

Arguments Against the Death Penalty

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Introduction

The death penalty is a government-issued sentence for capital crimes such as murder, treason, and espionage. The term “capital punishment” refers to the practice of executing someone as punishment for such extreme criminal offenses. As of 2019, beheading, electrocution, hanging, lethal injection, and shooting are the primary methods of execution used around the world. The United States is the only country to authorize electrocution (*Amnesty International Global Report*, 2020, p. 10).

International legislation regarding the death penalty does exist. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council and endorsed by the UN General Assembly, outlines a set of regulations regarding when and how the death sentence should be imposed and carried out. It recognizes that when the death penalty is enforced, it must be carried out in a manner that induces the least possible level of suffering (United Nations, 1988). In the United States, issuing the death sentence is not only a responsibility at the federal level but also of the state government, although not all states utilize the death penalty as a form of punishment. In fact, 22 states and the District of Columbia do not implement the death penalty, and more than half of the states have not performed executions over the past two years (*Death Penalty Fact Sheet*, 2020, p. 1, 3). Although the use of capital punishment is becoming a lot less frequent, it remains an extremely controversial issue on several grounds.

History

The origins of the death penalty date back to Babylon in the Eighteenth Century B.C., when the Code of King Hammurabi established the ancient “eye for an eye” principle (Hood, 2020). The code prescribed the death penalty for twenty-five crimes and was originally created to ensure that the death penalty was not disproportionately applied. However, over the next few centuries, the death penalty evolved to become an extremely harsh punishment, in which the severity of the execution method was not always proportionate to the magnitude of the crime. In the 7th century BCE, the Draconian Code of Athens made the death sentence the sole overarching punishment for almost any crime (Augustyn, 2020). The methods of execution varied in different empires but were often extremely harsh. Some forms of capital punishment that were used in Rome included being hurled from a cliff, crucifixion, drowning in a sealed bag with a vicious animal, and forced gladiatorial combat. Other methods that were used in China included boiling, sawing the criminal in half, and flaying him alive. Extreme European executions included burning at the stake, drawing and quartering, and drowning (Hood, 2020).

Through the Early Modern period, the number of crimes punishable by death increased continually, and by the 1700s, there were 222 crimes that were considered capital crimes (Reggio, 1997, p. 23). Britain has a long history of capital punishment, and its colonies were highly influenced by these practices. Under British rule, the American colonies also implemented a harsh death sentencing code, with some states enforcing it more strictly than others. Death penalty reform finally began towards the end of the 18th century, when a law that reserved capital punishment only for crimes involving treason and murder was proposed (Reggio, 1997, p. 24). While it was not accepted, this proposed legislation, along

with the treatise *An Essay on Crimes and Punishments* by Italian jurist Cesare Beccaria, had a strong impact on making Americans question the necessity of such cruel punitive measures. Through the 19th century, several organizations began to form across the colonies to advocate for the elimination of the death penalty, and in 1846, Michigan became the first state to eradicate the death penalty for all crimes except treason (Reggio, 1997, p. 26). Many more states followed suit over the next few decades. The movement died down in the early 1900s but revived again in the 1950s when the issue was taken to the courts.

In 1972, the *Furman v. Georgia* case ended capital punishment in the United States, as the Supreme Court determined that the cruel and unusual capital punishment laws violated the Eighth and Fourteenth Amendments (*Furman v. Georgia*, 1971). However, just four years later, the *Gregg v. Georgia* case reinstated the death penalty when the Court determined that the reformed death penalty laws did not necessarily entail cruel and unusual punishment (*Gregg v. Georgia*, 1976).

Capital punishment continues to be a highly disputed topic today, due to both its moral implications and its effectiveness on criminal behavior (or lack thereof). There are several aspects of capital punishment that are highly debated, but this paper focuses on the morality and fairness of the death penalty, as well as the financial burden it creates. While there are some potentially legitimate arguments in favor of capital punishment, the drawbacks seem to outweigh the benefits on all fronts.

Morality of the Death Penalty

Supporters of the death sentence often believe that people who have taken the life of another have lost their own right to life and that criminals should be punished to the extent of

their crimes. They also believe that capital punishment is a form of retribution and should be implemented in order to demonstrate the anger of the victim's family, as well as to condemn such criminal behavior in public view. However, capital punishment is often ineffective because it legitimizes the same behavior that the law is trying to suppress, so it is ultimately counterproductive in terms of the message it relays. The death penalty is unique to other forms of punishment in that it mimics the crime of murder, which (along with treason) is the main offense that is punishable by death in the United States. Considering the act of murder to be both a heinous crime and an acceptable punitive measure relays a message of hypocrisy and double standards. Additionally, regardless of the severity of the crime, the death sentence seems more of an act of vengeance as opposed to retribution.

Another argument supporting the death penalty is that such severe punishment acts as a deterrent to other criminals. However, there has been no statistical evidence to prove this claim. On the contrary, according to 18th-century jurist Cesare Beccaria, certain and swift punishment has been shown to be a more effective deterrent (Beccaria, p. 76). Neither of these conditions apply to the death sentence, which can take an average of 19.8 years from sentencing to execution (Snell, 2020, p. 2).

Fairness of Death Sentencing

Although there are laws and procedures in place to regulate which criminals receive a death sentence, the process is often ultimately biased and discriminatory. As a result, the punishment of death may be disproportionate to the crime. There is a large amount of evidence to support the argument that the death sentence targets people of color. Even though these communities are guaranteed "equal protection of the laws" under the Fourteenth Amendment of the Constitution

(U.S. Const. amend. XIV), there are several factors that may result in an unfair sentence. One such factor is jury selection. This selection process, known as “death qualification,” often results in an over selection of jurors who are biased in favor of capital punishment and prevents other equally qualified jurors from serving. In addition to excluding a large percentage of death penalty opponents from the jury despite the declining public support of capital punishment, death qualification also results in the disproportionate exclusion of African Americans (Lynch & Haney, 2018). Thus, such juries often neither represent the views nor the racial diversity of their communities.

Once the jury becomes biased, there is a significantly higher chance that prejudices based on race, ethnicity, religion, gender, or other factors will come into play during the trial. When the legislation is unable to clearly determine whether or not the criminal should receive the death sentence, decision-makers often fall back on their personal beliefs and opinions. There have been several studies that show that people who kill white victims are more likely to receive the death sentence than those who murdered African or African American victims. A study conducted by Professors Michael Radelet and Glenn Pierce, who examined more than 15,000 cases of homicides in North Carolina, supports this argument. Their results showed that the odds of receiving the death penalty are three times higher for killing a white person than for killing a black person (Radelet & Pierce, 2011, p. 2120). This racial disparity can be seen by the overrepresentation of the black population on death row. According to a Bureau of Justice Statistics report, more than 41% of prisoners under the death sentence are black (Snell, 2020, p. 11). However, only approximately 13% of the United States’ population is black or African American (U.S. Census Bureau, 2019). While these massive discrepancies can be explained by other factors, such as socioeconomic

circumstances, these statistics are an indication that the death sentencing process is not entirely unbiased.

Another issue with the death sentence is the possibility of innocence. Whether it be due to racial biases or other factors, it is possible that witnesses might see or perceive something slightly different from reality, which can lead to false convictions. There have been a handful of exonerations, but such cases are very rare. Since 1973, there have been only 172 exonerations in 28 states (*Death Penalty Fact Sheet*, 2020, p. 2). There is no way to determine how many people were given a death sentence and executed for a crime they were not guilty of. Once the execution is complete, it cannot be undone. One such case occurred in 2004, when Cameron Willingham was executed for murdering his three children by arson. However, reports later revealed that the original forensic investigation was flawed, and all of the scientific evidence used to incriminate him was invalid. While this does not prove that Willingham was innocent, it does indicate that the evidence presented in his case would not have been enough to sentence him to death (Carpenter et al., 2006).

Financial Aspect

In several states, the costs of implementing the death penalty are much higher than those of life without parole. Death row, the section of prisoners who are convicted of capital crimes and sentenced to death, requires more resources to maintain than high-security prisons, not to mention the actual execution that costs additional money and manpower. For example, in Louisiana, the security costs for death row are at least seven times higher than those for a secured camp (Johnson & Quigley, 2019, pp. 27-28). Given that death row is extremely backlogged and slow, an inmate may serve on death row as long as incarceration for life without parole. In fact, this is often the case, as many

prisoners on death row die before the actual execution. Additionally, when the execution does take place, the government takes on an additional burden of liability in the case of a botched execution.

Several studies across various states have shown that the expenses of capital punishment sentences at the state level far exceed those of life without parole sentences. A study conducted in Oklahoma shows that capital cases typically cost about 3.2 times more than non-capital cases (Collins et al., 2017). Another report, from New Jersey Policy Perspectives, shows that the death penalty has cost New Jersey taxpayers more than \$253 million since 1983 (Forsberg, 2005). Thus, the death penalty becomes a financial burden on the economy not only at the state and national scale, but also at the level of the individual taxpayer.

Conclusion

Based on all these perspectives, an effective solution might be to eliminate the death sentence altogether and replace it with incarceration for life without parole. In recent years, public support of the death sentence has been decreasing, while life without parole is becoming a more commonly agreed-upon alternative. Almost two-thirds of American voters were in favor of alternative punishments to the death penalty, with a majority of these voters choosing life without parole as a better alternative (Lake Research Partners, 2010). Additionally, it is important for states to focus on preventative measures, like initiatives to reduce violent crime rates, so that the number of capital crime cases up for death sentencing is decreased. However, regardless of what measures are taken, there is no one solution that satisfies all the controversies revolving around the death penalty. There will always be disagreement about whether or not it is morally correct or necessary.

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