Is capital punishment a deterrent to crime?

Greg Warren Colyer

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IS CAPITAL PUNISHMENT A DETERRENT TO CRIME?

A Project
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Criminal Justice

by
Greg Warren Colyer
December 1999
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Approved by:

Dr. Dale K. Sechrest, Chair, Criminal Justice

Dr. Frances S. Coles

11-23-99 Date
ABSTRACT

There continues to exist in this country, a strong disagreement with regards to capital punishment as a means to curb violent crime. The debate continues to rage with proponents arguing that the death penalty is a necessary evil and must continue and the abolitionists which denounce the death penalty as cruel and unusual punishment as well as being a failure at reducing the level of violent crime in this country.

Abolitionists argue capital punishment is not a deterrent to crime but rather an inhumane and barbaric means which do not justify the futile ends. Proponents however, disagree and argue that the death penalty should not only be continued but used more often to discourage future crime and help promote and maintain a sense of justice and moral order.

Should executions continue in this country and remain a necessary part of our legal system or should they be stopped and labeled as a failure? Have all attempts to deter and decrease violent crimes in this country been exhausted? Is there another rational method of experimentation by which society can examine the possibility for crime deterrence? Would televised public executions curb the current flow of violent crimes in America?
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IS CAPITAL PUNISHMENT A DETERRENT TO CRIME?

Introduction

Since the United States Government was formed in 1787, more than 13,000 people have been executed (ACLU, 1996). In the 1930's, over 150 individuals were executed yearly (ACLU, 1996). Public outcry denouncing capital punishment led to numerous legal challenges and eventually forced this practice to slow down until 1972, when capital punishment was declared unconstitutional and placed on hold (Bedau, 1996).

Capital punishment was, at one time, only applied to convicted felons. The English courts, during the American Revolution, defined over 200 acts as felonies, which also applied to the colonists. All individuals committing these acts were classified as capital offenders (Neubauer, 1979). However, the courts and legislatures began to recognize other forms of punishment such as incarceration and probation. By the 1970's, nine jurisdictions allowed the death penalty for specific crimes, among which were murder, rape, and treason (Neubauer, 1979).

The United States Supreme Court declared the death penalty unconstitutional in 1972. The deciding case was Furman vs. Georgia (Litardo, 1994). The court held that the application of the death penalty to only a few of those eligible for execution, was capricious and arbitrary (Bedau, 1996), thus was cruel and unusual punishment. The court, in 1976, upheld the constitutionality of the death penalty by a vote of seven to two. In Gregg vs. Georgia, the court insured that the sentencing authority is given adequate guidance and information in all death penalty cases (Bedau, 1996). These guidelines
would include the death penalty for certain mandated crimes, and if administered in a manner to guard against arbitrariness and discrimination, would not violate the 8th Amendment. New objective standards would guide, regulate, and direct future processes for imposing the death sentence.

Between 1930 and 1960, there have been more than 3,724 executions carried out in the United States as opposed to 632 in Wales and England (Gibbons, 1977). This makes the United States one of the number one users of the death penalty. Russia and China also rank high in the use of capital punishment.

Executions for various crimes in the United States, when broken down into categories, revealed 3,225 for 1st and 2nd degree murder, 434 for rape, 23 for armed robbery, 18 for kidnapping, 11 for burglary, and 13 for various other crimes (Gibbons, 1977). There were 31 federal executions. Non-whites were put to death in 50 percent of the murders, 90 percent of the rapes, and 40 percent were executed for other capital offenses. The overwhelming complaint against the death penalty is that it is discriminatory (ACLU, 1996).

Many Abolitionists argue that low income minorities and those of the lower socioeconomic level are the persons who suffer, and are the real victims of the death penalty (Zehr, 1996). Capital punishment was more heavily used in the southern states versus the rest of the country (Snell, 1995, Bedau, 1996).

There are more than 2,000 people awaiting execution in the United States. According to Snell, most of these people are classified as poor but he does not describe or explain his definition of poor. (The Death Penalty, 1996). Many are African Americans,
Latinos, and Asians, and many have some form of mental illness, but again, Snell does not describe or define mental illness (Snell, 1995).

The United States Military and 37 other states now have current laws authorizing the death penalty. Some mid-western and north eastern states have abolished capital punishment altogether. Two states have never implemented the death penalty; Alaska and Hawaii. The Southern states are criticized as having the majority of executions (ACLU, 1996).

It should be noted that capital punishment in the United States involves a very small percent of the population. However, the finality of “loss of life” with the deliberate execution of a select few raises numerous questions such as:

A. Is capital punishment cruel and unusual punishment?
B. How painless are the methods of execution?
C. How successful is capital punishment in reducing serious crime in America?
D. Does God and the Holy Bible sanction capital punishment?
E. Is capital punishment designed to be discriminatory?

This paper will describe and discuss the issues relevant to deterrence. It will discuss deterrence in general as it applies to the death penalty and why the violent criminal behavior is not deterred. Criticism of the death penalty revolves around the issue of it being cruel and unusual punishment based on the methods of execution, religious interpretations, racial disparities, and wrongful death due to the innocence of the accused. These four areas are the main focus of this report and will be examined. Has capital punishment, as a deterrent to serious crime, been successfully tested? Before that question can be answered we need to fully examine and test all options in deterring crime. Capital
punishment may be a necessary and viable part of our criminal justice system regardless of whether it is employed as a general or specific deterrent. This paper will attempt to focus and answer such issues as: Is the death penalty "a necessary evil?" Is the death penalty cruel and unusual punishment? Is capital punishment in agreement with biblical scriptures and not contradictory to human government? Is capital punishment a deterrent to crime? Are there racial disparities in the system as well as innocent deaths? The paper continues with a new proposal to test the theory of deterrence based on capital punishment with the suggestion of televised executions nationwide in all penal institutions.
History

Capital punishment is defined as the use of death as a legally sanctioned punishment, and is used by numerous societies throughout history all over the world. According to Armstrong, executions have been practiced by society all over the world in an attempt to control social order, regulate behavior and to control norms (Armstrong, 1996). Capital punishment first appeared in the Babylonian Code of Hammurabi during the 18th century B.C. (Armstrong, 1996). The earliest recorded capital death took place in Egypt at around the 16th century (Armstrong, 1996). Apparently, the most severe method of execution appears during the Draconian Code of Athens during the 7th century B.C. Every illegal act was punishable by death. During the 5th century B.C., the Romans used death as a punishment for anyone disturbing the peace of the city at night or publishing insulting songs (Armstrong, 1996). However, the Romans also used death as a form of entertainment such as the gladiator battles, sea battles in the Coliseum, and Christian devourment by lions (Armstrong, 1996). Many forms of execution were carried out in Europe, such as stoning, burning, and crucifixion during the Middle Ages (Armstrong, 1996). One form of death was beheading which was for those accused of witchcraft or branded as heretics (Armstrong, 1996).

Seeking freedom from religious persecution, the early colonists fleeing England found new hope in the American Colonies. Even though colonies formed their own laws, they still brought with them the death penalty practiced in many European countries. For the early colonists, the death penalty was an accepted form of punishment by most of the local citizens. For example: Pennsylvania, being a state with a high population of
Quakers, utilized the death penalty for only two crimes, while Virginia, the harshest of all the colonies utilized capital punishment for twelve different crimes (Zehr, 1997).

The United States Constitution gave both state and federal governments the right to select their own punishments for crimes (ACLU, 1996).
Justification For Capital Punishment

With regards to the methods used to execute people, this paper will state that the firing squad, lethal injection, electrocution, gas chamber as well as hanging are perfectly acceptable. The question here is whether or not the person is suffering or is in pain while being executed. The answer is yes. But to what degree? As for psychological pain the concern is lessened considerably. The thought of death for a person convicted of a capital offense is going to include anxiety and psychological trauma to the offender, but should it be considered as part of the punishment? However, for this very reason, the punishment should be carried out swiftly.

As for the pain itself, the principle consideration is what method of execution offers the least pain and anguish. This paper will briefly discuss the five methods of execution and the fact that death is not instantaneous, but what other methods are available to us? How about stabbing, throat cutting, head crushing, body dismemberment, or even body explosion? Of course these methods would not only be sadistic, torturous, cruel and ridiculous in themselves, but utterly inhuman. An interesting side line to this segment is that in the military (special forces), elite commandos, law enforcement, SWAT teams, and expert snipers are taught that a sure and swift kill of another person is to sever the spinal cord at the base of the neck below the medulla oblongata. This method has been taught for a number of years and continues to be taught. This method assures instantaneous death, or does it? It is interesting that for centuries the French used a method of execution which assures instantaneous death by severing the spinal cord, "the guillotine." But was this method painless?

Should those individuals facing the death penalty be allowed to choose their method of execution? Perhaps one should remember that these sentenced subjects will be
removed from society because they have committed a heinous act against their human counterparts. It seems they have no place in today's society and have lost all respect and dignity for mankind. Should they not suffer the same type of demise as well as the pain and suffering as their victims encountered? Are there moral and ethical problems encountered by abolitionists using the Bible as their defense against capital punishment? According to the New Testament there is no private interpretation and no contradictions in the Bible. It is the word of God thus the blueprint of life. One cannot take one scripture from the book and base his entire belief on it. The Bible must be read in its entirety and studied for the true meaning. Numerous people take the scripture of, "an eye for an eye," (Exodus 21: 21-26), as a literal interpretation. Others use the sixth commandment of, "thou shalt not kill," (Exodus 20:13). If one reads both the Old and New Testaments, the overall consensus is belief, faith, and love both of God and your neighbor. The Bible also speaks of obeying the laws of the state. Today those laws are carried into our society to maintain social order and control. The Bible is very clear towards obeying the laws of your government. Capital punishment as a general deterrence may not deter people from further violence, but clearly it will act as a specific deterrence to the one sentenced to death from ever committing future intolerable acts.

Is capital punishment discriminatory? Are there certain classes and races of people sentenced and executed more often than others? Possibly, but when white people are killed and when certain people have a higher social status such as when a "cop" is killed, then people become more outraged and punishment is more vigorously pursued.

Is it possible to forget the past injustices and focus on the future. Isn't it time to
stop shifting the blame back and forth? How can societies change behavior and attitudes of people especially when those behaviors and attitudes are so diverse and extend to a variety of cultures, traditions, and beliefs. Equality and fairness must be the priority of the criminal justice system. The question is, how do we achieve this when there is so much bias and discrimination which exists today, as well as in the past? The answer has not been found, but in viewing the death penalty statistics of 1995, there appears to be at least on the surface, the signs of equality. In 1995, there were 3,054 prisoners under sentence of death. Of the persons awaiting execution, 1,730 were white, 1,275 were black, 22 were native American, 19 were Asian and eight were classified as other races. Fifty-six males were executed with 33 being white, 22 black and one Asian. Men represented 98% of persons executed, whites represented 57%, blacks 42% and other races 16% (native Americans, Asians and others of unknown race). Forty-eight women were under sentence of death, 32 were white and 16 were black. There were 237 Hispanics under sentence of death and this figure accounts for 8.5% of inmates of known ethnicity. No women were executed in 1995.

During 1995, white inmates under sentence of death increased by 77, while blacks increased by 72. Of the 237 Hispanics sentenced to death, only 2 were executed (Snell, 1995).

Statistics for 1996, indicate that 3,219 prisoners were under sentence of death. Of those awaiting execution, 18 were Asian and 8 were classified as others. There were 45 males executed of which 27 were white, 14 black, two Hispanic and 2 listed as others. Forty-eight women were under sentence of death, but none were executed (Snell, 1996).
During 1996, the number of black inmates under sentence of death increased by 65, the number of white increased by 88 and the number of persons of other races (American Indians), rose from 48 to 50. The number of Hispanics sentenced to death rose from 239 to 259 in 1996 (Snell, 1996). Women sentenced for execution in 1996 were 48. None were executed. According to the Bureau of Justice statistics, men were 98% (3,171) of all prisoners under sentence of death. Whites predominated (57%); blacks comprised 42% and other races (1.6%) including 24 native Americans, 18 Asians and 8 persons of unknown race. Among those for whom ethnicity was know, 99% were Hispanic (Snell, 1996).

It would appear on the surface that all races are being equally represented by these numbers, but are they? In order to establish any furtherance of discrimination in the U. S. and to compare the effect of minorities being the focus of capital punishment, one needs to know the population of each state per 100 thousand people and determine the percentages of inequity in this country.

This segment could easily be a major topic itself. This paper hasn't mentioned the mentally retarded, the execution of juveniles, or the legal defense and economic status of the accused. However, the death penalty should be applied to all people equally according to the laws of the country, regardless of race, religion, or citizenship.
Opponents of capital punishment feel that the death penalty not only violates the 8th Amendment and the 14th Amendment, but the Holy Bible as well. Most abolitionists feel the death penalty is a relic of early America, when slavery, branding, and corporal punishment were common and routine acts. They feel we are civilized, and capital punishment has no place in today's society. Abolitionists believe in one's right to life and one's right to not be subjected to cruel and unusual punishment, is fundamental and is part of international human rights declarations (Litardo, 1994).

While both sides disagree on both moral and ethical questions, they also differ on religious philosophy. Each side uses the Biblical interpretations to express their viewpoint and to help justify their position on the issue.

Proponents of capital punishment often cite the Old Testament as proof to the legitimacy of the death penalty with such scriptures as "an eye for an eye." Yet, it is important to keep in mind that the New Testament, God's new covenant with man, must be the primary standard for Christians. The Old Testament, or Hebrew scriptures, have distinct connections with the New Testament. Jesus Christ came to fulfill prophesy and the law while consciously building on Old Testament traditions (Quade, 1996). Jesus Christ came to establish a new order, a new creation, (a new covenant) and therefore the Old Testament is considered by Zehr to be subordinate to the New Testament (Zehr, 1979, Holy Bible, KJV 1990).

The Old Testament does allow the death penalty and uses a theme of vengeance. In early Hebrew history it was a society ruled by the strict law, and vengeance was to be
controlled. An "eye for eye, tooth for tooth, hand for hand and stripe for stripe" was a rule to make retaliation proportionate to the offense (Holy Bible, KJV, Exodus 21:24). The Old Testament allowed capital punishment for adultery as well as for murder, however, a death conviction required absolute certainty requiring at least two or three witnesses instead of the United States standard of "beyond a reasonable doubt" (Quade, 1996, Holy Bible, KJV Deuteronomy 17:6).

A killing was a religious evil that demanded compensation through a religious ceremony and executions were a way of righting a moral imbalance. Capital punishment in those days had more of a sacrificial and ceremonial function as opposed to the legal function of today (Zehr, 1979).

According to the Old Testament, life was sacred and could only be taken in certain circumstances. Christ's death on the cross, the act itself being that of capital punishment, wiped away the Old Testament's moral and ceremonial basis for the death penalty. By Jesus dying on the cross, a trade was made with the murderer Barabbas and in effect, closed off the Old Testament reason for the death penalty altogether (Zehr, 1979).

The New Testament moves from retribution of the Old Testament to no retribution and love. Jesus taught that life was given by God and belongs to God and is not ours to take. For those who believe in repentance, human redemption, and salvation, is it right to deprive a person of that possibility? (Zehr, 1979).

A final note on Biblical perspectives. In the Old Testament, the Sixth Commandment says, "Thou Shalt Not Kill," yet capital punishment, whether ceremonial retribution or sacrificial retribution, continued in practice (Quade, 1996). The teachings
of the New Testament which are the new standards for Christianity, (repentance, love, salvation, etc.) we are to obey the Ten Commandments in theory. But under the followings of Christ, the two most important and necessary laws of Christianity, are to love thy God and love thy neighbor. If these two ideas are obeyed without question, then according to the scriptures, it is impossible to break any of the Ten Commandments (Holy Bible, Exodus 20:1).

The Christian, therefore, has a responsibility to call the state to higher standards of behavior and to ask the state to perform its task effectively and justly. The state should consider the needs of both victims and offenders and use its power with correctness, effectiveness, and appropriately (Zehr, 1979).

The New Testament tells us to, “obey the laws of the state.” The state has the power to determine laws and regulations. In the book of Hebrews in the New Testament, we are told to obey them that have the rule over you (Holy Bible, Hebrews 13:17). Proponents of capital punishment consider the death penalty a legal and justified sanction by the state and not against biblical interpretation. This can further be clarified by Jesus stating in Matthew 19:18 “Thou Shalt Do No Murder” and changed from Thou Shalt Not Kill (Exodus 20:11). The New Testament represents the new covenant God made with man. God’s commandments are still observed however, capital punishment by the state, became necessary for order and stability among society.

Many people consider the Holy Bible a blueprint for life on earth today and a book which should be read and followed as a reference guide only. The problem with today’s Christianity is that people apply their own interpretations to the scriptures.
Why Deterrence Doesn’t Work

There is one strong difference between abolitionists and retentionists over capital punishment. Deterrence retentionists believe that the death penalty does prevent some types of crime by intimidating offenders. The theory is that the fear of death should stop some people from committing murder. But, is this true?

The deterrent impact of capital punishment is one of the most frequently studied phenomena in criminology. The majority of work fails to show the positive correlation between capital punishment and the homicide rate. Even with the use of highly sophisticated time-series designs, which do not show any support for deterrence, do not deter the hard core retentionists. Deterrence should establish credible threats of punishment, but there is no supportive evidence to back up the claim. Virtually no criminologists feel that capital punishment is an effective deterrent. On the other hand, some abolitionists feel that sanctioned death sentences actually increases the murder rate. Abolitionists feel that life without parole in an institution will serve the same purpose as death, and it is less barbaric and much more humane. According to them, capital punishment is nothing more then murder by the government.

One big argument against the death penalty is the time delay between sentencing and execution. Appeals can take years, and in 1991, only 14 out of 266 people who were sentenced to death were actually executed (Walker, 1994).

The issue of delays gives ammunition to death penalty opponents and only an elimination of appeals would speed up the process.

According to Ernest Von Haag, people are not deterred by exactly calculating the
size of the threat and the actual risk of suffering punishment against the likely benefit of
the crime they consider committing. Thus, do threats deter? Von Haag asks, "Does the
more severe threat of death deter significantly more than that of incarceration?" (Barnet
& Bedau, 1996)

In 1975, Isaac Ehrlich attempted to prove that with each execution at least seven
or eight murders were deterred and the public support for the death penalty grew.
However, in-depth studies soon found that there were flaws in the research and found
weaknesses in the claim through unreliable data.

In a study done by Cochran, Chamber and Seth, (Deterrence or Brutalization) on
Oklahoma’s death penalty, they concluded that there was no evidence to support a
decrease in the homicide rate after reintroducing the death penalty, and the findings again
failed to show a significant deterrent effect with the use of the death penalty.

"The death penalty does not work because murder is not a rational act done by
rational people who carefully think through the consequences of their actions," says James
McCloskey, a director of Centurion Ministries in Princeton, New Jersey. People who
commit murder are either full of hate and anger, or suffer from some type of emotional
state. They are emotionally unbalanced and kill with no regard for human life. Killers are
often antisocial people who do not respond normally to social values and are more often
than not, in need of some type of drug therapy. McCloskey continues by saying, “To
think that putting a person to death will deter others from committing further acts of
violence is an irrational approach and doomed to fail." (McCloskey, 1996)

Barnet and Bedau disagree and argue that the death penalty can and does deter
crime (Barnet/Bedau, 1996). Death differs significantly from any other type of punishment. For example, life in prison is still life, but in contrast, death is death and irreversible. Do inmates prefer spending the rest of their lives in prison or a sentence of death? Can a logical conclusion can be drawn in favor of capital punishment as a deterrent? As one can plainly see, the death penalty issue is an on-going dilemma. There will never be a consensus as to whether it truly deters or not. Has this society exhausted all possibilities before coming to a decision as functional or do we need to initiate and continue to satisfy our need to know?

The future of capital punishment rests with a very simple statement. How can the death penalty deter if society can’t agree on its necessity and application? If this nation can’t come to a decision as to the implementation nationwide and agree and stand by with determination at making the process work, (or not work), then where do we stand? The purpose of this paper is to come to an understanding of current problems which now exist and put forth an effort in making deterrence work. This society must stop fighting and arguing among themselves and join forces aimed at a common goal, the reduction of serious crime.

Of course, the death penalty doesn’t work. And why should it when society can’t even come to a realistic policy towards deterrence? What type of message does this send to the criminal element? Our current approach tells those who commit the most heinous crimes, with death as a punishment, that we can’t make up our minds whether or not it’s cruel and unusual punishment or serves as a deterrent. This paper discusses four different areas of cruel and unusual punishment, all of which are valid, as well as important topics
to consider. But society must draw the line at some point and get back to the primary concern. Will the death penalty work as a deterrent as a punishment for certain crimes? We know it will stop any future criminal activity from the person being sentenced. But will it stop further acts of violence among those who chose that life style, and are caught, convicted, and sentenced?

This paper is not an attempt to discuss why people commit murder and other crimes related to capital punishment, but to strictly focus on the fact that capital punishment, as it is applied today, does not appear to curb violent crime.

There are two primary concerns with capital punishment. It is not consistent nationwide and it is not swift and sure. The offender is not only aware of the immoral issue, racial disparities, innocent victim syndrome, and method of execution, but is also confronted with the time frame from conviction to actual execution and the inconsistent methods of application across the nation. With all the confusion and discrepancies the offender now faces, does he or she view their chances of actually being executed if sentenced to death, as slim or next to none?

The state therefore needs to have a more consistent capital punishment policy; one that assures the death penalty for certain crimes and one that not only assures swift and sure punishment, but also proceeds toward deterrence. Public, televised executions nationwide with strict federal guidelines throughout all penal institutions, is a possible step in that direction.
Issues/Cruel and Unusual Punishment/Execution Methods

Opponents of the death penalty argue that it is cruel and unusual punishment for the state to put a person to death. They argue that deaths by hanging, electrocution, lethal injections, firing squad or the gas chamber are horrifying and immoral, cause pain and suffering, and are indeed barbaric (Zehr, 1997).

Regardless of certain views on the way executions are carried out, are these methods the least barbaric we can implement? According to death penalty proponents, capital punishment must be available to punish certain crimes for which there is no other reasonable punishment. For example: An act of cold blooded murder, murder from terrorism, murder relating to kidnapping, rape, and child offenses, or murder by torture are a few such crimes that should not be tolerated in society. Are these heinous crimes, which by their very nature, cruel, inhumane, and immoral? Do such crimes go against society’s values and moral system or should they be tolerated? (Stephan/Brien, 1993).

As of December 31, 1996, the predominant method of execution in 32 states was lethal injection. Eleven states used electrocution, seven used lethal gas, four used hanging and three used firing squad. In the United States, the method of execution in all federal prisons is lethal injection (Snell, 1997).

Among the sentenced executed between 1977 and 1996, the average time spent between the imposition of most recent sentence they received and execution was nine years. White prisoners spent an average of eight years and four months in prison while the average for black prisoners was nine years and nine months. (Snell, 1995). In 1996, nineteen states executed 45 prisoners. The average length from sentence of death to the
execution was 10 years, five months. Thirty eight states provided revised capital
punishment statutes at the end of 1996, while 36 provided for review of all death
sentences (Snell, 1996).

Opponents of the death penalty cite the following examples in regards to current
practices of executions and maintain it is cruel and unusual punishment. Hanging was the
most common form of execution throughout the 19th century and is still practiced in a few
states. However, if the drop of the rope is too short, the person is strangled (ACLU,
1996), but if the drop is too long, then the jerk of the rope could rip off the person’s head.
In the 20th century, electrocution replaced hangings (ACLU, 1996). When the electric
current enters the body, it jerks, smokes, causes the head to rise and there’s the smell of
burning flesh. Often times it takes more than one jolt to end a person’s life (ACLU,
1996). The gas chamber was initially intended as an improvement over electrocution
(ACLU, 1996). The condemned is strapped into a chair, a cyanide pellet is dropped into a
container of sulfuric acid to make a form of lethal gas, and once inhaled, the person
struggles for air (ACLU, 1996). The person changes color, usually purple, drools and
then usually goes unconscious. But that time can vary from seconds to several minutes
(ACLU, 1996). The firing squad is still another practice used today. The condemned is
strapped to a chair, a target is placed on his chest, while five men (one loaded with
blanks) fire at the person (ACLU, 1996). Lethal injection is now used by more than a
dozen states. This method is considered the most humane, however, a wrong dosage can
render a person conscious and paralyzed while dying. Eyewitness accounts claim these
executions are indeed ugly, horrifying, degrading, and painful. It is seen as immoral in
principle, unfair and discriminating and should be abolished (Barnet/Bedau, 1996).

On the other hand, Chris Armstrong, the author of *Death Penalty: A Means to Curb Violent Crime in the United States*, quoted, “If the death penalty has been declared legal and thereby humane, then the federal and state government must employ it to its fullest as a means of deterring previous murderers from recommitting their crimes.” (Armstrong, 1996). He continues to say that hanging was declared not to be cruel or unusual punishment according to the Ninth U.S. Circuit Court of Appeals. Furthermore, if hanging is constitutional then lethal injection, electrocution, and the gas chamber, which are much more humane, are certainly compatible standards of decency (ACLU, 1996).

The 8th Amendment deals with cruel and unusual punishment (Frisman, 1996). Those in favor of the death penalty view the term **cruel** as irrational and disproportionate and the term **unusual** as rare and infrequent (Cochran, Chamlin, Seth, 1994). Proponents see nothing in the constitution that bars the death penalty as cruel or unusual punishment. Proponents further argue that the Supreme Court in 1976, ruled again that capital punishment was not a violation of the 8th Amendment (Stephan/Brien, 1993).

Even though proponents argue for the death penalty they generally agree that death should be as painless as possible. Of the 220 inmates put to death since 1977, 106 were killed by electrocution, 103 by lethal injection, 9 by the gas chamber, 1 by firing squad, and 1 by hanging. Proponents believe that candidates for the death penalty should be allowed to chose their own method of death (Litardo, 1994).

The primary principle is that a punishment must not be so severe as to be degrading to the dignity of a human being. Pain certainly may be a factor in the judgment
and the infliction of an extremely severe punishment will often entail physical suffering (Wasserstrom, 1979).

There are four principles to consider when determining the "cruel and unusual punishment" issue: (1) The punishment must not be degrading to human dignity. (2) The punishment will not be one totally rejected throughout society. (3) The punishment will not be inflicted in an arbitrary fashion. (4) The punishment will not be patently unnecessary or excessive (Wasserstrom, 1979).

Wasserstrom, a professor from the University of California, Los Angeles), concludes death is not only severe punishment, but degrading, excessive, and totally arbitrary. No other existing punishment is comparable to death in terms of physical and mental suffering. It further appears that there is no method available today that guarantees immediate and painless death. Mental pain also accompanies physical death and the two are inseparable. The long wait between sentence and execution causes direct mental anguish. As the California Supreme Court pointed out, the process of carrying out a death sentence is degrading and brutalizing to the human spirit, and a psychological torture (Wasserstrom, 1979).
Racial Disparities

What remains to be constant in studying capital punishment is the type of person sitting on death row. They are most likely to be a minority, a low income person who lacks education, perhaps a high school drop-out (Litardo, 1994), and in most cases was convicted of murdering a white person (Cochran, Chamlin, Seth, 1994).

Of the 45 executions in 1994, only four involved the murder of a black victim. Not one white person was executed that year for the murder of a black person, while ten black men were executed for crimes involving white victims (ACLU, 1996). Since the reinstatement of the death penalty, only four white persons have been sent to death for the killing of a black person, while 90 black men have been executed for killing white people. Is there racial injustice? From these figures it would appear so, but one must look at each case individually and without bias or preconceived ideas before making a final decision as the Superior Court said in McCleskey (Snell, 1995).

What is the viewpoint of the Supreme Court on this area? Has the Supreme Court ignored the relevance of these finding? The Court’s refusal to recognize racial bias in death penalty cases is based on the observed behavioral patterns of the various players in the criminal justice system (Newbauer, 1979).

Gregory Russell from the Greenwood Press (Westport, Ct.), examined the effects of jury members when dealing with issues of whether or not to invoke the death penalty, and found racial bias played a crucial role in their decision.

Russell hypothesizes that death penalty supporters often possess attitudes that have been linked by other researchers to racial bias, (authoritarianism, punitiveness,
When analyzing a survey done in Georgia, Russell found that a combination of the respondent’s race and level of punitiveness provides the most accurate prediction of the level of support for the death penalty. This concludes that because death penalty juries are currently composed of persons more likely to support the death penalty such as whites, and who hold attitudes tending toward racial bias, are more likely than other respondents to serve on death penalty cases (Russell, 1995).

We can safely say that if the court’s guidelines for jury selection in capital cases are responsible for this disparate outcome, then defendant’s could very well be denied their due process rights as well as becoming victims of unequal protection and bias (Russell, 1995).

Broad constitutional principles and specific legislative rules both authorize as well as impose general constraints on capital punishment. The jury is the link between the law on the books and the law in action. At no other time in the criminal justice system has the jury been placed in such an important role than that of deciding guilt and punishment for someone facing the death penalty (Acker and Lanier, 1996).

Historically, juries rather than judges have served as the sentencing authority in capital punishment cases. This is because of the nature of the decision that is required. Should a person live or die for a given type of offense? This is an extremely difficult and heavily thought out decision. The question is based more on moral questions than legal. Thus, these cases are unique and because of the unique qualities of the trial jury, the court has made the jury the sentencing authority in capital punishment cases (Acker, 1996). It appears that one must address the problem of jury selection in determining fairness and
equality for death sentence cases.

Does the factor of discrimination continue to be the problem it once was? The appeals process for a condemned prisoner is lengthy and painstaking. Every effort is being made to see that the verdict and sentence are fair. However, assertions of discrimination are not an argument for ending the death penalty, but for extending it because justice requires that the law be applied equally to all and it is not justice to exclude everyone from the penalty of the law if a few are found to be favored.

It is uncertain whether there is any racial bias in death sentences imposed in recent years. There are good grounds for believing that such bias existed in decades past, particularly in the south, notably for crimes in which black men raped white women (Wilson, 1983).

In the application of the death penalty, there is substantial evidence of race discrimination. Between 1930 and 1966, African Americans represented 54 percent of the 3,859 people executed in the United States (ACLU, 1996). They also represented 90 percent of the 455 people executed for the crime of rape. The most recent research focuses on the racial characteristics of the offender and the victim. African American defendants who kill whites have about a 25 percent probability of viewing the death penalty as compared to that of whites who kill African Americans (Walker, 1994, ACLU, 1996).

One of the deciding cases for discriminatory use of the death penalty was McCleskey vs. Kemp. McCleskey, during an armed robbery, shot and killed a white police officer. He was convicted and given the death penalty. McCleskey made six
appeals. The first four upheld the conviction and denied him new trials, certrorain and writs of Habeas Corpus. On the fifth appeal, McCleskey filed another writ of Habeas Corpus in the Federal Courts. His petition raised 18 different claims, one of which was that the state of Georgia was discriminatory in sentencing procedure and violated the 8th Amendment and 14th Amendment. McCleskey argued that he was the victim of a process that sentenced him to death because whites are killed more disproportionately than blacks. The Baldus study looked into “The McClesky Decision” to examine and evaluate any discriminatory actions. The findings were that the death penalty was imposed upon McCleskey because of his race (David Baldus is a professor from the University of Iowa). The District Court stated “Statistics do not demonstrate a prima facie case in support of the contention that the death penalty was imposed upon him because of his race, because of the race of the victim or because of any 8th Amendment concern” (McCleskey v Kemp, Georgia 1978). The court showed that there was insufficient cause to show irrationality, arbitrariness and capriciousness under any kind of 8th Amendment analysis. The court further stated that McCleskey would have to prove direct racial discrimination and not just infer discrimination (McCleskey v Kemp, Georgia 1978). The Court of Appeals denied his writ and stated that there was no evidence of direct racial discrimination and that the death penalty was not imposed on him because of his race, or the race of the victim or any 8th or 14th concern. There was no intent to discriminate. McCleskey v Kemp was the last great challenge to the capital punishment issue. The United States Supreme Court refused to abolish capital punishment.
Wrongful Death/Innocence

In a statement by Hugo Adam Bedau, a professor of philosophy at Tufts University, "It is false sentimentality to argue that the death penalty should be abolished because of the abstract possibility that an innocent person might be executed" (Bedau). He concludes that the only way to assure that convicted persons do not kill again is to put them to death, "If the government functioned only when the possibility of error didn't exist then the government wouldn't function at all" (Barnet and Bedau, 1994).

Based on evidence presented by Bedau, he claims that from 1892 to 1971, at least 7,000 executions took place in the United States. According to Bedau, there was no indication of innocent persons sentenced to death. However, he does not explain his findings in this area. Bedau further states that if an innocent person is put to death, the mistake can never be corrected. No possible compensation is possible. "It is better that ten guilty should escape than one innocent person should suffer," (Palmer, 1994).

Because the death penalty is more shocking than any other punishment given out, the courts and juries are much more scrupulous in demanding the fullest degree of evidence.

One must remember that our criminal justice system cannot be made fail-safe because it is run by human beings and humans are fallible. As an example, a study published in the Stanford Law Review, documents 350 capital convictions in the United States which through further investigations, found some of these persons to be innocent of the crime. Of the 350 convicted, 25 were put to death. The others spent years incarcerated in our penal system (ACLU, 1996).

Since 1973, 66 persons were released from their "sentence of death" due to new
evidence (unknown what type) finding them innocent of the crime and the charges were dropped (Deiter, 1996). Ordinarily, a crime for which a convicted person claims he is innocent is not entitled to federal court review based on new evidence. Chief Justice Rehnquist held that a state prisoner, when convicted of a crime for which he is given the death penalty, should not expect the Supreme Court to have the responsibility for reviewing new evidence (McCloskey, 1996.) He is not entitled to court review based on new evidence “because of the very disruptive effect that entertaining claims of actual innocence would have on the finality in capital cases. The threshold showing for such an assumed right would necessarily be extraordinarily high” (McCloskey, 1996). However, Rehnquist in his findings does admit that some people are convicted wrongly. In 1973, there were 48 cases in which convicted persons were found innocent of the crime and released from death row but McCloskey states no reasons for those reversals (McCloskey, 1996).

The Supreme Court’s view on the death penalty is simple. It is cutting off access to the federal courts for those proclaiming their innocence. The reason, “finality” even though 20 percent of those sentenced are innocent (McCloskey, 1996).

The following are examples of how people can be convicted wrongfully:

A. Unreliable eyewitness accounts
B. Under skilled, lazy, unprepared and under compensated defense attorneys
C. Perjury by buying witnesses
D. Unreliable prosecution witnesses
E. Inept or corrupt forensics criminalists
F. Prosecution withholding key evidence
G. Racism
(If the previous examples are true, should society seriously consider modifying the
criminal justice system)?

Deiter stated that there were instances where people have been sentenced to death
and later found to be innocent. This is a major concern in our criminal justice system
today. Is it better to abolish capital punishment altogether rather than convict and
sentence more innocent people to death? Is there a way to improve our current system?
Perhaps some type of "federal death committee" to review every capital punishment
sentence in the area not covered by constitutional issues of the Supreme Court, or re-
examine those issues considered by the court on the appeals issue.

An old cliche states that it is better to free 100 guilty people than to even consider,
without absolute certainty, the guilt of one man that may in fact be innocent. Have we
strayed from this concept?

It is believed that the death penalty is a necessary evil to correct the faults of a
criminal and deviant mind if indeed all other means have been exhausted. Capital
punishment is not cruel and unusual punishment if handed out to those who are convicted
equally and fairly without any bias or discrimination under the law.

Has the death penalty failed on the issue of reliability? Blackmun does not believe
the system can accurately and with consistency, determine which defendant's should die.
Blackmun further states that the system fails to deliver the fair, consistent and reliable
sentences of death required by the constitution due to inevitable factual, legal and moral
error which we know wrongly kills some defendant's (Blackmun, 1994).

Richard Dieter of the Death Penalty Information Center, a Washington based
group concerned with what it believes are inequities in the way the death penalty is applied, said the following, “Since the Supreme Court ended a four year moratorium on capital punishment there have been 415 executions nationwide” (Asseo, 1997). He believes there will be more executions in the future as a result of federal and state laws shortening the appeal process of the condemned. Lawmakers have attempted to streamline the process in federal and state courts due to frustration with inmate appeals (Asseo, 1997). In 1996, congress enacted a law setting time limits for state inmates to file appeals in federal courts and there is a concern that this speeding up process will result in mistakes and injustices (Asseo, 1997).

Capital punishment is a very controversial topic. This paper has discussed a few critical issues based solely on cruel and unusual punishment, but has not touched on other issues such as retribution, rehabilitation, and alternative forms such as life in prison.

There are both positive and negative concerns dealing with the death penalty. Will society and lawmakers ever come together with a common agreement on this issue? It appears the problem is much too complex and the views widely differ. A major issue is that of the deterrent effect capital punishment has on crime. However, will the death penalty or the fear of death for committing certain criminal acts deter people from committing those future acts? Some say that capital punishment solves nothing and that it provides human sacrifice for a sick society and is a cry of politicians who buy votes with fear tactics (Asseo, 1997).

Do these arguments have their merits and sound reasoning? What about the serial killer, the domestic terrorist, child abductor, or those who commit murder by torture? Do
these types of individuals need to be kept off the streets and out of society’s way? Can life imprisonment guarantee that? Perhaps, but capital punishment does accomplish that.
The Last Option/A New Policy

The proposal is simple but quite drastic. It is time to truly test the death penalty issue and prove or disprove the deterrence dilemma. The proposition is that by the general public viewing capital executions nationwide, at all penal institutions, local, state, and federal, will have a definite impact on current inconsistent attitudes. One of two events will occur: The outrage of televised death will either anger people, which could possibly result in more criminal behavior among the antisocial criminal types, or totally shock the public conscience with anger and outrage about what they just viewed, causing the criminal element to more seriously weigh the cost and benefit of murder and other heinous acts.

The policy should be implemented statewide with 100% cooperation from all penal institutions. All penal institutions will be forced to coordinate and announce to a central committee all dates for executions of inmates. A committee will be responsible for scheduling all televised broadcasts nationwide. This has to be an all or nothing decision. Guidelines should be set and monitored by the federal government. Guidelines should not only be implemented with consistency with regard to which acts should be given death sentences, but also the policy should improve on the theory of swift and sure punishment. Society needs to establish, once and for all, which criminal acts will not be tolerated by our society. Such crimes as first degree murder, kidnapping/murder, child molestation/murder, death from torture, terrorist’s acts resulting in death and arson resulting in death. These are just a few examples of acts that should be punished by death nationwide. However, consistency is the key.
A time frame should be incorporated which would allow that each execution be publicly broadcast over national television, statewide. Rules and regulations regarding viewing by each institution would be thoroughly followed and adhered to. A committee at the federal level would have to regulate all such rules and initiate sanctions or reprimands against violations. The committee would receive feedback by reviewing the results every six months for a five year period and compare the homicide rates with past statistics to determine any casual interpretations, nationwide.

A large emphasis would be placed on feedback from inmates under confinement in our institutions, especially those under the sentence of death, but all comments on this issue will be collected and evaluated.

Of course, there are many other factors to consider such as the cost of such a policy, which would include a video/film crew complete with media implications and of course the cost of executions themselves, statewide, which already bring mixed results among the public. These two areas as well as the current arguments for and against capital punishment will create the usual resistance.

Juvenile facilities would also be subjected to this program. After all, if the criminal mind and deviant behavior begins at a young age, why not instill in their minds how society views such behavior. If such a policy could reduce the possibility of juveniles committing heinous and violent crimes into adulthood, then the policy is worth initiating and you would think such a policy would be gladly received and accepted by the public.

Critics will argue on the “young minds” and how much more harm then good will result. But let’s remember that a good shock for those that are contemplating criminal
activity might be just the right message to send out to our youth.

To examine the theory that televised executions can reduce violent crimes, a classical experiment would test the hypothesis that nationally televised executions, of those convicted of violent crimes, could deter and reduce violent acts for those who view such executions. Specified institutions across the nation located in states where large populations await the death penalty for crimes such as first degree murder, murder/rape, terrorist acts, kidnapping/murder would be selected. States such as California, Texas, Florida, Pennsylvania and Ohio just to name a few, have large amounts of prisoners under the sentence of death.

Within these states, both state and federal institutions would be selected including juvenile facilities. An appropriate sampling size would be selected using all institutions in the United States as our sampling population and then randomly selecting each individual institution depending on population.

With our samples chosen, our next problem would be to randomly select subjects for both a control group and experimental group. Both groups would be given a pretest in the form of a questionnaire. The questionnaire would be directed toward pros and cons, for and against capital punishment. More specifically, the questions would be aimed at what would deter a person from committing violent crimes if anything and what causes a person to follow a life of crime.

After administering the pre-test, an experimental stimulus, or treatment would be given to the experimental group. The treatment or independent variable would consist of a video taped execution. All subjects in the experimental groups would be exposed, over
time, to a series of nationally televised executions. Each execution would be followed up by a questionnaire given to each subject requesting their feedback and responses to the event. The control group would not be subject to the stimulus nor would the control group be told about the program.

Correctional guards and staff would take part in this program by monitoring each subject or group after the event. Any emotional, psychological or sociological changes would be documented and recorded for later data collection and analysis.

A time span for evaluation of the program is difficult at best to consider, however, a five year plan would allow for a partial analysis of the study. During this phase, both the experimental and control groups would be given a post-test. These two groups would answer identical questions as they did earlier in the pre-test. The post-test would be measured against the pre-test for any causal relationships between the two groups. Did the stimulus have any effect on the experimental group or did subject opinions about capital punishment for both groups remain the same.

Of course there are many things to consider, such as the validity, reliability, and time restraints, but such a study, if feasible, would definitely produce data to help understand crime, crime polices and social behavior in society.
BIBLIOGRAPHY


