

The Persistence of Capital Punishment in the United States

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The use of the death penalty began in American during the colonial period with the first execution occurring in 1608 (Bohm, 2011). The use of capital punishment continued in colonial times with laws that made the death penalty applicable to offenses such as theft, killing horses and commerce with Indians (Kronenwetter, 2001). Attempts to reform the use of capital punishment in America would not begin in earnest until the late eighteenth century when a group led by Thomas Jefferson made an unsuccessful attempt to enact a law that only allowed capital punishment for the crimes of treason and murder (Bohm, 2011). The debate over the use of the death penalty continued through ratification of the United States Constitution until 1846 when Michigan became the first state to abolish capital punishment for all crimes except treason (Bohn, 2011). Moving to the present day, in 2013 the state of Maryland became the eighteenth state to abolish the capital punishment by replacing the death penalty with life in prison without parole (Koenig, 2013). Including the state of Maryland, there has been an emerging trend in the last decade with eight states abolishing or no longer having enforceable capital punishment laws.

### **The Capital Punishment Debate**

Debate on the use of capital punishment invariably leads to a discussion of when the United States will align with the majority of other nations in declaring that the death penalty is not an acceptable practice in modern society (Dieter, 2002). An inherent part of the persistence of capital punishment in the United States is that Tenth Amendment to the Constitution stipulates that all powers not granted to the federal government are reserved for the states and the people (Cornell, n.d.). Accordingly, while this right of empowerment allows states to solve their problems, it also provides for the influence of local beliefs and politics to shape decisions regarding the use of capital punishment.

**Deterrence Against Committing Capital Crimes**

In consideration that any society has a vested interest in discouraging criminals from unlawful actions, the stiffest possible punishment should be used to deter murder (Wright, 2010). Given this rationale, the inherent argument of deterrence in the capital punishment debate is that the looming threat of death will reduce the overall capital murder rate. However, according to Bohm (2011), the inherent problem with this belief in the deterrent effect is that there is no scientific evidence to substantiate the fact that a sentence of death has any more impact on the murder rate than a sentence of life in prison without the possibility of parole. As a whole, the laws of a civilized society provide some degree of deterrence against committing criminal acts. The issue with the murder of another human being, however, is that the majority of individuals do not commit murders regardless of the consequences (Bohm, 2011). More importantly, of those individuals who do kill another human being, the likelihood of being convicted and executed is extremely minimal considering that upwards of ninety percent of individuals who commit murder are not eligible for the death penalty (Bohm, 2011).

**Brutalizing Effect of the Death Sentence**

The issue with the brutalization effect is the belief that capital punishment actually contributes to the murder rate by setting an example that killing a human being is an acceptable act. In simpler terms, an execution reinforces the belief in some individuals that killing is justifiable under the correct circumstances (Shepherd, 2005). According to Bohn (2011), in considering that executions are violent acts, the death penalty generally provides a degree of provocation for some individuals to commit violent acts. Likewise, studies have shown that the imposition of a death sentence generally increases the murder rate in some states (Shepherd, 2005).

**Murder and Capital Punishment.**

The debate of whether capital punishment is a sanctioned form of murder is more akin to the principle of an eye for an eye. While a capital murder and the execution of an individual both result in death, Bohn (2011) identifies that the difference is that murder is a crime and an execution is a lawful act. However, the decision of whether capital punishment is a form of murder or a lawful act is more of an ethical conundrum that has to be resolved on an individual basis in establishing a position regarding the acceptability of capital punishment (Bohn, 2011). Perhaps the best answer to the debate over whether capital punishment is or is not a legally sanctioned form of murder was provided by George Bernard Shaw identifying that criminals are killed by the hands of man and only justified by the law (Shaw, 2006).

**Incapacitation and Capital Punishment**

The theory of incapacitation with regard to capital punishment is that an executed prisoner is permanently prevented from killing another individual. There is no argument that an executed prisoner will not kill again. However, a sentence of life without parole instead of the death penalty does provide the possibility that an individual will remain a threat to the general public and the correctional system for the remainder of their natural life (Bohn, 2011). This consideration then becomes the prevailing argument for capital punishment proponents that life without the possibility of parole is not a viable alternative to the death penalty. An alternative perspective of the incapacitation theory is that it punishes an individual for a crime that they may hypothetically commit at some future time, not for one that they have committed (Zimring, 1995). From an ethical perspective, the issue regarding the incapacitation theory is whether killing an individual based on the potential that they may commit a crime at some point in the future not just another form of premeditated murder?

**Escapes and Oversight Issues.**

In support of the incapacitation theory to prevent a future act, capital punishment proponents often cite that individuals sentenced to life without parole are a continued threat to society due to the potential of escape or inadvertent release (Bohn, 2011). While there is no contesting the fact that individuals have escaped from death row, few have actually escaped for any length of time (Bohn, 2011). Another aspect of the potential threat to society is associated with the inadvertent release of an individual by a parole-board (Bohn, 2011). There is also no contesting the fact that parole-boards do make mistakes and convicted individuals have been inadvertently released from prison. However, there is a stronger probability the court system will make mistakes as the result of complicated appeal processes that would incorrectly provide an individual who has been given a sentence of death with their freedom (Bohm, 2011). Bohn (2011) also identifies that approximately one-hundred individuals are removed from death row each year through post-conviction processes. Accordingly, the likelihood that an error could be made during this process that incorrectly releases a prisoner from death row is one of the more valid arguments provided by capital punishment proponents.

**Execute All or the Worst Offenders.**

**All Offenders.** There is no doubt that executing all offenders sentenced to death would ensure that the individual would never kill again (Bohn, 2011). However, consider also that since 1956 there have been 1,135 death row exonerations (Michigan Law School, 2013). Without question, the criminal justice system intends to provide fair and just treatment equally under the law. Therefore, upon considering the significance of a truly innocent individual being sentenced to death and executed, there is little wonder why many individuals believe that a fair criminal justice system is merely a myth (Bohm & Walker, 2005).

**Worst Offenders.** To alleviate the possibility that an innocent individual could be sentenced to death, some capital proponents propose that the actual execution of death row inmates should be restricted to the worst offenders (Bohm, 2011). To that only the worst offenders are executed, several recommendations have been offered that involve a more stringent use of aggravating factors and limiting the types of crimes that would allow imposition of the death penalty (Bohm, 2011). However, this would still allow for the death penalty to be administered in an arbitrary manner given issues associated with: the varied manner in which different jurisdictions apply the death penalty; a general inability of many jury members to fully understand the death penalty sentencing process; the difficulty in determining a defendant's actual intent; and, no doubt, a continued refinement of death penalty sentencing laws by the Court (Bohm, 2011). Further, the fairness of laws and procedures aside, applying the death penalty to the worst offenders still would not alleviate issues associated with: the arbitrary nature of judicial assignments; applicability of the death penalty in the state where the crime was committed; and plea-bargaining to a non-capital offense (Grisham, 2010). Simply put, as long as fallible humans administer the capital punishment process, the arbitrary nature of the death penalty will continue and attempting to only execute the worst offenders will not resolve issues associated with discrimination in the capital punishment process.

### **Economic Cost of the Death Penalty and Alternative Use of Life Without Parole (LWOP)**

Without regard to the age of an individual at the time of their conviction, the real economic impact of capital punishment in America goes well beyond the simple monetary comparison of the cost for imposing a death sentence with the cost to keep an inmate incarcerated for the remainder of their life (Bohm, 2011). Studies have consistently shown that once consideration is given to the added costs to the criminal justice system as a whole, as well

as other costs to local governments, life in prison is a less expensive alternative than a death sentence (Bohm, 2011). As an example, consider that the state of California spends approximately \$137 million annually to maintain the death penalty, but would only spend roughly \$11.5 million if the same inmates were sentenced to life without parole (Bohm, 2011). The significant difference between these figures is in spite of the fact that California does not adequately track the actual monetary cost of the capital punishment system that continues to cost taxpayers hundreds of millions each year (Harwood, 2013).

Although the use of life without parole is a less offensive alternative to capital punishment, it still does not preclude the possibility of convicting an innocent person (Bohm, 2011). Additionally, the possibility exists that the safeguards established by the Court could be relaxed in the absence of capital punishment, thus increasing the likelihood that an innocent person would be sentenced to life in prison. However, while life without parole may resolve some capital punishment issues, in many respects it is just another form of a death sentence (Agyeman, 2005; Bohm, 2011). Finally, in considering the potential of an individual committing future crimes if sentenced to life in prison, Bohm (2011) identifies that prisoners serving a life sentence are generally some of the most well-behaved inmates in the correctional system.

### **Conclusion**

Perhaps American citizens as a whole would reject the death penalty if they were better informed (Firmant & Geiselman, 1997). However, until this period of enlightenment occurs, the persistence of capital punishment in some states continues for the same reason that it was abolished in other states – the power of the states provided by the Tenth Amendment that allows the influence of local beliefs to decide the issue of capital punishment (Garland, 2010).

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