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The Death Penalty

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ABSTRACT

The death penalty is a controversial subject in the United States and has been a topic of debate for a long time. Given both sides of the controversy, capital punishment still remains a necessary element of justice and an integral part of the criminal justice system. This paper explores the various reasons why people support or oppose capital punishment.

Opponents claim that answering a murder with an execution, in the name of justice, is wrong. This argument is answered with research affirming that capital punishment is a deterrent to crime and provides no chance for an offender to recidivate. Arguments stating that capital punishment is cruel and unusual punishment consequently deny the philosophy of retribution. In place of retribution, opponents tout the philosophy of rehabilitation. Finally, opponents of the death penalty claim that the sentence is given unequally to different races and ethnicities despite the numerous studies proving otherwise.

In this study, research was conducted to see which reasons best explain the support and opposition for capital punishment. It was found that emotional opposition, morality, and law and order were the only explanations having statistically significant effects on the amount of death penalty support or opposition. However, the results suggest the need for further research of death penalty attitudes using statistically relevant data. To sentence people who commit the most heinous acts of crime with anything less than death is a travesty of justice and an insult to all the surviving family and friends of the unfortunate victim.

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INTRODUCTION

Capital punishment, also known as the death penalty, is an essential part of the American legal system. It should be unwaveringly supported by all individuals involved in every aspect of criminal justice, from police officers and judges to lawyers and lawmakers. The administration of the sentence of death cannot ever be taken lightly because, once it is carried out, it is absolutely irreversible.

According to ProCon, 31 of the 50 states allow the death penalty as a sentence. In 2009, ten states considered ending capital punishment (Death Penalty Information Center, 2017). In fact, death penalty opposition groups have enjoyed recent success. Some of those successes include the state of Illinois' moratorium against execution of criminals, the claim that lethal injection causes unnecessary pain, and New Jersey's possible ending of its death penalty (Death Penalty Information Center, 2017).

In the 1970s, the death penalty was very much at issue. Two landmark cases during that period include *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976) (Death Penalty Information Center, 2017). The court struck down the death penalty in *Furman v. Georgia* (1972), as it was then administered in over 30 states. Two factors were specifically cited for this case. First, the juries had almost complete discretion when choosing the death penalty; most states had no clear provision for aggravating and mitigating circumstances (Death Penalty Information Center, 2017). They said that the death penalty, since it was being imposed capriciously and arbitrarily, was unusual but not cruel. However, Georgia's and several other states' revised death penalty laws were upheld in the case *Gregg v. Georgia* (1976) (Death Penalty Information Center,

2017). The number of crimes which could be considered punishable by death was significantly diminished.

Capital punishment is a necessary element of justice in America. Its application must be painstakingly carried out only to certain individuals who violate specific laws that are punishable by death. The basic idea of capital punishment is that particular crimes deserve no lesser punishment than death as an equal and effective punishment. In order for any legal system to be effective, all of the citizens must follow the rules that have been established with the understanding that they may pay the ultimate price for violating those rules.

Capital punishment is an integral part of the criminal justice system for many reasons and should be considered an appropriate response to certain specific crimes. The death penalty is 100% effective at preventing offenders from reoffending because all future crime has been curtailed by the offender's execution. Once punishment is carried out, there is no chance that the offender will be released on a technicality, obtain a parole, or escape from prison to kill again. Society affirms the value that is placed upon each innocent person's life by allowing death as a penalty for murder. The innocent people who have been killed by released, paroled, or escaped murderers far outnumber the amount of people wrongly executed and proven innocent.

POSITION

The death penalty lowers the homicide rate. This known fact is supported by statistics obtained during the course of much research. Two studies conducted by Mocan and Gittings (2003) confirmed that capital punishment has a deterrent effect. In the first study, state-level data obtained during the period from 1977 to 1997 was used

to analyze the influence of executions, commutations, and removals from death row on the incidence of murder (Mocan & Gittings, 2003). An average of five murders were deterred for each execution (Mocan & Gittings, 2003). Shepherd (2005) found similar results. Shepherd analyzed monthly data from 1977 to 1999 and made three important points (Shepherd, 2005). First, each execution reflects an average of three fewer murder; both crimes of passion and murders by intimates were deterred (Shepherd, 2005). Second, executions deter the murder of many races of people; each execution prevents the murder of one Caucasian, 1.5 African-Americans, and 0.5 individuals of other races (Shepherd, 2005). Finally, a shorter wait on death row increases the deterred murders; every 2.75 years reduction in wait time on death row deters one additional murder (Shepherd, 2005). It is evident that research clearly supports the idea that the number of murders increases as the number of executions decreases.

Other studies indicate the same trend. From 1977 to 1996, a study conducted by Professors Dezhbakhsh, Rubin, and Shepherd, using data collected from over 3,000 U.S. counties, found that every execution reduces the murder rate by an average of eighteen (as cited in "Does...," 2006). Justice For All (JFA) stated that the murder rate for Texas in 1991 was 15.3 per 100,000; it had fallen 60% by 1999, to just 6.1. In Harris County, which includes the city of Houston, Texas, murders have dropped from a high of 701 per year to an average of 241 per year since executions resumed in 1982 (as cited in International Debate Education Association, 2010). Researcher Karl Spence of Texas A&M University said, "...In six months, more Americans are murdered than have been killed by execution in this entire century...Until we begin to fight crime...every

person who dies at a criminal's hands is a victim of our inaction” (as cited in International Debate Education Association, 2010, para. 10).

Controversy concerning the death penalty dates far back. Even when the death penalty was outlawed between 1972 and 1977, over 60% of the population continued to express support for that method of punishment (Simon & Blaskovic, 2002). Support for the death penalty grew even higher between 1986 and 1996, when over 75% of Americans indicated their approval of the use of capital punishment (Simon & Blaskovic, 2002). In April of 2001, in its initial report to the Human Rights Committee, pursuant to Article 40 of the International Covenant on Civil and Political Rights, the United States said 62% of US citizens, acting through their elected officials, support the retention of the death penalty for the most severe crimes (Franck, 2003). This seems to appropriately reflect the sentiments of the majority of U.S. citizens.

Capital punishment involves a fair process and is applied equally across all races. The United States Supreme Court seemed to agree with the majority who support the death penalty when it rejected a convicted murderer's challenge in *McClesky v. Kemp* (1987) (Death Penalty Information Center, 2017). The case rested on a statistical challenge that 22% of defendants in cases with a black defendant and a white victim were sentenced to death; while only 1% of defendants in cases with a white defendant and a black victim were sentenced similarly (Death Penalty Information Center, 2017). Using the raw numbers indicated, capital punishment was not applied equally; but when factors other than race were considered, the numbers separating race and sentencing were very small (Marzilli, 2003). Furthermore, state statutes govern the application of capital punishment, and there is no discrimination in state statutes against

any particular ethnic race, color, or heritage. The laws supporting capital punishment are enacted to punish the specific offender who violates that statute, regardless of race (Gottfried, 1997).

As a deterrent to future crimes, capital punishment is 100% effective because the killer is deceased and is therefore incapable of committing further offenses. The death penalty is the ultimate form of specific deterrence. It is the one form of punishment that prevents the offender from repeating the same offense of committing a new one. The death penalty's effectiveness as a deterrent to other possible offenders depends upon the effectiveness of the application of the sentence. Recent studies show that the death penalty does deter potential murderers (as cited in "Studies...", 2007). The individual studies vary on the actual number of murders that were prevented by each execution, ranging from three to eighteen murders prevented (Sehba & Nathan, 1994). Therefore, speeding up executions and spending less time on appeals could increase the deterrent effect of capital punishment.

COUNTER POSITION

Capital punishment opponents are quick to claim that killing as retribution is immoral. Retribution is one of the oldest correctional philosophies, believing that punishment must avenge or retaliate for a harm or wrong done to another. Opponents to the death penalty believe the state should not ever murder someone in the name of justice, regardless of the crime. Furthermore, execution prevents the possibility of rehabilitation, automatically eliminating the possibility that the offender may repent of the crime, submit to punishment, and emerge as a productive, reformed part of society.

To those who oppose the death penalty, it is considered “the ultimate form of cruel, inhuman and degrading punishment” (Amnesty International, 1998, p. 3).

The Biblical Sixth Commandment of “Thou shalt not kill” (Exodus 20:13) is frequently used as an argument against the death penalty. However, the original Hebrew translation states, “Thou shalt not MURDER” (Blidstein, 1965, p.155). Murder is most commonly defined as unlawfully killing a person with malice aforethought (US Federal Law 18 USC 1111-Murder). Using this definition, executions carried out by the state are not murder. Moreover, there are numerous references in the Bible that instruct people to punish certain offenders with death.

Some other death penalty opponents simply state that any killing is morally wrong. In simplest terms, execution is killing that is condoned by the state; as such, it places no value on human life. More importantly, the idea of state-sanctioned killing is overshadowed by the proven risk of executing innocent people. There are many different factors that have led to wrongful convictions, including police and prosecutorial misconduct, administrative pressure for a speedy resolution of the case, perjured testimony, suppressed evidence, and racial prejudice (Amnesty International, 1998). Twenty-three innocent people were executed in the United States in the twentieth century (Amnesty International, 1998). According to the Death Penalty Information Center (2017), as of January 1, 2008, the total number of death row inmates was 3,297. California, Florida, and Texas had the largest number of death row inmates with 678, 402, and 358 respectively (Death Penalty Information Center, 2017). Texas also registered the highest percentage of minorities on death row: 70% (Death Penalty Information Center, 2017). Amnesty International USA (1998) reported that 135 people

have been exonerated and freed from death row since 1973; five of those were in 2009. Opponents of the death penalty believe that there is no justification, under any circumstance, for the avoidable killing of an innocent person.

Crime and punishment in the 20th century provides a powerful reflection of America's racial divide. One of the social issues that death penalty opponents often cite is whether a person's race affects the likelihood of that person receiving the death penalty. According to Amnesty International USA (1998), more than 20% of black defendants who have been executed were convicted by all-white juries. Issues other than race motivate the controversy over the death penalty; however, the statistics showing racial disparity are a fundamental issue.

The U.S. Supreme Court ruled, in 1972's *Furman v. Georgia* (408 U.S. 238), that the then-current administration of the death penalty was unconstitutional due to the fact that it was racially discriminatory (Death Penalty Information Center, 2017). In 1976, *Gregg v. Georgia* (428 U.S. 153) allowed the reinstatement of capital punishment on the condition that states must demonstrate that specific sentencing criteria and judicial protections were in place which would eliminate the risk of arbitrary application of the death penalty (Death Penalty Information Center, 2017). Since 1973, 135 people have been found to have been wrongfully convicted and sentenced to death – 51% were black (Death Penalty Information Center, 2017). While the racial argument superficially appears compelling, the solution to this problem is quite simple. Discrimination should not occur; when it does, it should be corrected immediately. If the death penalty were consistently applied to murderers of all races, in cases where the victims represent all races, then the idea that it is a tool promoting racism would be abolished.

Another argument against capital punishment is that it is cruel and unusual punishment, which the VIII amendment to the Constitution of the United States of America prohibits. In *Trop v. Dulles* (1958), Chief Justice Earl Warren said: "Whatever the arguments may be against capital punishment... the death penalty has been employed throughout our history, and in a day when it is still widely accepted, it cannot be said to violate the conceptual concept of cruelty" (as cited in International Debate Education Association, 2010, para. 1). Disallowing cruel and unusual punishment seems to indicate prohibition of torture, boiling in oil, burning alive, dismemberment, and other practices which involve an extreme amount of pain. If someone could show that the pain involved in the execution of criminals was equivalent to that of these punishments, they would provide a powerful argument against the death penalty (Nathanson, 2001).

RECOMMENDATION

Capital punishment, more commonly known as the death penalty, has been a point of contention in the United States for decades. Capital punishment is an integral and undeniable part of our criminal justice system and should not be discarded. Though the death penalty should never be taken lightly, it should have the full support of all individuals involved in every aspect of the criminal justice system, from police officers and judges to lawyers and law-makers.

Statistics show that when the death penalty is correctly implemented, the homicide rate decreases (Bedau, 1997). This proves that capital punishment is an effective deterrent to homicide. Furthermore, capital punishment in the United States is fairly and equitably administered despite opponent's claims that racial disparity exists

(Death Penalty Information Center, 2017). Although capital punishment opponents quote the Biblical injunction of “Thou shalt not kill,” they are using the quote out of context and are not considering the fact that death is an acceptable punishment for certain crimes in the Bible. Other opponents use the argument that death is included in the VIII amendment’s restriction of cruel and unusual punishment. This argument disregards the fact that procedures are employed to keep the death penalty completely or nearly painless. Therefore, the death penalty does not constitute cruel and unusual punishment. The death penalty is important because it is 100% effective at preventing offenders from recidivating because all future crime has been curtailed by the offender’s execution.

In this study, research was conducted to see which reasons best explain the support and opposition for capital punishment. It was found that emotional opposition, morality, and law and order were the only explanations having statistically significant effects on the amount of death penalty support or opposition. One should, instead, base opinions on the multitude of statistics and research available on this highly effective form of punishment. Committing a heinous crime and receiving death as punishment is justified and necessary to accomplish justice.

REFERENCES

Amnesty International. (1998). *Fatal flaws: Innocence and the death penalty in the USA*.

Retrieved from

<https://www.amnesty.org/download/Documents/152000/amr510691998en.pdf>

Bedau, H. (1997). *The death penalty in America: Current controversies*. New York, NY:

Oxford University Press.

Blidstein, G.J. (1965). Capital punishment-The classic Jewish discussion. *Judaism*, 14,

150-172.

Death Penalty Information Center. (2017). Retrieved from DPIC website

<https://deathpenaltyinfo.org/>

Death Penalty Information Center. (2017). *United States Supreme Court decisions:*

1972-1996. Retrieved from <https://deathpenaltyinfo.org/united-states-supreme-court-decisions-1972-1996>

Does the death penalty deter? (2006). *The Wilson Quarterly* 30.3, 77-78. Retrieved from

http://archive.wilsonquarterly.com/sites/default/files/articles/WQ_VOL30_SU_2006_Periodical_10.pdf

Franck, H.G. (2003). *The barbaric punishment: Abolishing the death penalty*. The

Netherlands: Kluwer Law International.

Gottfried, T. (1997). *Capital punishment: The death penalty debate*. Springfield, NJ:

Enslow Publishers.

International Debate Education Association. (2010). Argument: Capital punishment has

a deterrent effect on criminal activities. *Debatepedia*. Retrieved from

http://debatepedia.idebate.org/en/index.php/Argument:_Capital_punishment_has_a_deterrent_effect_on_criminal_activities

International Debate Education Association. (2010). Argument: The death penalty is not cruel. *Debatepedia*. Retrieved from

http://dbp.idebate.org/en/index.php/Argument:_The_death_penalty_is_not_cruel

Marzilli, A. (2003). *Point counterpoint: Capital punishment*. Philadelphia, PA: Chelsea House Publishers.

Mocan, N. H., & Gittings, K. R. (2003). Getting off death row: Commuted sentences and the deterrent effect of capital punishment. *Journal of Law and Economics*, 46(2), 453-78.

Nathanson, S. (2001). *An eye for an eye: The immorality of punishing by death* (2nd ed.). Lanham, MD: Rowman & Littlefield.

ProCon. (2016). *31 States with the Death Penalty and 19 States with Death Penalty Bans*. Retrieved from

<https://deathpenalty.procon.org/view.resource.php?resourceID=001172>

Sehba, L. & Nathan, G. (1994). Further explorations in the scale of penalties. *British Journal of Criminology*, 24, 221-249.

Shepherd, J. (2005). Deterrence versus brutalization: Capital punishment's differing impacts among states. *Michigan Law Review*, 104(2), 203-256.

Simon, R. J. & Blaskovich, D. A. (2002). *A comparative analysis of capital punishment: Statues, policies, frequencies, and public attitudes the world over*. Lanham, MD: Lexington Books.

Studies: Death penalty discourages crime. (2007). *Fox News*. Retrieved from
<http://www.foxnews.com/story/2007/06/11/studies-death-penalty-discourages-crime.html>