

REIMAGINING JUSTICE WITHOUT EXECUTION: SHOULD THE DEATH PENALTY BE ABOLISHED?

TANVI DESAI

College of Science

Florida Atlantic University

Abstract

Surrounded by controversy, the debate regarding the preservation, or lack thereof, of the death penalty in the United States has sparked intense discourse. It has remained the subject of profound controversy since its beginning during colonial times. Stemming from issues surrounding the ethicality of the capital punishment and the irreversible essence of it, many Americans have begun reevaluating the cruel punishment at hand and favoring the abolishment of the death penalty. As human life becomes increasingly vital in this generation, this paper will argue against the preservation of the death penalty for a multitude of reasons. These compelling reasons include the ethical complications that pose from taking a life that can simply be avoided by the eradication of the irreversible nature of the punishment. Additionally, another compelling factor favoring the abolition of the penalty is the lack of deterrence the death penalty offers, as research has failed to correlate the establishment of the punishment with a decrease in crime rates and criminal activity. Lastly, the uncertainty and unpredictable nature of the death penalty along with the costs corresponded support more cost-effective, time-effective, and less permanent alternatives. Considering the seemingly endless appeals, mitigation evidence, and trials associated with the capital punishment, the economic turmoil the capital punishment ensues argues against the preservation of the death penalty. The utilization of legal cases such as *Glossip v. Gross*, *DeLuna v. Lynaugh*, and statistics from a variety of verified sources, will argue in support of the eradication of the death penalty in the United States.

Violating the right to life, the death penalty, also known as capital punishment, is on average abolished from three countries a year.¹ Maintained as the source of immense controversy and dispute between two groups, those who favor the preservation of the capital punishment, and those who favor the abolition of it, also known as the abolitionists, the death penalty is known as the most cruel, degrading, and inhumane punishment one can receive in the court. Sentenced to death row and forced to undergo psychological torment as they await their execution, the death penalty often inflicts psychological distress on condemned prisoners. In fact, indicating a clear history of being unconstitutional, the Supreme Court had declared in 1972 that under the existing laws at the time, “the imposition and carrying out of the death penalty... constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”² This essay will argue against the preservation of the death penalty and fight for the abolition of this capital punishment. Due to the ethical complications that pose from taking a life, the lack of the deterrent effect associated with the punishment, and the exceptionally costly and lengthy duration the barbaric tradition instills, the death penalty should in fact be abolished. Addressing the opposing views of those who advocate for the preservation of the death penalty, this essay will provide insight and argue for the total abolition of the capital punishment in favor of the safeguarding and justice of the human rights the penalty violates.

Beginning with the ethical complications and complete ignorance of the person’s right to life, the death penalty is a clear violation of the right that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” as declared by the Universal

¹ The Death penalty Is the Ultimate Cruel, Inhuman and Degrading Punishment. Amnesty International. (2023, November 13). <https://www.amnesty.org/en/what-we-do/death-penalty/>

² *Furman v. Georgia*, Oyez, <https://www.oyez.org/cases/1971/69-5030> (last visited Apr 13, 2024).

Declaration of Human Rights.³ In 1976, the Supreme Court established the ethical nature of the death penalty, as they ruled that “the punishment of death does not invariably violate the Constitution.”⁴ However, it is clear that the execution is in fact the subject of a cruel and inhumane punishment. With no guarantee of a quick and painless death, in conjunction with the psychological torture inflicted upon condemned prisoners between their sentencing and execution, the Supreme Court’s ruling in *Gregg v Georgia* should be overturned.⁵ Furthermore, beyond the psychological implications, the ethicality behind the idea that people should be killed in order to stop people from killing, is still up for debate among society. As paradoxical and ironic as it is to kill to teach and illustrate not to kill, the justification for taking a life simply does not outweigh the moral implications that taking a human life can act as a lesson and incentive to refuse to take a life, as the death penalty is not a deterrent.⁶

With the utilization of execution methods including but not limited to beheading, hanging, lethal injection, and shooting, the role of forgiveness in the administration of justice is questioned as well.⁷ As the idea of permanently ending an individual’s life, the most basic human right, is taken advantage of, newly emerging and modernizing social values constitute of alternatives such as therapeutic or problem-solving courts that incorporate rehabilitation efforts.⁸ As potential for

³ The Death Penalty Is the Ultimate Cruel, Inhuman and Degrading Punishment. Amnesty International. (2023, November 13). <https://www.amnesty.org/en/what-we-do/death-penalty/>

⁴ The Case Against the Death Penalty. American Civil Liberties Union. (2012, December 11). <https://www.aclu.org/documents/case-against-death-penalty>

⁵ *Id.*

⁶ Webteam, W. (2009, June 18). A Clear Scientific Consensus That The Death Penalty Does Not Deter. Amnesty International USA. <https://www.amnestyusa.org/updates/a-clear-scientific-consensus-that-the-death-penalty-does-not-deter/>

⁷ The Case Against the Death Penalty. American Civil Liberties Union. (2012, December 11). <https://www.aclu.org/documents/case-against-death-penalty>

⁸ *Id.*

redemption and individual transformation is considered, endorsing and highlighting killing to solve social problems sets a negative example for citizenry for the future generation as well. Promoting a constant cycle of vengeance and murder and arguing that a life for a life is justice is essentially both morally and irreversibly a flawed concept.

As the capital punishment discredits the sanctitude of human existence, the ethical complications surrounding the death penalty stem even to those who are more susceptible to it due to the discrimination involved. In fact, according to research, 35% of people executed in the last 40 years have been Black, an overwhelming proportion in comparison to the only 13% of Black Americans that make up the population.⁹ Discriminatory in its application, the death penalty has been proven time and time again to be disproportionate in that it is also more susceptible to those from less advantaged socioeconomic backgrounds and minorities, due to the lack of compatible legal representation provided to them in court.¹⁰ As the disadvantaged are accused against victims from higher social classes, the condemned from impoverished social classes are often subjected to a sentence on death row that they would have otherwise avoided had they been wealthy and able to afford adequate legal representation.

Additionally, surrounding the irreversible nature of the punishment at hand, the moral complication of the human nature of wrongful convictions in court remains, as there is no guarantee the convicted are guilty, but instead the verdict is construed upon by the better judgement of the jury based on evidence presented. For example, in *Glossip v.*

⁹ Race and the Death Penalty. American Civil Liberties Union. (2003). <https://www.aclu.org/documents/race-and-death-penalty#:~:text=The%20results%20of%20their%20study,when%20the%20accused%20was%20black.>

¹⁰ 10 Reasons to Abolish the Death Penalty. Amnesty International. (2004, October 1). <https://www.amnesty.org/en/wp-content/uploads/2021/08/afr010132004en.pdf>

Gross, the convicted Clayton Lockett, had suffered from a heart attack and died less than 40 minutes after the state had administered him a lethal injection, indicating the irreversible nature of the punishment.¹¹ This also entails the risk of executing an innocent person that can never be eliminated, which can be shown by the over 191 prisoners that had been sent to death row in the U.S. since 1973, that have since been exonerated or released from death row entirely based on new evidence indicating their innocence, shown as precedent in cases such as *DeLuna v. Lynaugh*.¹² Across the United States, a minimum of one person for every 10 that are executed have since been exonerated, or freed from the accusation of guilt, succeeding their execution, highlighting the fallibility and irreversible nature of the capital punishment.¹³

Furthermore, ineffective in its attempt as a deterrent, the death penalty does not effectively act as a deterrent to crime as it is arguably not severe, swift, or certain.¹⁴ As there has been no significant or substantial evidence proving that the establishment of the death penalty has been effective in reducing crime any more than life imprisonment or other alternatives have, abolitionists argue that its effectiveness as a deterrent becomes increasingly undermined by the relatively similar crime trends and activity in countries without the use of the capital punishment.¹⁵ Police chiefs, when ranking the factors that potentially reduce crime rate, ranked the death penalty as the least effective measure in regulating criminal activity.¹⁶ In fact, states that have since abolished the punishment have been proven to have a significantly lower murder

¹¹ *Glossip v. Gross*, Oyez, <https://www.oyez.org/cases/2014/14-7955> (last visited Apr 13, 2024).

¹² *DeLuna v. Lynaugh*, 890 F.2d 720 (5th Cir. 1990)

¹³ *The Case Against the Death Penalty*. American Civil Liberties Union. (2012, December 11). <https://www.aclu.org/documents/case-against-death-penalty>

¹⁴ National Institute of Justice. (2016, May). Five Things About Deterrence. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

¹⁵ *Id.*

¹⁶ Time on Death Row. Death Penalty Information Center. (2023, November 22). <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>

rate than states that have preserved the death penalty, indicating a potential correlation between the preservation of the death penalty and the increase in crime and murder rates.¹⁷ In fact, the FBI had found that the death penalty has the opposite of a deterring factor, as “the FBI has found the states with the death penalty have the highest murder rates.”¹⁸ Additionally, the General Assembly of the United Nations had even stated that “there is no conclusive evidence of the deterrent value of the death penalty.”¹⁹ Referring to the statute penalty outlining the requirements for a deterrent to be considered a deterrent, it must be consistent and promptly employed, or severe, swift, and certain, both of which the capital punishment simply cannot guarantee to offer.²⁰ Although there is debate regarding the severe nature of inflicted death, many argue that death is in fact less severe than life imprisonment, as it is often quick and painless, and an escape from a life of reflection and suffering that imprisonment entails.

Regarding the duration of the penalty, the death penalty is not swift at all, as it often takes decades for a person to be executed considering the improbability of an execution date, if they even are eliminated.²¹ In fact, more than half of death row prisoners have been on death row, awaiting their execution, for over 18 years, undergoing psychological torment as their fate is being constantly overturned between court rulings and constant appeals, most likely outlasting a decade.²² Finally, regarding the certainty of the penalty, of those convicted of a homicide, only 1 of

¹⁷ *Id.*

¹⁸ The Case Against the Death Penalty. American Civil Liberties Union. (2012, December 11). <https://www.aclu.org/documents/case-against-death-penalty>

¹⁹ Why The Death Penalty Should Be Abolished. International Commission against the Death Penalty. (n.d.). <https://icomdp.org/why-the-death-penalty-should-be-abolished/>

²⁰ National Institute of Justice. (2016, May). Five Things About Deterrence. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

²¹ Time on Death Row. Death Penalty Information Center. (2024, April 8). <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>

²² *Id.*

33, or about 3% are eventually actually sentenced to death.²³ Further indicating an extreme uncertainty surrounding the punishment, at least 2,016 death sentences have been recorded across 52 countries, yet only around at least 883 executions across 22 countries have been recorded.²⁴ Thus, the death penalty's lack of ability to be considered a deterrent renders the use for such a severe punishment unnecessary on grounds of immorality, as the need for the maintenance of the death penalty is undermined by its inability to deter crime effectively in the present or in the future.²⁵

Lastly, the financial burden and economic turmoil associated with the costs of the death penalty further support the total abolition of the punishment. As the lengthy legal processes, indefinite and constant appeals, complexity of cases involving death, mitigation evidence, travel accrued to capital trials, and more, add to the risk-benefit analysis of the punishment, the financial margin and budget associated with the utilization of the capital punishment puts the United States in a potentially difficult financial situation.²⁶ Although many may think that the execution of the convicted would be an easy way to rid the economy of the costs associated with their survival, it is in fact much more expensive to carry out the death penalty than it would be to sentence an individual to a life of imprisonment without the possibility of parole.²⁷ As the death penalty offers the defendant an automatic appeal to the state's highest appellate court, the costs accrued for both trials are now burdened upon the state and taxpayers.²⁸ The taxpayers are also

²³ The Case Against the Death Penalty. American Civil Liberties Union. (2012, December 11). <https://www.aclu.org/documents/case-against-death-penalty>

²⁴ *Id.*

²⁵ *Id.*

²⁶ Wasteful & Inefficient. Equal Justice USA. (2020, January 28).

<https://ejusa.org/resource/wasteful-inefficient/>

²⁷ Costs. Death Penalty Information Center. (2023, March 27).

<https://deathpenaltyinfo.org/policy-issues/costs>

²⁸ Miron, J. (2023, July). The Financial Implications of the Death Penalty.

<https://www.cato.org/blog/financial-implications-death->

burdened upon the responsibility of accruing the costs associated with separate death row housing, time of judges, court reporters, prosecutors, briefs, and even extra security in court. In the United States itself, over a dozen states have found that the death penalty is often up to 10 times more expensive as the alternate life imprisonment sentence, with a single death penalty case costing over 2 million dollars more than a non-death penalty case in some instances.²⁹ Burdening taxpayers with funding executions, the cost of the capital punishment, considering the legal and pre-trial fees, the duration of death penalty trials, the cost of appeals, and the heightened security on death row, are all significant. As the financial resources accrued to the criminal justice system are finite and provide states with a financial strain, the implementation of the death penalty is simply unnecessary in light of more effective and cost-effective alternatives.

All in all, the abolition of the futile death penalty in the United States will serve to benefit the nation as a whole by fostering a moral justice system that acts as a strong deterrent and is dependent on a more time-effective, cost-effective, and ethical approach to sentencing the convicted. Some argue in favor of the preservation of the penalty in the essence of its ability to scare individuals from committing a crime they can be killed for; however, the penalty has been proven to not only not serve its purpose as a deterrent, but instead increase criminal activity where it is utilized. The eradication of the capital punishment will allow for the obliteration of the barbaric and inhumane procedure that puts innocent lives at risk.

penalty#:~:text=Capital%20cases%20also%20produce%20more,capital%20trials%20are%20uniquely%20expensive.

²⁹ Wasteful & Inefficient. Equal Justice USA. (2020, January 28).

<https://ejusa.org/resource/wasteful-inefficient/#:~:text=More%20than%20a%20dozen%20states,comparable%20non%20death%20penalty%20cases.&text=The%20most%20rigorous%20cost%20study,comparable%20non%20death%20penalty%20case.>