

# Capital Punishment

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The use of the death penalty to punish wrongdoers for certain crimes.

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"I am a human being and nothing pertaining to human is alien to me, so said Karl Marx

([www.sociologist.com](http://www.sociologist.com))" (Goel, September 2008)

The popular but unscientifically view that was largely untested until 1975 was that executions save lives by deterring murderers. A professor named Isaac Ehrlich published a very influential article that showed results of deterrence during the 1950's and 1960's showed that each execution saved eight innocent lives by deterring murder. History is now repeating itself. Over the last 5 years there have been more than a dozen studies reporting deterrent effects of capital punishment that go beyond findings. The estimates of the deterrent effects are far greater, ranging from three to thirty-two murders deterred for each execution. Some other researchers argue that even murders of passion, can be deterred. (Fagan) One study by a student claims that executions not only deter murders but also increase the deterrent effects for other punishments like drug crimes. So what do we make of these claims? Where are we headed in the future? There is no way to know but it is leaning more toward ramping up executions to achieve even greater deterrent effects. Legal academics, such as Professors Cass Sunstein and Adrian Vermeule, both of the University of Chicago, find the new deterrence evidence "powerful" and "impressive." They couple it with "many decades of reliable data about deterrent effects" as a "foundation" of their argument, which holds that since "capital punishment powerfully deters killings," there is a moral imperative to aggressively prosecute capital crimes. (Fagan)

The new deterrence studies fall however fall well short. In these studies you must consider the fact that most of the studies fail to account for incarceration rates or life sentences. These are factors that can drive down crime rates via deterrence or incapacitation. There was a study done that found no effects of execution and a significant effect of prison conditions on crime rates. Another report showed that incarceration effects that dwarf the deterrents effects of execution. (Fagan) Most all of the studies fail to account for social factors drug epidemics that are very reliable predicts of fluctuations in the murder rate over time. The studies seem to lump all the homicides together and not look separately at the subset of murders that are eligible for the death penalty. All but one of these recent studies lumped all of the homicides together claiming that all are equally deterrable. In the study that actually looked

into specific areas found that domestic homicides are more deterrable than others. This is a claim that flies in the face of six decades of theory and research in killing between intimate partners and shows their spontaneity and unpredictability. (Fagan)

The beginning of the 21<sup>st</sup> century the death penalty is considered by most civilized nations as a cruel and inhuman punishment. Most have even banned the death penalty leaving United States to be the only Western democracy that continues the practice. There has been a great deal of debate that has gone on over the years. In recent years the debate has been on the use of new technologies which have shown that a large amount of people sentenced to death are actually innocent. The trend toward abolition of the death penalty has become more and more popular in the recent years. Even looking into the cost of a single execution compared to the cost of a life sentence is actually a very large amount. According to the FBI, 16,137 murders in 2004, but only 125 death sentences were handed out and 59 persons – most of whom were convicted a decade earlier - were executed. Even in States where prosecutors infrequently seek the death penalty, the price of obtaining convictions and executions ranges from \$2.5million to \$5 million per case, compared to the less than \$1 million for each killer sentenced to life without parole. (Fagan) There are over 3,300 convicts that are living on “death row” in American prisons that have been sentenced to death are awaiting executions. An example of the extraordinary large amount of money it costs yearly. Florida spends \$25 million to \$50 million more per year on capital cases than it would have to if all murderers received life without parole. Indiana Legislative Services Agency estimated that if the state had sentenced its death row prisoners to life without parole, its taxpayers would have been spared approximately \$37.1 million dollars. That is honestly just an amazing amount of savings for taxpayers. We are talking about millions of dollars in savings. The costs associated with the death penalty create public policy choices. If the state is going to spend \$5 million, what is the best use of the money? It could buy an execution or fund additional police detectives, prosecutors or even judges. These additional jobs help arrest and incarcerate criminals who

actually escape any punishment due to the insufficient law-enforcement resources. Are we spending our money wisely to provide capital punishment? In New York things cost more, between 1995-2004 taxpayers paid \$200 million on the death penalty without any executions at all. The one question for states goes to the heart of the role of deterrence in American capital punishment law, and the joins with the problem of cost. (Fagan)

There are several different forms of capital punishment that are used throughout the country. Many debates have gone on about what form is reflective of the morals and values of society. Abraham Lincoln himself said “You do not know how hard it is to let a human being die, when you feel the stroke of your pen will save him”. I found that to be a very powerful statement and yet Abraham himself executed over 267 soldiers for even just falling asleep at their post. The first execution to take place in the American colonial government was George Kendall who was shot to death by a firing squad for spying in Spain in 1608, since then over 18,000 Americans have been legally executed. In the early days of execution in our country we use firing squads and hangings or beheadings took place. They took place in common town areas for the public to participate and witness. This continued until the 1830’s when Government officials in northeastern states passed a number of laws including limiting the number of witnesses at an execution and setting up enclosures for the event or moving it indoors, transforming it from a public event to an action of just the state. The last was in public execution was in 1937 in Missouri.

Hanging was at one time considered to be the more humane way to execute than other methods learned from England like boiling the subject alive. This is how we executed our subjects primarily in the United States until the end of the nineteenth century. In the 1890’s was the introduction of the electrocution chair. In 1890 the first execution in the electric chair took place in New York. In 1977 the United States introduced lethal injection. It is now the primary method used in the 35 states that still employ the death penalty. Lethal injection is a process of first giving the subject a sedative, followed by

a combination of lethal drugs. Even though this is the primary method used in the United States there are still states that use electrocution, hanging, and even firing squads on rare occasion. No method of execution has ever been found to be unconstitutional by the Supreme Court. However in 1910 *Weems v. United States* the court did make a ruling that set three important precedents concerning sentencing. First, cruel and unusual punishment is defined by the changing norms and standards of society and therefore is not based on historical interpretations. Second, courts may decide whether a punishment is unnecessarily cruel with regards to physical pain. Third, courts may decide whether a punishment is unnecessarily cruel with regard to psychological pain.

Capital punishment is for those who commit first degree murder under aggravated circumstances. There is however certain situations or circumstances that will prevent a defendant found guilty of first degree murder from the death penalty. These circumstances are called Mitigating Circumstances. In 1986 the Supreme Court held that the constitution prohibits the execution of a person who is insane. It ruled that the Eighth Amendment “forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are about to suffer it. “ Each state is responsible for deciding its own definition of “insane”. It is also barred to execute a convict that is mentally handicapped. In 1989 the Court rejected the argument that to execute a mentally handicapped person was “cruel and unusual” under the Eighth Amendment. Since then the Court used the *Weem* test as the rationale for barring the execution of the mentally handicapped. Age is the last factor that can change a first degree murderer of the death penalty. The Court decided to prohibit the execution of offenders who committed their crimes before the age of eighteen. The Court based this on the majority of the states, as well as every other civilized nation.

There are two sides to the debate of whether or not we should practice the death penalty. Opponents of the death penalty worry that the message we are giving by the use of the death penalty will actually increase the acceptance of revenge in our society and will produce a climate of violence.

Advocates of the death penalty wish to show the benefits to society turn to the idea of deterrence. The problem at hand is the ability to perform the studies needed, there are few executions carried out in the United States each year to really determine the impact of deterrence. Therefore each study that proves the deterrent effect by the use of the death penalty is matched by the one that disproves the same premise.

So where are we headed in the future? In looking at the studies done, there just isn't one easy answer. Since 1999 the United States has decreased dramatically in the executions carried out each year. State death rows are shrinking, in Texas which is the leading state in the number of executions yearly, saw the number of death sentences decrease 50 percent from 1998 to 2008. I personally think that the lack of enough executions to properly test deterrence leaves us just as stuck as when I asked where we are headed. I do think we need to study why we are the last Western democracy that still uses capital punishment. We need to especially with the crisis our country is in to look at the actual benefits of the death penalty and the budget benefits, seeing how we are tanking as a country financially. Taking all of the system's costs into account including the cost of just a capital punishment trial verses a murder trial would save millions. New Jersey's decision in 2007 to become the first state to abolish the death penalty was based off cost savings. New Mexico two years later followed, as every state and our constitution should follow. As states across the country adopt reforms to reduce the pandemic of errors in capital punishment, we wonder whether such necessary and admirable efforts to avoid error and horror of the execution of the innocent won't – after many hundreds of millions of dollars of trying – burden the country with a death penalty that will be ineffective, unreasonably expensive, and politically corrosive to the broader search for justice. (Fagan) Americans at this point just seem to want to make the sentence of death fairer than in doing away with it altogether, 63 percent of Americans favor the practice. I would have to say I think we need to step our game up and join the rest of the modern world and end the death penalty all together.

Bibliography:

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