The Death Penalty: A Deterrent for Murder
Or No Longer a Viable Punishment in the United States?

The death penalty has been around for hundreds of years; it has always been assumed that having the death penalty, also known as capital punishment, deterred murder and consequently decreased a country’s murder rate. However, can we continue to assume this? There have been over 130 cases since 1973, whereby inmates on death row have later been released due to new evidence proving their innocence. (Amnesty International, 2010) Are the risks involved in the death penalty worth it? The United States as of 2006 marginally prefers life without parole as a reasonable punishment for murder, rather than capital punishment. (Amnesty International, 2010) Therefore, this leads me to the question: do states with the death penalty have lower murder rates?

It is important to understand the history surrounding the death penalty in the United States before discussing its relation to crime. “In a monumental 1972 decision by the US Supreme Court, all but a few death penalty statutes in the United States were declared unconstitutional … Four years later, defying predictions that the United States would never again witness executions, the Supreme Court reversed its course toward abolition by approving several newly enacted capital statutes.” (Borg et al, 2000, p.43) Though, the death penalty was reintroduced in states in 1976, the overall trend in the past 50 years favorable toward the death penalty has diminished, certainly across the global stage. The United States is in fact the only Western nation that still practices capital punishment for civil homicide. (Bailey et al, 1989, p.722) “Use of the death penalty worldwide has continued to shrink, and use of the death penalty has also been increasingly curtailed in international law. Since 1990, an average of three
countries each year have abolished the death penalty, and today over two-thirds of the world’s nations have ended capital punishment in law or practice.” (Amnesty International, 2010) Currently, 139 countries have abolished the death penalty. In the United States only 15 states and the District of Columbia have abolished the death penalty (New Mexico was the last state to join abolishment). However, the federal death penalty can also be enacted in any state or territory in the US, even in non-death penalty states. (Amnesty International, 2010)

The essay, “Trying to Understand America’s Death Penalty System and Why We Still Have It,” written by Thomas F. Geraghty, states that there is a disconnect between what the public wants and what the public likes to hear. Though there is growing public opposition to the death penalty, when newly elected officials take office, the public likes to know that they will be tough on crime. “Even the most ‘progressive’ politicians I know or read about regard opposition to the death penalty as a veritable kiss of political death,” writes Geraghty. (Geraghty, 2003, p.211) There have been too many cases where innocent people have been punished for a crime they did not commit and sentenced with the death penalty, later to be released or, worse, executed. The Supreme Court and Congress have supplemented fair adjudication in capital cases with an obstacle course of hurdles that must be cleared. It has become unclear as to whether an innocent person being tried for the death penalty, with substantial evidence supporting their innocence, would be saved from capital punishment in a court of last resort. To counter the argument of innocent life being taken, in courts where a person being tried for capital punishment has committed the crime, family members of the victim will appear in court. Though, the family may be unaware of the strength of their presence, it is often in conjunction with a political purpose. The prosecutors will bring family members in to help cement a ‘guilty’ verdict by the jury. There are few people who would be able to ignore the pleas of family members of a victim. Geraghty continues on to say that the only hope of America abolishing the death penalty in all states and declaring it unconstitutional, would be to mount an effective public campaign focusing on human rights
and the risk of human error. However, this would take more than just a few years, and for abolitionists the time to act is now. Geraghty proposes a “moratorium followed by a thorough examination of the death penalty process, followed by legislation designed to address systemic defects. In states where suspension of the imposition of the death penalty is not a political possibility, examination of the process could be undertaken and legislative proposals made. State commissions examining capital punishment systems should be drawn from all communities and should include those in favor of and those opposed to the death penalty. Exposing defects and proposing improvements may substantially reduce the number of death penalty prosecutions while ensuring a fairer process for those defendants the state seeks to execute.” (Geraghty, 2003, p.212) Though Geraghty proposes implementing these changes into the American legislative and judicial process, 47 percent of Americans (as of 2008) still believe in the validity and effectiveness of capital punishment (Amnesty International, 2010); Geraghty, also, raises the interesting point that if a politician were to stand for a pro-abolition movement, that candidate or incumbent would stand little chance of being elected or re-elected into office. Despite, an increasing amount of the public leaning more toward natural life without parole, it would seem that capital punishment has become an American ideology.

“Murder and Capital Punishment: A Monthly Time-Series Analysis of Execution Publicity,” written by William C. Bailey of the Cleveland State University and Ruth D. Peterson of the Ohio State University, argue against the theory that states with highly publicized executions experience lower murder rates. “We find no evidence that execution publicity influenced the rate of homicide during the 1950-1980 or 1940-1986 period. Some evidence suggests that higher levels of executions are associated with lower murder rates. However, the apparent deterrent effect is very slight and short-term. Indeed, the cumulative effect of capital punishment on homicides during the execution and subsequent months is essentially zero.” (Bailey et al, 1989, p.722) Increasingly it would seem that murder rates are not higher in states with the death penalty as previously assumed. Though this essay is taken from an era
where the death penalty would probably be more acceptable, 1989, a lot of the data found confirms what is now being realized today, that murder rates and death penalty statutes do not result in deterrence. “Since the mid-1970s, persons have been sentenced to death in all but three retentionist jurisdictions resulting in over 2000 persons on death row. Further, the annual number of executions has increased steadily throughout the 1980s.” (Bailey et al, 1989, p.722) Bailey and Peterson continue on to discuss the possible reasons that the United States has preferred the death penalty over natural life without parole. Of the many listed reasons, the deterrence theory continues to be the most popular. However, revenge, retribution, moral validation, permanent incapacitation, scapegoating, racism, and classism arguments have all been made, including other demands for punishment. However, many of these listed reasons cannot be justified by empirical reasoning. “The basis of the retribution claim is that convicted murders deserved to die because of their antisocial behavior.” (Bailey et al, 1989, p.722) The deterrence theory is a lot easier to test and verify, as is the deterrence theory in relation to highly publicized capital punishment cases. In 1927, 1929, 1930, 1931, and 1932, five highly publicized executions took place in Philadelphia; when gathering information to test whether or not post-execution murder rates decreased, it turned out that they had in fact risen. Therefore, can the death penalty, despite its severity, influence the behaviors of potential offenders and prevent homicide? It would seem that no, it cannot. Three more cases of highly publicized executions were examined in Philadelphia and their post-murder rates, this time there was no change in the amount of murders occurring in 1944, 1946, and 1947 than in previous years. (Bailey et al, 1989, p.723) These studies have been conducted throughout many different states in the US; however, there have been inconsistencies in the literature regarding publicity executions. (D’Alessio et al, 2004, p.351) In earlier works, many essayists conclude that public executions do, in fact, lead to lower murder rates, however, in latter works, certainly more recently in the late 20th and 21st century, evidence has not followed this pattern. Publicity executions have either shown no decrease in murder and have remained relatively the same or murder rates have
in fact risen. There is also another fundamental difference in the same studies done in different time periods: news coverage or publicity was taken into consideration when an execution was reported in newspapers, however, it is television that is the prominent source of news coverage featured in the latter essays.

William C. Bailey in “Murder, Capital Punishment and Television: Execution Publicity and Homicide Rates” writes, “A fundamental premise of deterrence theory is that to be effective in preventing crime the threat and application of the law must be made known to the public. Proponents of deterrence theory and general prevention have long contended that the publicity surrounding punishment serves important educative, moralizing, normative validation, and coercive functions. Accordingly, and applying this premise to capital punishment, high levels of execution publicity should result in lower homicide rates.” (Bailey, 1990, p.628) However, logically another argument can be made, “... if capital punishment promotes killings due to its brutalization effect on society, then one could predict a positive relationship between the level of television coverage devoted to executions and homicide rates.” (Bailey, 1990, p.628) Bailey concluded in his research that media coverage of executions is so low that it neither decreases the murder rates through education and moralization nor does it increase the rates through excessive brutalization shown on television. Instead he found that the low amounts of media coverage have no correlation effect on the murder rates in the United States.

Anthony Ellis raises an interesting philosophical point in his essay, “A Deterrence Theory of Punishment.” Ellis does not necessarily connect the deterrence theory to capital punishment in his paper; rather, he maps the reasons for which it should or should not be applied to issues regarding punishment. Ellis states, “The simplest version of the deterrence theory of punishment, that we may punish offenders to deter other potential offenders, has usually been rejected, for two reasons. First, the theory commits us to accepting that in punishing one person in order to deter others we are
unacceptably using him.” (Ellis, 2003, p.337) Though, this reasoning can also be argued, as one may have already relinquished their right to not be ‘used’ due to the fact that they have indeed committed a crime. “Secondly, the theory lays down no acceptable limits on punishment. Presumably if we are concerned simply with deterring offenders, then the appropriate level of punishment should be whatever is necessary to deter.” (Ellis, 2003, p.338) Ellis continues on to say that retaliation of crime, even by law, would be unjustified if it did not deter others from committing the same crime. In conjunction with the death penalty, this raises an interesting point. If murder rates have remained consistently lower in states without the death penalty (as I will provide evidence of later on in this paper), then, according to Ellis, the death penalty is entirely unjustified as a deterrent.

The deterrence effect has been socially accepted in all realms of criminal behavior, excepting the crime of murder. It was most popular in the 1970s when it was believed that certainty, celerity and severity were enough to deter crime. (Borg, 2000, p.45) ‘Certainty’ meaning that if a person committed a crime then he or she would be caught and punished. ‘Celerity’ refers to the time that has passed between a person committing a crime and being punished for it; studies show that the deterrence effect is more successful when the least amount of time has passed. (Borg, 2000, p.45) Lastly, ‘severity’ of punishment is determined by the severity of the crime itself. It is severity that has caused the most debate in scholarly circles. Michael L. Radelet and Marian J. Borg in “The Changing Nature of Death Penalty Debates” state that, “Over the last two decades more and more scholars and citizens have realized that the deterrent effect of a punishment is not a consistent direct effect of its severity – after a while, increases in the severity of a punishment no longer add to its deterrent benefits.” (Borg, 2000, p.45) For example, “If one wishes to deter another from leaning on a stove, medium heat works just as well as high heat.” (Borg, 2000, p.45) In other words, increasing severity becomes redundant, or without effect. Therefore, one could conclude that the severity of the death penalty ceases to have any higher
incremental deterrent effect over another punishment, such as life without parole, for the crime of murder.

Eric Neumayer makes an interesting point in his paper “Good Policy Can Lower Violent Crime: Evidence from a Cross-National Panel of Homicide Rates, 1980-97.” He states, “There is too little focus on how good policy can lower rates of violent crime, of which homicide is the most extreme and by far the most reliably reported form.” (Neumayer, 2003, p.619) If good policy has made it possible to lower murder rates in non-death penalty states then can death penalty states not adopt the same system?

Essayists Bailey, Geraghty, and Peterson truly helped to develop my hypothesis which came to light during much of what I read. I hypothesized that states with the death penalty would not correlate to that state having lower murder rates. Murder rates in states with the death penalty have in deed been considerably higher than states without, which refers back to the incremental deterrence lacking effect in spite of high severity of punishment. There are many factors involved that could lead a state to have lower murder rates, however, better policy suggested by Neumayer is an issue and the evidence certainly points to a correlation.

Though, research has led me to question the successfulness of the deterrence theory in crimes of murder, it is necessary to show a correlation of lower murder rates in states without the death penalty, to provide further evidence and refute past argument. Amnesty International has devoted a large amount of its time to discovering whether murder rates do in fact decrease in states with the death penalty. Amnesty International and the Death Penalty Information Center both provided the most up-to-date information of execution and murder rates within the individual states, differing regions, and nationally. Most of their data dates back to the 1960s, providing me with long-term trends to draw correlations between my hypothesis and research question. I gathered long-term and current data to produce sufficient evidence to support my hypothesis.
Table 1: Murder rates of states with and without the death penalty from 1990-2006 (Death Penalty Information Center, 2010)

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<tbody>
<tr>
<td>Murder Rate in Death Penalty States</td>
<td>9.5</td>
<td>9.51</td>
<td>9.23</td>
<td>7.72</td>
<td>6.51</td>
<td>5.70</td>
<td>5.82</td>
<td>5.71</td>
<td>5.9</td>
</tr>
<tr>
<td>Murder Rate in Non-death Penalty States</td>
<td>9.16</td>
<td>8.63</td>
<td>7.88</td>
<td>5.37</td>
<td>4.61</td>
<td>4.25</td>
<td>4.27</td>
<td>4.02</td>
<td>4.22</td>
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<tr>
<td>Percent Difference</td>
<td>4%</td>
<td>10%</td>
<td>17%</td>
<td>44%</td>
<td>41%</td>
<td>35%</td>
<td>36%</td>
<td>42%</td>
<td>40%</td>
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Table 1 shows that on average states without the death penalty have had consistently lower murder rates than states with the death penalty from 1990 to 2006. In fact, the percent difference grew from a humble 4 percent in 1990 to a significant 40 percent in 2006. However, the statistics rely heavily on a variety of factors. Population levels, geographical determinants, cost of trial and race biases all play a role. There are 15 states and the District of Columbia that do not have death penalty statutes, leaving 35 states that do, plus the US government and US military. “Since the U.S. Supreme Court reinstated the death penalty in 1976, 80% of all executions have taken place in the South. The Northeast accounts for less than 2% of executions.” (Amnesty International, 2010) Local politics and location of the crime, also, play a large role, as prosecutors in the Northeast may not try for the death penalty, whereas prosecutors in the South are more likely to, as seen in Table 2. Ninety-five percent of death row inmates cannot afford an attorney and therefore, receive court-appointed attorneys who often lack the necessary experience to take on capital cases. (Amnesty International, 2010) When victims of a crime are white, then it is far more probable that the prosecutor will seek the death penalty, than if the victim had been African American or another ethnic/racial origin as seen in Table 3. “Over 75% of the murder victims in
cases resulting in an execution were white, even though nationally only 50% of murder victims generally are white.” (Death Penalty Information Center, 2010)

Table 2: Murder Rates per 100,000 in varying regions of the US (Death Penalty Information Center, 2010)

![Murder Rates per 100,000 - 2008](image)

<table>
<thead>
<tr>
<th>Region</th>
<th>Murder Rate per 100,000</th>
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<tr>
<td>South</td>
<td>6.6</td>
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<tr>
<td>West</td>
<td>4.8</td>
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<tr>
<td>Midwest</td>
<td>4.8</td>
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<tr>
<td>Northeast</td>
<td>4.2</td>
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<tr>
<td>National</td>
<td>5.4</td>
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Table 3: Percentage of victims who belong to a certain race, 2010 (Death Penalty Information Center)

![Race of Victim in Death Penalty Cases](image)

- Black: 77%
- Hispanic: 15%
- White: 6%
- Other: 2%

Regarding cost in a capital case where the death penalty is sought, “A 2003 legislative audit in Kansas found that the estimated cost of a death penalty case was 70% more than the cost of a comparable non-death penalty case. Death penalty case costs were counted through to execution (median cost $1.26 million). Non-death penalty case costs were counted through to the end of
incarceration (median cost $740,000).” (Kansas Report to the Legislative Post Audit Committee, 2003)

“In Tennessee, death penalty trials cost an average of 48% more than the average cost of trials in which prosecutors seek life imprisonment. In Maryland death penalty cases cost 3 times more than non-death penalty cases, or $3 million for a single case.” (Maryland Research Report, 2008) “In California the current system costs $137 million per year; it would cost $11.5 million for a system without the death penalty.” (California Report on the Fair Administration of Justice, 2008)

Further evidence to support that death penalty states have higher murder rates than non-death penalty states can be seen in Table 4 and Table 5. Table 4 shows considerably higher murder rates despite taking into account the severity, celerity, and certainty reasoning. Whereas Table 5 shows states without the death penalty where the punishment for murder is less severe and murder rates are lower.

**2008 Murder Rates for Top 5 Executing States**

<table>
<thead>
<tr>
<th>State</th>
<th>Murder Rates per 100,000</th>
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<tbody>
<tr>
<td>Missouri</td>
<td>7.7</td>
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<tr>
<td>Florida</td>
<td>6.4</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5.8</td>
</tr>
<tr>
<td>Virginia</td>
<td>4.7</td>
</tr>
<tr>
<td>Texas</td>
<td>5.6</td>
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</table>

*Table 4: Murder Rates in States with the Death Penalty, 2008 (Amnesty International, Death Penalty Information Center, 2008)*
Research concludes that states with the death penalty have higher murder rates on average than states without the death penalty. Research consistently supports this theory from the 1960s to present day. The western hemisphere has all but abolished the death penalty as a punishment for murder, barring the United States of America. Many opponents to the death penalty find it absurd that a country so devoted to human rights can still uphold a policy which takes away human life. The data points to less murder or homicide activity in states whereby different policies substitute the severity of punishment which can be found in 35 death penalty states. The evidence points to the decisive conclusion that severe punishment does not deter crime in the form of murder and thus, should cease to be punishment. Severe punishment is only as effective as the crimes it can prevent; consistently, evidence shows that the death penalty has not worked as an effective deterrent for some years. Can states that uphold death penalty statutes continue to claim that it does act as a deterrent despite the evidence? Can politicians be elected despite pro-abolition views? It would seem that all change will be slow moving and will certainly produce more in-depth debates and statistical analysis, however, for
states that wish to reduce their murder rates, and I imagine most do, then abolition may be the way to go. Radelet and Borg state, “Taking a long-term historical view, the trend toward the abolition of the death penalty, which has now lasted for more than two centuries, will continue. Things could change quickly; the final thrust might come from conservative politicians who turn against the death penalty in the name of fiscal austerity, religious principles (e.g., a consistent "pro-life" stand), responsible crime-fighting or genuine concern for a "smaller" government. Public support for the death penalty might also drop if there emerged absolute incontrovertible proof that an innocent prisoner had been executed. For those who oppose the death penalty, the long-term forecast should fuel optimism.” (Borg, 2000, p.57) In lieu of evidence presented in this paper, “Opponents of the death penalty have a lot of ammunition in their arsenals.” (Geraghty, 2003, p.209) Though the statistics may support lower murder rates in non-death penalty states, the arbitrariness involved with capital punishment in the United States is staggering. Race biases, geographical components, as well as, cost of attorneys and fair trial factors reek of high inconsistencies across the nation. US Supreme Court Justice Harry A. Blackmun in 1994, stated, "Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, and, despite the effort of the states and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake." (Amnesty International, 2010) Future research should include all factors, aforementioned, so as to determine conclusively whether states without the death penalty are truly reaping the benefits of good policy and less severe but more effective deterrence factors.
Bibliography


