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The Death of Capital Punishment

In 1994, a democratic governor swore Justice Penny White into the Tennessee Supreme Court. When presiding over her first death penalty case, she agreed with the majority opinion and reaffirmed the conviction of Richard Odom for his said crime, but overturned his death penalty sentence. Despite the fact that this was White's first case, she immediately received negative feedback from the state's republican leaders who claimed that she never "upheld a death penalty conviction" (Dieter). Although White did nothing more than exercise her judicial discretion, she was penalized, losing the next election for Tennessee Supreme Court Justice. As Richard Dieter writes in his report *Killing for Votes: The Dangers of Politicizing the Death Penalty Process*, "This politicization results in a significant loss for the American people...Death penalty trials [have] become campaign showcases for judges and prosecutors."

As of December 31, 2011, 96 countries—over two thirds of the countries in the world—have abolished the death penalty ("Figures on the Death Penalty"). The United States, with 33 states still utilizing capital punishment, is not one of them ("States With and Without the Death Penalty"). Supporters of the death penalty defend its existence by claiming that, for starters, it elicits justice. They also hold that capital punishment is allowed by the Constitution and that murderers deserve to die. But regardless if the death penalty prevails because of supporters' reasons or because politicians and criminal justice workers must endorse it to seem tough on crime, as a system capital punishment causes more problems than it solves. No studies have proven any deterrent effect, it costs billions more than life in prison, and it is responsible for taking innocent lives. These

reasons demonstrate the fact that capital punishment inefficiently uses government resources in order to maintain a broken system.

In 1975, professor and economist Isaac Ehrlich published an influential work attempting to prove a deterrent effect of the death penalty, but it has since been deemed incomplete and faulty by a number of researchers, including the National Academy of Sciences. In his study, Ehrlich contends that empirical evidence can demonstrate how the threat of death as a punishment hinders crime. “In fact,” he claims, “the empirical analysis suggests that on the average the tradeoff between the execution of an offender and the lives of potential victims it might have saved was of the order of magnitude of 1 for 8 for the period of 1933-67 in the United States” (Ehrlich 398). In other words, for every one criminal executed, eight innocent people are spared.

To attempt to prove his argument, Ehrlich begins with a theoretical approach, “emphasizing the interaction between offense and defense—the supply of and the (negative) social demand for murder” (Ehrlich 398). He aims to discover when and why murders occur in the way they do. In this theoretical section of his study Ehrlich includes factors like what influences murder, the severity of the punishment, and effects of income and demographics. Ehrlich continues by introducing complex economic models to affirm his theory. According to his analysis, the models not only demonstrate that capital punishment reduces crime, but that the murder rate is higher amongst impoverished people than amongst those with a steady income (Ehrlich 401).

At the end of his work, Ehrlich highlights counterarguments, acknowledging that his research assumes that criminals will unquestionably respond to incentives—like being put to death—which cannot be proven (Ehrlich 413). Since it’s release, Ehrlich’s study

has been used to both obtain death sentence convictions in trial and as an example of flawed research. Lawyers cited Ehrlich's work twice in 1976—in the case of *Gregg vs. Georgia* as well as in a death penalty case in North Carolina—in order to successfully deliver a capital punishment sentence to the alleged criminal. In 1978; however, the National Academy of Sciences harshly criticized Ehrlich's findings (Fagan). Again, in a report released this past year, the National Academy of Sciences emphasizes the fact that currently no proof exists to support a deterrent effect of the death penalty. In the report, experts note flaws in arguments for the presence of deterrence: "Furthermore, estimates of the deterrent effect of the death penalty were based on unfounded assumptions, for example, that the effect of capital punishment is the same across all the states and over time. There is no evidence to support such suppositions" ("Current Research Not Sufficient to Assess Deterrent Effects of the Death Penalty"). Because no evidence exists to support deterrence, it would be inaccurate to claim that capital punishment impedes murder.

Another common shortcoming in studies on deterrence revolves around the fact that alternate forms of punishment and changing social factors go unaccounted for. In Ehrlich's study, for instance, he recognizes that his "results may be biased by the absence of data on the severity of alternative punishments for murder..." (Ehrlich 416). Although life in prison without parole may have the same effect on deterrence as the death penalty, Ehrlich does not take it into consideration when discussing capital punishment. He, and other researches writing on deterrence, also fails to account for "complex social factors such as drug epidemics that are reliable predictors of fluctuations in the murder rate over

time” (Fagan). If in the same year a drug pandemic ceases, execution rates rise, and homicides decrease, there is no way to identify the catalyst for deterrence.

Despite the lack of credible evidence to prove that capital punishment deters crime, there is also no proof to say that it does not. Because of this, the National Academy of Science stresses “the lack of evidence about the deterrent effect of capital punishment—whether it is positive, negative, or zero—should not be constituted as favoring one argument over another” (“Current Research not Efficient to Assess Deterrent Effect of the Death Penalty”). If the death penalty deterred crime—if it prevented murderers from murdering and undeniably saved lives—then the execution of those criminals would be rightly mandated. But because no such finding has been proven and the studies vary widely, the presence of deterrence should not influence policy judgments.

While the debate of whether or not capital punishment deters crime remains largely unanswered, the enormous monetary costs of the death penalty versus life in prison have been clearly documented. Due to different state laws regarding capital punishment, varying rates of executions, and changing wages, there is no recorded national cost of the death penalty. But in all states that employ capital punishment, perpetuating executions costs substantially more than allowing a criminal to die in prison of old age, sickness, or injury. These costs can be attributed to ensuring the correctness of a conviction, extra trials and appeals, prosecution, defense, and courtroom expenses, and demographics of alleged criminals (Minsker).

In all court cases, the judge and jury aim to extract truth and deliver justice. In capital punishment cases in particular, their ability to do so means the difference between

life and death. A gross amount of extra time and material must be spent on death penalty cases to ensure that no innocent people are wrongly convicted, because once executed, those convictions are irreversible. Therefore, after *Furman vs. Georgia*—the case that suspended legality of the death penalty— the Supreme Court created strict guidelines to be followed by every state prior to an execution, including the presence of attorneys who have been “learned in the law” (Dieter 20). These protocols raise the price for every case in every state.

Added to the cost of guaranteeing a correct conviction is the money necessary for each trial and appeal. As opposed to a non-capital case typically including only one trial to determine guilt or innocence, a capital case requires two: one to decide whether or not the criminal committed the crime and one to conclude if the guilty should receive the death penalty (Minsker 5). Along with the costs derived from needing more than one trial, capital cases provoke many more appeals than ordinary criminal cases. If condemned to death, not only can the defendant review his or her conviction of guilt but also their death penalty sentence itself. This allows the selection of a new jury, a search for new witnesses, and a skyrocketing of costs. Richard Dieter, executive director of the Death Penalty Information Center, elaborates on the length of the appeals processes in his report *Smart on Crime*: “The entire appeal process can take 15 or 20 years before an execution. The average time between sentencing and execution in 2007 was 12.7 years, the longest of any year since the death penalty was reinstated” (Dieter 21). This time spent, both on awaiting appeals and after the final sentence has been administered, costs money. In California, for instance, it costs 90,000 dollars more to keep a criminal on death row than it does to put one in a general prison (Minsker 1).

The cost of the multiple trials, appeals, and awaiting execution still does not cover the toll capital cases take on the prosecution, the defense, and the members of the court alike. As previously stated, the court places an especially high importance on a correct sentence, particularly pertaining to death penalty cases. Because of this, both the prosecution and the defense work extra hours in and out of the courtroom fighting for their client. One particular capital case in California, involving criminal Scott Peterson, required 20,000 hours of prosecution work. This number for one case equates to the amount of work normally put in for nine full time employees in a year. The Peterson trial cost the Stanislaus county and the city of Modesto so much—a minimum of 3.2 million dollars—that the city police department had to postpone hiring 15 new officers due to lack of funds (Minsker 6).

Capital cases cost as much, if not more, on the defense side as they do on the prosecution side. Arguing a death penalty case tends to be extremely stressful, requiring a large incentive—usually in the form of money—to be offered to trained lawyers in order to defend a potential murderer. Along with this, the court requires the defense to hire experts with knowledge pertaining to the information of the case (Minkser 7). Lawyers often request the testimony of psychiatrists to declare or rule out mental illness, or that of forensic scientists to examine DNA. In terms of hiring the defense counsel, the cost to taxpayers depends greatly on the demographics of the alleged criminal. If the defendant comes from an impoverished or low-income background—a commonality in capital trials—he or she often cannot afford a lawyer. Because capital cases demand that everyone involved in the trial has sufficient experience, taxpayers end up covering the costs (Minkser 6).

These high costs also result from jury selection in death penalty trials. If a potential juror strongly favors or opposes the death penalty, the court will not allow him or her to sit on the jury. This forces those selecting the jury to go to great lengths in order to secure a fair trial, including orchestrating extensive questioning and interviews (Minkser 8). The jury selection process along with the multitude of steps involved in capital cases elongates the trials, requiring more attention from the judges presiding over capital cases and a hiring of extra judges to take over other cases.

It has been established that the death penalty costs more than life in prison, and it is not by any minute number. The state of California spends approximately 137 million dollars every year on the death penalty compared to the 11.5 million it would spend on life in prison (Dieter 14). That adds up to 125.5 million dollars that could instead be used to increase police forces or create more jobs. Because California averages less than one death penalty every two years, each individual execution ends up costing around 250 million dollars (Dieter 15).

In some states, these enormous costs have served as a major catalyst to abolishing capital punishment (Dieter 8). Before revoking the death penalty in 2007, both New York and New Jersey were spending ample sums of money to maintain a dormant death penalty. Over nine years, New York spent around 170 million dollars and over 25 years New Jersey spent around 253 million dollars; in both states, there was not one execution in those time periods (Dieter 14). Spending such an extravagant amount of money would logically imply that the executions are worth it. But according to a national police chief poll, the death penalty does not have enough of an impact to account for the money it requires. In the poll, police chiefs deemed the death penalty the most inefficient use of

taxpayers' money, and that the funds currently used for capital punishment should instead go toward training more officers and creating drug and alcohol programs for troubled youth (Dieter 9).

Of all the police chiefs polled, only 47 percent preferred the death penalty to a sentence of life in prison without parole (Dieter 11). This preference is ascribed to previously mentioned factors like a lack of deterrence and massive costs, and has nothing to do with morality. In fact, when posed statements to agree or disagree with, police chiefs concurred most with the assertion: "Philosophically, I support the death penalty, but I don't think it is an effective law enforcement tool in practice" (Dieter 10). This goes to show that arguments toward abolishing the death penalty go further than ethical, focusing more on usefulness and efficiency.

Of the ethical arguments, the most compelling is the fact that the death penalty has both taken and come close to taking innocent lives. Since 1973, 142 people have been exonerated from death row ("Innocence and the Death Penalty"). That means that if it were not for dedicated lawyers and organizations like the Innocence Project, 142 innocent people would be dead. Proponents of the death penalty argue that there is no way for certain to know that these exonerees are all innocent. As true as that may be, there is also no way for certain to know that they are guilty.

The Death Penalty Information Center cites the most common causes of exonerations as DNA evidence, eyewitness error, snitches, government misconduct, false confessions, and alternative factors such as hearsay ("Innocence and the Death Penalty"). More often than not, the most reliable way to determine guilt or innocence is through DNA. Of the 142 people exonerated, 18 cases involved DNA testing that pardoned the

accused criminal. The most recent case of an alleged criminal being released due to DNA evidence occurred this past year. In 1997, Louisiana resident Damon Thibodeaux received the death penalty for raping and murdering his fourteen-year-old cousin. He maintained his innocence throughout the trial and his years on death row, claiming that police officers coerced his confession with threats after a nine hour long interrogation. Fifteen years of incarceration and 500,000 prosecution and defense dollars later, Thibodeaux was exonerated on the basis of a false confession and lack of DNA evidence (“Innocence and the Death Penalty”).

It would be significantly easier to determine guilt or innocence if every criminal case involved DNA, but unfortunately there are many more instances when the jury and judge must rely on other forms of evidence to arrive at a conviction. Of all the exonerations in the past forty years, only thirteen percent have utilized DNA. The most common cause of wrongful convictions is eyewitness misidentification. Northwestern University’s Center for Wrongful Convictions published a study in 2001 involving the analysis of 86 exonerations, 46 of which included misidentification from an eyewitness (Warden). One infamous case took place in 1983 in Chicago, IL, when Anthony Porter was sentenced to death for robbing and murdering a young couple (Warden xi). He waited on death row for thirteen years, and fifty hours before his execution the court spared him because they discovered that he had an IQ of 51, declaring him mentally incompetent. This stay—a suspension of the execution—allowed an investigator, professor, and a group of Northwestern students to present a video tape capturing the murder confession from the actual killer, thus exonerating Porter (“Anthony Porter—the Post-Trial Period”).

Porter and 141 others managed to evade death, but not all get that opportunity. There is no way to know for certain how many criminals executed on death row may have been innocent, but the death penalty information center recognizes ten convicted criminals who received the death penalty despite the possibility of innocence (“Innocence and the Death Penalty”). On this list is Missouri resident Larry Griffin, who was executed in 1995 for his involvement in a drive-by shooting. After the execution, the judge presiding over the case, Justice Blackmar of the Missouri Supreme Court, noted: “The only eyewitness to the murder had a seriously flawed background, and his ability to observe and identify the gunman was also subject to question” (Gross). On top of that, another victim—one that survived the shooting—emphasized that neither Griffin nor the suspected witness was present at the scene of the crime. Although innocence cannot necessarily be proven, the fact that the main factor tying Griffin to the crime—the witness—was declared unreliable implies that his life may have been taken in vain. University of Michigan law professor Samuel Gross, who supervised Griffin’s case, stated: “There is no real doubt that we have an innocent person. If we could go to trial on this case, if there was a forum where we could take this to trial, we would win hands down.” Unfortunately for Griffin, his loved ones, and the reputation of capital punishment as a system, the government took an innocent life the day they executed Griffin.

Even if the judicial system manages to exonerate at least some innocent people prior to execution, the accused will inevitably suffer. The Innocence Project, an organization that uses DNA testing to ensure to the best of their ability that no innocent people be punished, explains what happens after a person is exonerated. They often

receive no apologies and no help, and unlike paroled criminals who may be set up with a job and a place to live, exonerees must fend for themselves (“After Exoneration”). These are innocent people who suffer because of no fault of their own. As long as the death penalty is in practice, executing an innocent person will always be a possibility.

Capital punishment does not necessarily hinder crime, but it does cost substantially more than effective alternatives of punishment and it does make mistakes. With that in mind, it is important to recognize the arguments made by those in favor of the death penalty. Supporters of capital punishment hold that it brings justice to mourning families, that it is allowed by the Constitution, and that violent criminals deserve to die. Although logical, the majority of supporters’ arguments are not based in fact. Maintaining that the death penalty provides justice assumes that all victims’ families have the same feelings, and arguing that the Constitution “allows” capital punishment does not indicate that it should exist. Pertaining to the notion that murderers deserve to die, research indicates that despite emotional appeals made by supporters, the financial and social toll the death penalty has on America makes it a counterproductive use of this country’s time and resources.

Supporters of the death penalty claim that by taking a murderer off the streets, the government brings justice to victims’ families. Take the story of Fredrick J. Romano, who lost his daughter to a criminal in 1987. Years later, Romano discussed his feelings toward the death penalty in the Baltimore Sun news article titled, “To Murder Victims’ Families, Executing Killers is Justice.” In the article he emphasizes that the death penalty does not provide closure, for nothing will heal the pain felt from losing a child, but instead it elicits justice. To counteract the response of some death penalty opponents who

argue that capital punishment evokes revenge instead of justice, Romano's wife explained: "Revenge would be going out and killing one of [the murderer's] family members... the death penalty isn't revenge. It's the law" (Kane).

For the Romano family, capital punishment may have brought a sense of justice. But it is a gross stretch to say that because one victimized family felt relief from the death penalty, all families feel the same way. In fact, California Crime Victims for Alternatives to the Death Penalty argue the opposite. The death penalty can prolong the family's pain, it attaches the murder victims to violence they never wanted to be associated with, and it wastes resources that could be put to better use. For example, Lorrain Taylor, a woman who has always been against the death penalty, lost her 22 year old sons to murder and did not change her views. In a booklet titled *Victims Against the Death Penalty*, she explains her stance: "Taking another person's life does not stop violence; there's a contradiction in responding to murder by executing people... If the government really wanted to end violence, it would take the millions of dollars it is wasting on the death penalty in California and use it for violence prevention for youth, rehabilitation, and victim services" ("Voices from California Crime Victims"). Taylor, along with many other death penalty opponents, does not understand why the government is focusing this country's money on executions when it could be put to better use elsewhere—like stopping crimes before they happen. Of course, whether or not the death penalty provides justice is an opinion-based debate; there is no right and wrong way to feel when it comes to losing a loved one. But because they are just opinions, claiming that capital punishment brings justice to families of the deceased is not a strong enough argument to uphold the existence of the death penalty.

Looking at the topic from a more legal standpoint, supporters of capital punishment push the fact that nothing in the Constitution prohibits the death penalty. When Wallace Wilkerson was sentenced to death for murder in the territory of Utah in 1878, he challenged the verdict and appealed first to the Supreme Court of Utah, and when that appeal was denied, he took it to the Supreme Court of the United States. He claimed that the sentence Utah delivered—death by firing squad—constituted cruel and unusual punishment. To Wilkerson’s dismay, Mr. Justice Clifford of the Supreme Court reinforced the same verdict: “... You [Wilkerson] be taken from your place of confinement to some place within this district, and that you there be publicly shot until you are dead” (“Wilkerson v. Utah”). When this case was decided, the United States recognized death by firing squad, hanging, and beheading as legitimate forms of execution. Today, the most common form of execution, with 1,150 in the United States since 1970, is lethal injection, a far more humane process (“Methods of Execution”). Supporters argue that capital punishment did not violate the Eighth Amendment when the government used humiliating forms of execution, and it still does not today.

But whether or not the constitution bans the death penalty is irrelevant because it also never condones it. Arguing for the death penalty on the grounds that the Constitution never explicitly speaks against it makes for an extremely weak argument, when there are other negative actions the Constitution says nothing about. Adultery, for example, is never addressed in the Constitution. That does not necessarily mean that the founding fathers encouraged cheating, just as it does not imply that they were against it. The argument goes the same way for capital punishment. The death penalty’s lack of a

presence in the Constitution cannot be interpreted to mean that it should be implemented in this country.

The third and most emotionally driven argument death penalty proponents make revolves around the belief that violent criminals deserve to die. Take serial killer Jeffery Dahmer, for instance, who murdered 17 men, both children and adult, between 1978 and 1991 (“Jeffrey Dahmer”). Not only did he kill them, but he also engaged in rape, dismemberment, and even cannibalism. When a person murders children the way Dahmer did, he or she arguably deserves to die; when a person takes away a right as inherent as life, he or she should lose that same right. In the words of Hammurabi, “If a man put out the eye of another man, his eye shall be put out” (King).

It cannot be said for certain that someone deserves to die unless it is known for certain that they committed the alleged crime. In his book *Eye for an Eye*, Stephen Nathanson writes: “...we cannot rely on them [institutions] to execute all and only those who deserve to die” (Nathanson 69). Because the justice system is not foolproof, there is no way to ensure that *only* those who deserve the death penalty are receiving it. When Hammurabi spoke of “an eye for an eye,” he advocated revenge, not justice. In the words believed to be spoken by Mahatma Gandhi, “An eye for an eye makes the whole world blind.”

As of right now, there is no reliable proof that the death penalty deters crime. Professors and researchers alike have attempted to demonstrate otherwise, but there are too many influential outside factors that must be taken into account to produce hard evidence. Sentencing a criminal to death does not save money, but it instead inefficiently uses taxpayers’ dollars to bring “justice” to mourning families and to criminals who

“deserve to die.” If anything, the high costs of capital punishment prolongs a families’ grief as they sit through years of trials and appeals, but are unable to bring back their loved one. Like all aspects of the legal system, the death penalty is not perfect. But its imperfections—like delivering wrongful convictions—can cause innocent people to die.

Research shows that as difficult as it may be to disregard the belief that murderers deserve to die, capital punishment is an ineffective and wasteful use of America’s time, and money. Instead of spending hundreds of millions of dollars on the death penalty every year, America’s taxes could go to crime prevention and awareness. An act of murder elicits an execution, so the death penalty does not stop crime, it punishes it. Reallocating resources to give the money spent on the execution process—which more often than not never ends up in an actual execution—could help stop crime before it happens (Minsker). The notion that the death penalty deters crime implies that in order for some to stop killing, others must serve as examples, murdering so would-be murderers understand the repercussions.

The death penalty is not a new punishment. Since the 18th century B.C, it has been used on criminals of all degrees from all walks of life (History of the Death Penalty). Because of this, the chances of capital punishment disappearing entirely from the American legal system are highly unlikely. But regardless of whether or not the death penalty ever ceases to exist, Americans should know where their money is going and what the government will inevitably responsible for, like the loss of innocent life. Research demonstrates that capital punishment is a broken system that cannot be fixed, yet America continues to indorse its inherently inefficient nature.

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