

Criminal Justice: Capital Punishment Focus

Background

The formal execution of criminals has been used in nearly all societies since the beginning of recorded history. Before the beginning of humane capital punishment used in today's society, penalties included boiling to death, flaying, slow slicing, crucifixion, impalement, crushing, disembowelment, stoning, burning, decapitation, dismemberment and scaphism. In earlier times, the death penalty was used for a variety of reasons that today would seem barbaric. Today, execution in the US is used primarily for murder, espionage and treason.

The Death Debate

Those in support of capital punishment believe it deters crimes and, more often than not believe that certain crimes eliminate one's right to life. Those who oppose capital punishment believe, first and foremost, that any person, including the government, has no right to take a life for any reason. They often believe that living with one's crimes is a worse punishment than dying for them, and that the threat of capital punishment will not deter a person from committing a crime.

Costs and Procedures

On average, it costs \$620,932 per trial in federal death cases, which is 8x higher than that of a case where the death penalty is not sought. When including appeals, incarceration times and the execution in a death penalty case, the cost is closer to \$3 million per inmate. However, court costs, attorney fees and incarceration for life only totals a little over \$1 million. Recent studies have also found that the higher the cost of legal counsel in a death penalty case the less likely the defendant is to receive the death penalty, which calls the fairness of the process into question.

A capital punishment case begins with a trial in front of a grand jury (typically 23 people). The first part of the trial is the guilt phase, where both sides of the case is presented and the jury determines whether the defendant is guilty of the crime they are charged with. Following a charge of guilty, the next phase of the trial is the penalty trial. Both sides again present their case for punishment in front of the jury, and the jury makes a recommendation and the judge pronounces the sentence. In some states, the judge does not have to follow jury recommendation, though in most he or she does.

Following the sentencing, the decision must go through direct review and state review, which acts as an appeal process for the convict. If the sentence makes it past all of the reviews, the inmate sentence is set in stone barring involvement of the President. The prisoner typically stays on death row for many years before their sentence is carried out, and in many states less than half of those sentenced to death actually receive their punishment before dying of natural causes.

Combating the 5 Arguments for the Death Penalty

While poll numbers in favor of the death penalty has fluctuated, a slight majority continue to back capital punishment based on arguments ranging from religious dogma to the cost of a life prison sentence. However, the death penalty may not actually represent justice for victims.

"The Death Penalty Is an Effective Deterrent"

The most common argument in favor of capital punishment, and there's actually some evidence that it may be a deterrent to homicide, but it's very expensive. As such, the question is not just whether it prevents crime but whether it is economically efficient deterrent.

"The Death Penalty is Cheaper Than Feeding a Murderer for Life"

According to the Death Penalty Information Center, independent studies reveal that capital punishment is actually far more expensive to administer than life imprisonment due to the lengthy appeals process, which still sends innocent people to death row on a fairly regular basis.

"Murderers Deserve to Die"

While many Americans share this view, death penalty opponents note that the government is an imperfect human institution and not an instrument of divine retribution. Therefore, it lacks the power, the mandate, and the competence to make sure that good is always proportionally rewarded and evil always proportionally punished.

"The Bible Says 'An Eye for an Eye'"

Actually, there is little support in the Bible for the death penalty. Jesus, who himself was sentenced to death and legally executed, had this to say (Matthew 5:38-48):

"You have heard that it was said, 'Eye for eye, and tooth for tooth.' But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also... You have heard that it was said, 'Love your neighbor and hate your enemy.' But I tell you, love your enemies and pray for those who persecute you, that you may be children of your Father in heaven..."

What about the Hebrew Bible? Well, ancient Rabbinic courts almost never enforced the death penalty due to the high standard of evidence required. The Union for Reform Judaism (URJ), which represents the majority of American Jews, has called for an end to the death penalty.

"Families Deserve Closure"

Families find closure in many different ways, and many never find closure at all. Regardless, "closure" is not a euphemism for vengeance, the desire for which is understandable from an emotional point of view but not from a legal perspective. Vengeance is not justice.

The friends and family of murder victims will live with that loss for the rest of their lives, with or without controversial policy objectives such as the death penalty. Providing and funding long-term mental health care and other services to the families of murder victims is one way to support them.

Arguments in Favor of the Death Penalty

ARGUMENT 1: DETERRENCE

Society has always used punishment to discourage would-be criminals from unlawful action. Since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder; the death penalty. If murderers are sentenced to death and executed, potential murderers will think twice before killing for fear of losing their own life.

For years, criminologists analyzed murder rates to see if they fluctuated with the likelihood of convicted murderers being executed, but the results were inconclusive. Then in 1973 Isaac Ehrlich employed a new kind of analysis which produced results showing that for every inmate who was executed, 7 lives were spared because others were deterred from committing murder. Similar results have been produced by disciples of Ehrlich in follow-up studies.

Even if some studies regarding deterrence are inconclusive, that is only because the death penalty is rarely used and takes years before it is carried out. Swift & sure punishments are the best deterrent. The fact that some states or countries which do not use the death penalty have lower murder rates than jurisdictions which do is not evidence of the failure of deterrence. States with high rates would have even higher rates if they did not use the death penalty.

Ernest van den Haag, a Professor of Jurisprudence at Fordham University, wrote: "Even though statistical demonstrations are not conclusive, and perhaps cannot be, capital punishment is likely to deter more than other punishments because people fear death more than anything else...Sparing the lives of even a few prospective victims by deterring their murderers is more important than preserving the lives of convicted murderers because of the possibility, or even the probability, that executing them would not deter others..."

The death penalty certainly "deters" the murderer who is executed. Strictly speaking, this is a form of incapacitation, similar to the way a robber put in prison is prevented from robbing. Vicious murderers must be killed to prevent them from murdering again, either in prison, or in society if they should get out.

ARGUMENT 2: RETRIBUTION

When someone takes a life, the balance of justice is disturbed. Unless that balance is restored, society succumbs to a rule of violence. Only the taking of the murderer's life allows society to show convincingly that murder is an intolerable crime which will be punished in kind

Although the victim and the victim's family cannot be restored to the status which preceded the murder, at least an execution brings closure to the murderer's crime (and closure to the ordeal for the victim's family) and ensures that the murderer will create no more victims.

Robert Macy, District Attorney of Oklahoma City, described his concept of the need for retribution in one case: "In 1991, a young mother was rendered helpless and made to watch as her baby was executed. The mother was then mutilated and killed. The killer should not lie in

some prison with three meals a day, clean sheets, cable TV, family visits and endless appeals. For justice to prevail, some killers just need to die."

Author and Professor of Philosophy, U.S. Military Academy. Excerpt from "The Death Penalty: For and Against," (Rowman & Littlefield Publishers, Inc., 1998): "[Opponents of the capital punishment often put forth the following argument:] Perhaps the murderer deserves to die, but what authority does the state have to execute him or her? Both the Old and New Testament says, "'Vengeance is mine, I will repay,' says the Lord" (Prov. 25:21 and Romans 12:19). You need special authority to justify taking the life of a human being.

The objector fails to note that the New Testament supports the right of the state to execute criminals in the name of God: 'Let every person be subjected to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists what God has appointed, and those who resist will incur judgment.... If you do wrong, be afraid, for [the authority] does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer' (Romans 13: 1-4). So, according to the Bible, the authority to punish, which presumably includes the death penalty, comes from God.

But we need not appeal to a religious justification for capital punishment. We can site the state's role in dispensing justice. Just as the state has the authority (and duty) to act justly in allocating scarce resources, in meeting minimal needs of its (deserving) citizens, in defending its citizens from violence and crime, and in not waging unjust wars; so too does it have the authority, flowing from its mission to promote justice and the good of its people, to punish the criminal.

ARGUMENT 3: INNOCENCE

There is no proof that any innocent person has actually been executed since increased safeguards and appeals were added to our death penalty system in the 1970s. Even if such executions have occurred, they are very rare. Imprisoning innocent people is also wrong, but we cannot empty the prisons because of that minimal risk. If improvements are needed in the system of representation, or in the use of scientific evidence such as DNA testing, then those reforms should be instituted. However, the need for reform is not a reason to abolish the death penalty.

Besides, many of the claims of innocence by those who have been released from death row are actually based on legal technicalities. Just because someone's conviction is overturned years later and the prosecutor decides not to retry him, does not mean he is actually innocent.

If it can be shown that someone is innocent, surely a governor would grant clemency and spare the person. Hypothetical claims of innocence are usually just delaying tactics to put off the execution as long as possible. Given our thorough system of appeals through numerous state and federal courts, the execution of an innocent individual today is almost impossible. Even the theoretical execution of an innocent person can be justified because the death penalty saves lives by deterring other killings.