

The Death Penalty in the United States of America

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Abstract: The death penalty dramatically signifies that society does not excuse or condone the taking of innocent lives. It symbolizes the value of the innocent victim. Incapacity can be imposed by long terms of imprisonment, particularly for habitual offenders; the policy of "keeping criminals off the streets" does indeed protect the public for a period of time, although it is done at a considerable cost. The object of deterrence is to make the certainty and severity of punishment so great as to inhibit potential criminals from committing crimes. The best available estimates of the certainty of punishment for serious crime suggest that very few crimes actually result in jail sentences for the perpetrators.

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Perhaps the most heated debate in the United States of America in criminal justice today concerns capital punishment. Opponents of the death penalty argue that it is "cruel and unusual punishment" in violation of the Eight Amendment of the U.S. Constitution. They also argue that the death penalty is applied unequally. A large proportion of those executed have been poor, uneducated, and nonwhite. Recognizing that in the past many indigents facing the death penalty did not have the best lawyers, Congress passed the Innocence Protection Act (formally the Justice for All Act of 2004, Public Law No: 108-405). Besides creating a DNA testing program, the Act authorizes a grant program, to be administered by the United States Attorney General, to improve the quality of prosecution and defense representation in capital cases. The grants may not be used to pay for lawyers in specific cases, but instead are to be used to establish, implement, or improve an effective system for providing competent legal representation to indigents charged with capital offenses or sentenced to death and seeking appellate review in state court (Death Penalty Information Center, "DPIC Summary: Innocence Protection Act of 2004").

In contrast, there is a strong sense of justice among many Americans that demands retribution for heinous crimes - a life for a life. The death penalty dramatically signifies that society does not excuse or condone the taking of innocent lives. It symbolizes the value of the innocent victim. In most cases, a life sentence means less than ten years in prison under the current parole and probation policies of most states. Convicted murderers have been set free, and some have killed again. Moreover, prison guards and other inmates are exposed to convicted murderers who have "a license to kill," because they are already serving life sentences and have nothing to lose by killing again.

Furman v. Georgia and Unfair Application Prior to 1972, the death penalty was officially sanctioned by about one-half of the states. Federal law also retained the death penalty. However, no one had actually suffered the death penalty since 1967, because -of numerous legal tangles and direct challenges to the constitutionality of capital punishment. In 1972, the Supreme Court ruled that capital

punishment as it was then imposed violated the Eighth and Fourteenth Amendment prohibitions against cruel and unusual punishment and due process of law. The decision was made by a narrow 5-4 vote of the justice, and the reasoning in the case is very complex. Only two justices - Brennan and Marshall - declared that capital punishment itself is cruel and unusual. The other three justices in the majority - Douglas, White, and Stewart - felt that death sentences had been applied unfairly: A few individuals were receiving the death penalty for crimes for which many others were receiving much lighter sentences. These justices left open the possibility that capital punishment would be constitutional if it was specific for certain kinds of crime and applied uniformly.

The Death Penalty reinstated after *Furman v. Georgia*, most states rewrote their death penalty laws to try to ensure fairness and uniformity of application. As of 2005, the states with the death penalty were Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming. The Court declared that capital punishment itself was not "cruel and unusual" within the meaning of the Eighth Amendment; that the authors of the Constitution did not consider it cruel or unusual; and that the reenactment of the death penalty by so many state legislators was evidence that the death penalty was not considered cruel or unusual by contemporary state lawmakers.

No Death Penalty for the Mentally Handicapped or Juveniles the U.S.

Supreme Court has upheld the death penalty but ruled that it is unconstitutional when ordered for a mentally handicapped person or juvenile. In both instances, the court said that putting those persons to death would be "cruel and unusual punishment" in violation of the Eighth Amendment to the U.S. Constitution. In 2002, by a 6-3 vote in *Atkins v. Virginia*, the court barred the execution of Daryl Renard Atkins, who was sentenced to death for the 1996 murder of a U.S. airman in Virginia for beer money. Atkins has an IQ of 59, a score classified by the American Association of Mental Retardation as mild retardation. In 2005, by a 5-4 vote, the U.S. Supreme Court in *Roper v. Simmons* upheld a ruling by the Missouri State Supreme Court outlawing the death penalty for juveniles. "Comprehensive neuropsychiatric and psychosocial assessments of death-row inmates and imaging studies exploring brain maturation in adolescents" played a key role in the decision.

Few executions despite these new laws, very few executions have been carried out. Nearly 3,500 prisoners are currently awaiting execution on "death row." But only about 50 to 100 will be executed in any single year. With only about 2 percent of death sentences actually carried out over the past decade, the death penalty cannot possibly be a deterrent to murder.

Can Punishment Deter Crime?

This is a difficult question to answer. First of all, we must distinguish between deterrence and incapacity. Incapacity can be imposed by long terms of imprisonment, particularly for habitual offenders; the policy of "keeping criminals off the streets" does indeed protect the public for a period of time, although it is done at a considerable cost. The object of deterrence is to make the certainty and severity of punishment so great as to inhibit potential criminals from committing crimes.

1. The certainty that a crime will be followed by costly punishment. Justice must be sure.

2. The swiftness of the punishment following the crime. Long delays between crime and punishment break the link in the mind of the criminal act and its consequences. And a potential wrongdoer must believe that the costs of a crime will occur within a meaningful time frame, not in a distant, unknowable future. Justice must be swift.

3. The severity of the punishment. Punishment that is perceived as no more costly than the ordinary hazards of life on the streets that the potential criminal faces anyhow will not deter. Punishment must clearly outweigh whatever benefits might be derived from a life of crime in the minds of potential criminals. Punishment must be severe.

These criteria for an effective deterrent policy are ranked in the order of their probable importance. That is, it is most important that punishment for crime be certain. The severity of punishment is probably less important than its swiftness or certainty.

However, the best available estimates of the certainty of punishment for serious crime suggest that very few crimes actually result in jail sentences for the perpetrators. About 12 million serious crimes were reported to police in 2002, but only 1.7 million persons were arrested for these crimes. Some of those arrested were charged with committing more than one crime" but it is estimated that police clear less than 20 percent of reported crimes by arresting the offender. Prosecutors do not charge about half of the persons arrested for serious offenses. Some offenders are handled as juveniles; some are permitted to plead guilty to minor offenses; others are released because witnesses fail to appear or evidence is weak or inadmissible in court. Thus, even if punishment could deter crime, the American current criminal justice system does not ensure punishment for crime.

Of course, there are many other conflicting theories of crime in the United States of America. For example, it is sometimes argued that this nation's high crime rate is a product of its social heterogeneity - the multiethnic, multiracial character of the American population. Low levels of crime in European countries, Japan, and China are often attributed to their homogenous populations and shared cultures. Blacks in the United States are both victims and perpetrators of crime far more frequently than whites. While blacks constitute only about 12 percent of the population, they account for almost one third of all persons arrested for serious crimes. A larger segment of the black population is in the young crime-prone age (fifteen to twenty-four years), and these youths are more likely to live outside husband-wife families. It is argued that "the streets" of the nation's black inner cities produce a subculture that encourages crime.

It is also argued that crime is irrational, that is, the criminal does not weigh benefits against potential costs before committing the act. Many "crimes of passion" are committed by persons acting in blind rage - murders and aggravated assaults among family members, for example. Many rapes are acts of violence, inspired by hatred of women, rather than efforts to obtain sexual pleasure. More murders occur in the heat of arguments than in the commission of other felonies. These are crimes of passion rather than calculated acts. Thus, it is argued, no rational policies can be devised to deter these irrational acts.