

Capital Punishment and the Case for Abolition

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ABSTRACT

This research project is to analyze the death penalty at the federal level. The death penalty has been an increasingly controversial issue in the United States since the 20th century. Support for the death penalty varies widely, but it is still popular. Contrastingly, in academia and among scholars, opinion on the matter of abolition is completely different. Currently, 24 states have legalized the death penalty, 23 states no longer legally allow it, and 3 states have temporarily outlawed the death penalty. The federal government in the United States has given states the right to choose whether they allow the death penalty or not, and because of this, abolition is immensely difficult to achieve. The United States is one of the only first world, developed countries that still carries out execution of prisoners. With a democratic government like the U.S. that says they focus on the rights of its citizens; the U.S. should be more widely focused on abolition of the death penalty. The death penalty in practice is undoubtedly an unethical and immoral practice, but it also deprives humans of their rights, has discriminatory roots, and has an extensive effect on the international community. Because of this, the death penalty is vastly flawed and there should be urgent efforts from citizens and politicians alike to abolish the death penalty swiftly. I put forward a proposition that the United States federal government unreservedly abolish the death penalty as a whole.

INTRODUCTION

Current U.S. Policy

Since the latter half of the 19th century, the death penalty has been a major issue that has been a part of significant debate. However, major legal work for abolishment was not very significant until the 1972 the case of *Furman v. Georgia*. In this case, “the Supreme Court declared capital punishment unconstitutional... The court said the death penalty was a violation of the Eighth Amendment prohibition against cruel and unusual punishment because of the inconsistency in who was given a death sentence and who was not” (crf-usa.org, 2012). This case was seen as an opportunity for the United States to eliminate the death penalty completely. However, even though 35 states followed the Supreme Court’s order, the public became increasingly worried about crime spikes that caused an interest in new measures regarding capital punishment. Since then, many states adopted their own laws on capital punishment, and others re-introduced their previous laws on capital punishment, while the federal government reestablished the death penalty in 1988. There have been several major cases since 1988 like *Roper v. Simmons* (2005) wherein “The Supreme Court ruled it unconstitutional to execute murderers who were under 18 when they committed the crime” (crf-usa.org, 2012). *Roper v. Simmons* was the last major case involving capital punishment. As of today, 24 states have the death penalty, 3 states have a gubernatorial moratorium, and 23 states, including Washington D.C., have abolished the death penalty (Death Penalty Information Center, 2021). Since the re-introduction of capital punishment in 1976, 1,546 individuals have been executed throughout the United States (Death Penalty Information Center Fact Sheet, 2021).

Claims of Discrimination

Capital punishment and the death penalty has been associated with claims of discrimination in cases involving the death penalty. Many people will say that capital punishment is much more favored by white Americans than it is African Americans. This is true, and white people tend to expend more time and

resources to upholding the death penalty. A study conducted by the Midwest Political Science Association found that “there is a substantial race gap in support for the death penalty, with 65% of whites supporting the policy, compared to only 50% among African Americans... [we] found racial prejudice to be an important predictor of whites’ attitude toward the death penalty” (Peffley and Hurwitz, 2007). When whites are more intolerant and support the death penalty, it significantly undermines the effort for abolition nationwide. Support of capital punishment is fostered by anti-black stereotypes and by the resistance to the racial discrimination argument against the death penalty (Peffley and Hurwitz, 2007).

The death penalty is more than just racially discriminatory, and it is carried out on minorities at a much higher rate than whites. This is due to a broader issue within the justice system as a whole that is not efficiently looked at. Even if the existence of discrimination can be proven, it is against the idea that capital punishment should be completely abolished because of it (Hockhammer, 1969). Abolition based solely on discrimination would be, to an extent, harmful to minorities because the problem of underlying issues within the system would not be solved. Because of this, minorities would still be arrested, tried, and convicted wrongfully and at rates much higher than whites.

Cost of Capital Punishment

An argument to be made for abolition is that it costs an immense amount of time, money, and resources compared to non-death penalty cases. Expenditures used on capital punishment and those on death row is a disservice to taxpayers and citizens alike. In 2003, a legislative audit in Kansas found that the cost of a death penalty case is 70% higher than that of a non-death penalty case (Amnesty International, 2017). Additionally, “In Tennessee, death penalty trials cost 48% more than the average cost of trials in which prosecutors seek life imprisonment” and “In Maryland death penalty cases cost 3 times more than non-death penalty cases, or \$3 million for a single case” (Amnesty International, 2017). This money spent in the pursuit of death is not only horrible for the justice system, but it is harmful to state economies and their budget discretion. The death penalty takes money away from legitimate crime-control measures. This money can instead be spent on crime prevention, mental health treatment, education and rehabilitation, meaningful victims’ services, and drug treatment programs (Amnesty International, 2017). Incarceration and legal costs should not be nearly as overwhelmingly high as they are currently. Death row inmates are kept in high security prisons, which is significantly more expensive than a state prison, and they are incarcerated for long periods. A Pew Study estimated “that of the 44 states evaluated, median spending was 49%, with 10 states experiencing growth of 90%” (Mcfarland, 2016). This is explicitly attributed to the increase in incarceration time for long periods like 20 years on average in the state of California. Abolition of the death penalty would halt this wasteful spending and would allow for the justice system to shift resource focus on actual crime prevention instead.

Innocence and Wrongful Convictions

According to the Death Penalty Information Center, at least 187 people since 1973 who had been wrongly convicted and sentenced to death in the United States have been exonerated (Death Penalty Information Center, 2021). That is an alarmingly high number of individuals who were set to be executed, and it causes people to question how that can happen. One of the main issues involving wrongful convictions revolves around forensics and DNA testing technology. Research by the Virginia Law Review thoroughly analyzed the cases of over 156 exonerees. They found that in many of these trials, there was invalid forensic science testimony which consisted of two basic types. (1) the misuse of empirical population data, and (2) conclusions regarding the probative value of evidence that were unsupported by empirical data (Garrett and Neufeld, 2009). DNA technology has not solved the problem of invalid forensic testimony, and when DNA technology is needed, it is hardly utilized. “only two percent of law enforcement requests to crime labs involve requests for DNA analysis. Nor is DNA analysis immune from inaccurate presentation of results” (Garrett and Neufeld, 2009). Additionally, it is deeply troubling that the incidence of faulty use or mischaracterization of the underlying data cannot be known without retesting or reexamination of the underlying forensic evidence, which was declined to be done in many of the cases involving the exonerees (Garrett and Neufeld, 2009). This is a wide, underlying problem within the justice system, and “the adversarial system largely failed to police the invalid testimony during these trials” (Garrett and Neufeld,

2009). It is also important to mention that in these cases, defense counsel rarely cross-examined analysts concerning invalid testimony and rarely retained experts, since courts routinely deny funding for defense experts (Garrett and Neufeld, 2009). The United States justice system and those who work to prosecute criminals, severely neglect the use of DNA analysis and work actively against DNA analysis so that they can continue to incarcerate more people.

METHODS AND RESULTS

Conducting research on the death penalty can be difficult due the ethical implications of the topic. The research included in this project includes data collection from intergovernmental and nongovernmental organizations, as well as high-profile academic scholars. This project works to outline the role international community, what previous and current policy implications have played a role in the death penalty, and a holistic evaluation of how factors like discrimination, wrongful convictions, etc. make a case for abolition. All sources used in this project were credible and accurate.

International implications

The stance perpetuated by the international community has a profound effect on policy and views on the death penalty in the United States. Towards the end of the 20th century, countries around the world abolished the death penalty in mass. This trend can be attributed to two issues: “embodying a change in states’ violent punishment of their criminals and constituting a new human right in the individual’s catalogue” (Mathias, 2013). There are several international nongovernmental organizations, like Amnesty International, that foster the movement against the death penalty, and by doing so they embed this movement into the institutional structure of other states around the world. A first major step towards abolition in the international community was in 1989, when the United Nations adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights. This act sought complete abolition of capital punishment in all member states. In 2000, the European Union proclaimed that the Charter of Fundamental Rights was to be used as a precautionary measure against violations of human rights on citizens in member countries. The case for abolition is propelled by international organization involvement in proposing and establishing human rights treaties, covenants, and other policy measures. In 1977, Amnesty International won the Nobel Peace Prize for its efforts in solving human rights issues tied to capital punishment. This award “signaled an important world cultural moment wherein the international community celebrated the organization’s work against political imprisonment and the death penalty...They [the award] mark breakthrough stages in the global abolition trend that linked the human rights regime to the abolition trend” (Mathias, 2013). Global efforts for abolition have continued, and most recently in 2021, the UN High Commissioner on Human Rights and their team provided statements to U.S. President Joe Biden regarding the current status of death penalty in the United States.

The United States, along with just two other democracies (South Korea and Japan) in the world, is one of the only democracies that still practices the death penalty. Historically, the United States has not followed international standards and guidelines regarding the death penalty. The U.S. is one of leading democracies in the world that is revered for how they handle and promote human rights. However, they do not use their incredible status on the world stage to denounce the death penalty, nor do they actively work towards abolition. The penetration of a world model on how to handle the death penalty does not always guarantee that nation-states will follow, however, their efforts have inspired citizens in the U.S. to advocate for abolition of the death penalty. Because of the ability of the international community to influence the abolition movement worldwide, their efforts have a profound effect on advocacy in the United States.

Wrongs of Deterrence Theory

In the Minnesota State legislature, the deterrence theory in criminology states “criminal penalties do not just punish violators, but also discourage other people from committing similar offenses” (Johnson, 2019). Those who favor the death penalty and retentionists argue that other people will not commit crimes if they know execution is a possibility. Though deterrence may stop some people for committing crimes that would

warrant capital punishment, it is simply not true that it completely works, as there are currently over 1,000 people on death row at this very moment. Studies conducted on deterrence work to show that the death penalty would at least reduce a significant amount of people from committing murders. However, these studies are flawed and “One major deficiency in all the existing studies is that none specify the noncapital sanction components of the sanction regime for the punishment of homicide. Another major deficiency is the use of incomplete or implausible models of potential murderers’ perceptions of and response to the capital punishment component of a sanction regime” (Nagin and Pepper, 2012). Without this information, drawing credible conclusions about the effect of the death penalty on homicide is impossible.

Contrastingly, abolitionists believe that some individuals may commit heinous crimes because of a desire to commit suicide. Mental illness plays a large role in the motives and desires for people to commit homicides, and some people may subconsciously or consciously have no control over their desire of murder or suicide. Additionally, abolitionists will argue that the death penalty will increase the level of serious crime because those who have already committed crime worthy of capital punishment, will continue to commit crimes knowing that their life may end anyways (Hockhammer, Jr., 1969). Throughout academia, and scholars who have studied deterrence effects, there is a wide consensus that the deterrence effects and studies in favor of it are fundamentally flawed. The Death Penalty Information Center stated that “88% of former and present presidents of the country’s top academic criminological societies reject that the death penalty deters murder” (Death Penalty Information Center, 2021). It can be concluded that the deterrence theory is flawed, and therefore the death penalty is not stopping people from committing acts of crime.

DISCUSSIONS AND CONCLUSIONS

The only way to eradicate the issues associated with the death penalty is to abolish it all together. I presented my argument through analysis of multiple primary and secondary sources, including research projects, scholarly journals, and other work by scholars involved in high-level academia. The issues with the death penalty lie within the broken structure of the U.S. justice system, and it is a deep institutionalized issue. There needs to be a complete overhaul of the system in order to change death penalty laws in this country. African Americans specifically are disproportionately affected by these laws, and as I stated earlier, discrimination is an example of the major issues surrounding the ethics of the death penalty. There is no doubt that this discrimination stems from conservative America and the positive perception white Americans have of death penalty laws. Another major issue perpetuated by the death penalty, is spending and the number of resources needed to carry out legal proceedings and execution of prisoners. The United States spend an immense and unnecessary amount of money on the death penalty. That money could instead be used to work towards ridding the justice system of its underlying system issues.

There have been some major efforts to abolish the death penalty, whether that’s the cases of *Furman v. Georgia* or *Roger v. Simmons*, but it is a lengthy and difficult process. Existing policy in the U.S. has remained relatively the same recently with 23 states who have abolished the death penalty, 24 who allow it, and 3 states that have a moratorium. The United States has the opportunity to abolish the death penalty and not be a part of the only three democracies in the world that allows it. As of 2016, a total of 140 nations had abolished the death penalty for all crimes and there are seven more countries that have abolished the death penalty for “ordinary crimes” and 30 more that haven’t executed anyone in the past decade (Barry, 2017). The United States should follow the route that much of the international community has taken to abolish the death penalty.

Undoubtedly, the U.S. is on a much better track towards abolition than it has ever been. The number of executions has dropped from 300 death sentences in the mid-1900s to lows of 85 or fewer in the mid-1990s, and in 2016 there was a 40 year low of 30 death sentences. This trend can be seen as a win for abolitionists, and it shows that the United States is steering the right direction towards abolition of the death penalty. The support for the death penalty is consistently decreasing, so change must be done while the momentum is in favor of abolition. Whether that’s through advocacy, lobbying politicians, or education- we can make a legitimate change on the death penalty stances and laws in the United States.

LIMITATIONS

As mentioned previously, the death penalty is a controversial topic that is at the center of many heated debates. Because of its severity and ethical implications, it is difficult to run experiments on the death penalty without some flaws. Instead, it is important that data is extensive and well-put together.

In terms of policy in the United States, there is a significant number of limitations. Though the death penalty is extremely controversial, many presidents, governors, members of Congress, and politicians alike hardly acknowledge the issue of capital punishment. In recent years, policy that works towards abolition in both the federal and state governments have been relatively non-existent. This could be because of special interests, not wanting to lose votes, among other compromises. Many politicians care about the money in their pockets, and tend to focus on keeping their jobs, and the abolition is an issue that can damage political reputations. There are a significant number of Americans that support abolition, but popularity among retention is relatively high, especially in conservative areas. The United States is one of three democracies in the world that still carries out this cruel punishment, and they tend to ignore advice and pleas from the international community. We can't ignore the fact that people in this country are being executed every year, and that there is a major need for change. This cruel, inhumane punishment is wrongfully done in the name of justice.

It is important that anyone who has the ability to spread awareness on this issue to do so. Call or email your local and federal politicians, use social media as a platform, and speak out for those who no longer have a voice on death row. I urge everyone to take meaningful action towards abolishing the death penalty and end this cruel punishment for good.

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