalty does deter crime. However, measuring the effect of deterrence by comparing it to increases or decreases in crime rates has produced questionable conclusions because capital punishment is effected by history, legislations, economics, and society. Based on recent research studies, perhaps the only thing that needs to be improved upon is the time inmates spend on death row waiting execution (Ehrlich, 1975; Cloninger & Marchesini, 2001; Mocan & Gittings, 2003; Katz, Levitt, & Shustorovich, 2003; Levitt, 2004; Liu, 2004; Shepherd, 2004; Dezhbakhsh & Shepherd, 2006; Fagan, 2006). Shortening the time inmates sit on death row cuts down on legal costs, food, housing, long-term care, and most importantly, it sends a clear message. The message is that following arrest and adjudication by the criminal justice system, the criminal's time on earth will be minimal. Potential murderers need to understand that a death sentence is serious; therefore, execution is final and the appropriate punishment for offenders who commit the worst types of crimes. Furthermore, executions carried out swiftly and efficiently save lives and money.

CONCLUSION

Statistical and research supporting the death penalty fall in line with what law enforcement and legal minds already know. The death penalty, as practiced today by the state and federal court systems, gets in the way of maximizing the full effect of executions. As a result, would be criminals are willing to take a risk and commit violent homicides because the political and legal climate is in their favor. For example, if convicted of capital murder in a death penalty state such as Texas, the criminals know there is an average ten-year wait between sentencing and execution; therefore, the

death penalty is not intimidating. If convicted of capital murder in a non-death penalty state, criminals get life imprisonment with no risk of execution. In either case, criminals are not deterred by the death penalty or going to prison for life because there is no imminent sanction for taking the life of another human being.

Law enforcement officers and police chiefs interact with criminals and their behaviors every day. Violent murderers commit horrible crimes that end the lives of innocent people and destroy families. Yet, the death penalty as it exists today is not a strong enough threat to criminals who commit murder. Murderers know they can manipulate the system by filing appeal after appeal for ten or more years at taxpayers' expense. Moreover, if a criminal is on death row long enough, he might be pardoned or removed from death row due to changes in legislation. Years spent on death row awaiting execution does not decrease the murder rate; it produces the opposite effect. Lengthy court appeals and long death row waits sends the message to potential murders and inmates that a person can kill another human being and the odds of not having the death penalty sentence carried out is in favor of the person who commits murder.

In today's economy, it makes a lot of sense that states look for ways to cut unnecessary expenditures, especially in the area of prosecuting lengthy, costly capital punishment cases. Modern research in the last eight years has proven that the death penalty does deter crime; however, the deterrence effect is diminished by the judicial court system. The death penalty has a job to do, which is to deter the worst crimes from occurring. Therefore, the entire process, from apprehension to execution, must be re-structured in order to restore and improve the deterrence effect.

In the United States, with all the court delays and long death row waits, the death penalty appears ineffective because the entire legal process favors the criminal, not the victims or society. The criminal justice and judicial system needs to go back to the days when crime did not benefit criminals. The utilization of the death penalty should continue for the sole purpose of punishing criminals who commit willful violent acts of murder. Executions of violent criminals that perpetrate the most heinous slaughter of innocent human beings need to be administered often and held publicly. Potential criminals need to know that punishment by death is forthcoming and swift.

As mentioned earlier, the length of time between sentencing and actual execution needs to be shortened and the impediments need to be removed. If punishment for committing capital murders was carried out swiftly and immediately, the deterrence effect of the death penalty would become even more evident in reducing crime benefiting all members of society. Murderers should not live longer than their victims would have. Prolonging the lives of guilty murderers disrespects the victims, their families, citizens, and law enforcement. As it is written in Ecclesiastes 8:11, (New King James Version), "because the sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil."

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