

## The Eighth Amendment of the US Constitution versus Death Penalty as a Form of “Cruel and Unusual” Punishment

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### Abstract

The present research deals with the issue of death penalty in the US which creates tension whether it remains as a justified and valid form of punishment. It discusses the history of capital punishment, its adoption in the US, the way some US States started to abolish a “cruel and unusual punishment”, the attempted reforms. It further analyses current approach of death penalty, the reforms focused on the process by which it is applied and with the limits of what is constitutional under the Eighth Amendment’s ban: ‘Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted’. The cases that made changes in the US legal system are also reviewed. Forms of executions, federal death penalty, court decisions regarding people with mental disabilities, juveniles, religion, women, the issues of race, innocence, financial facts, the roles of International Organizations and current statistics of the Bureau of Justice, DPIC, NAACP Legal Defense Fund, regarding death row inmates by state, number of executions by region is presented and reviewed. The research displays public opinion and analyses current situation in the US by presenting Gallup annual Crime Surveys, DPIC and Lake Research Partners polls. It poses a question whether a just society requires death penalty for the taking of a life. The research concludes that the U.S is a party to several fundamental human rights treaties that impact capital punishment, though it has refrained from being a party to the treaties that have most direct effects through invoking domestic law. By involvement of the U.S. in these treaties it will initiate the reform and restrict the death penalty from a human rights perspective. It will reduce exercising any unnecessary measures which threaten innocent life.

**Keywords:** Death Penalty, Capital Punishment, Constitution, eighth amendment, human rights, punishment, crime

### Introduction

Death Penalty is considered to be a disputable question throughout the US, dividing the Nation among the group of people who are for and against this type of capital punishment. It has a prolong history mainly inherited from Britain when hanging was the common form of punishment. Coming to the land of the present United States, European settlers brought the practice of capital punishment. Although some US States started to abolish death penalty, most states held onto it. During the Civil War, opposition to the death penalty waned, as more emphasis was given to the anti-slavery movement. After the war, new developments in the means of the executions emerged. However, in the 1960s, it was suggested that the death penalty was a “cruel and unusual punishment” and thus, unconstitutional under the Eight Amendment. However, Americans have their own objectives about this certain case. The present paper will present the opinions of both sides.

Death Penalty is not only an unusual severe punishment, it serves no penal purpose more effectively than a less severe punishment; therefore the principle inherent in the clause that prohibits pointless infliction of excessive punishment when less severe punishment can adequately

achieve the same purposes invalidates the punishment. One can assume that death penalty is a primitive form of punishment that should be overthrown and this tendency doesn’t seem to change, while more than a half of American population supports it and will support.

### Historical Background

“I don’t think you should support the death penalty to seek revenge. I don’t think that’s right. I think the reason to support the death penalty is because it saves other people’s lives”, said George W. Bush, in his presidential debate, dated October 17, 2000 (Bush, (2000)). History of capital punishment dates as far back as the 18th century B.C. in the code of King Hammurabi of Babylon when he first formed death penalties by codifying the death penalty for 25 different crimes. This type of severe punishment existed in the Hittite Code in 14th century B.C., Draconian Code of Athens in the 7th century B.C., which made execution the only way of right punishment for all crimes at those times, and the Roman Law of the Twelve Tablets in the 5th century B.C. In those times death penalties were executed by means of crucifixion, drowning, beating to death, burning alive, and impalement. In Britain most common way

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of punishment was hanging dating from the 10-th century. However, as the world progressed William the Conquer did not allow persons to be hanged or otherwise executed for any crime, except in times of war. Some methods though were marked with harshness while such forms of execution were used as boiling, burning at the stake, hanging, beheading, and drawing and quartering. Executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason. Capital Punishment could command widespread support in the 17th and 18th centuries as a punishment for all serious crimes as it served three important purposes. One was deterrence. American officials used a variety of corporal and financial punishments for lesser crimes, and they restored to banishment for more serious offences, but in an era before the invention of the prison, everyone agreed that such punishments were insufficient to deter the gravest crimes. The second was retribution. When the cause of crime was conceived as the criminal's failure to control a natural human tendency towards evil, capital punishment was accepted as a legitimate of retribution directed at a person responsible for his own actions. The third purpose was penitence. Repentance before death was widely considered essential, and a death sentence was thought uniquely able to facilitate repentance.

The first attempt to reform death penalty in the U.S. was presented by Thomas Jefferson introduced a bill to revise Virginia's death penalty laws which proposed that capital punishment could be used only for murder and treason. It was defeated by only one vote. Dr. Benjamin Rush challenged the belief that death penalty served as a deterrent. He held that having a death penalty actually increased criminal conduct. Rush gained the support of Benjamin Franklin and Philadelphia Attorney General William Bradford who believed that the death penalty should be retained, but that it was not a deterrent to certain crimes. He subsequently led Pennsylvania to become the first state to consider degrees of murder based on culpability. In 1794, Pennsylvania repealed the death penalty for all offenses except first degree murder (Bohm, 1999), (R, 1999), (Randa, 1997), (W S. , 1997).

In the early 19th century some states built state penitentiaries for the purpose of decrease number of capital punishment. In 1834, Pennsylvania became the first state to carry out executions in correctional facilities. In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason. Later, Rhode Island and Wisconsin abolished the death penalty for all crimes. With the exception of a small number of rarely committed crimes in a few jurisdictions, all mandatory capital punishment laws had been abolished by 1963 (Bohm, 1999).

The electric chair was introduced at the end of the century. New York built the first electric chair in 1888, and in 1890 executed William Kemmler. Soon, other states adopt-

ed this method of execution

(Randa, 1997). In 1924, the use of cyanide gas was introduced, as Nevada sought a more humane way of executing its inmates. Gee Jon was the first person executed by lethal gas. From the 1920s to the 1940s, there was resurgence in the use of the death penalty. There were more executions in the 1930s than in any other decade in American history, an average of 167 per year. (Bohm, 1999), (W S., 1997).

In the 1950s, public sentiment began to turn away from capital punishment. The 1960s brought challenges to the fundamental legality of the death penalty. Before then, the Fifth, Eighth, and Fourteenth Amendments to the United States logic to executions and maintained that the United States had, in fact, progressed to a point that its "standard of decency" should no longer tolerate the death penalty (Bohm, 1999). In the early 1960s, it was suggested that the death penalty was a "cruel and unusual" punishment and therefore unconstitutional under the Eighth Amendment. In 1958, the Supreme Court decided in *Trop v. Dulles* (356 U.S. 86) that the interpretation of the Eighth Amendment contained an "evolving standard of decency that marked the progress of a maturing society."

#### **Death Penalty: Current Approach**

***The Eighth Amendment to the US Constitution:*** The recent concern regarding death penalty and the reforms are focused on the process by which it is applied and with the limits of what is constitutional under the Eighth Amendment's ban: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted'. The notion that the death penalty should be abandoned because it is a violation of human rights would not reverberate with many Americans. Rather their concern is expressed in terms of fairness, risks of fatal error, arbitrariness or simply the morality of the death penalty.

The issue of the arbitrariness of the death penalty was brought before the Supreme Court in 1972 in *Furman v. Georgia* (408 U.S. 238). *Furman*, bringing an Eighth Amendment challenge, argued that capital cases resulted in arbitrary and capricious sentencing. In 9 separate opinions, and by a vote of 5 to 4, the Court held that Georgia's death penalty statute, which gave the jury the complete sentencing discretion without any guidance as to how to exercise that discretion, could result in arbitrary sentencing. The Court held that the scheme of punishment under the statute was therefore "cruel and unusual" and violated the Eighth Amendment. Thus, on June 29, 1972, the Supreme Court effectively voided 40 death penalty statutes, thereby commuting the sentences of 629 death row inmates around the country and suspending the death penalty because existing statutes were no longer valid. Although the separate opinions by Justices Brennan and Marshall stated that the death

penalty itself was unconstitutional, the overall holding in *Furman* was that the specific death penalty statutes were unconstitutional. With that holding, the Court essentially opened the door to states to rewrite their death penalty statutes to eliminate the problems cited in *Furman*. Advocates of capital punishment began proposing new statutes that they believed would end arbitrariness in capital sentencing. The first was Florida to rewrite its death penalty statute five months after *Furman* following 34 other states proceeded to enact new death penalty statutes. To address the unconstitutionality of unguided jury discretion, some states removed all of that discretion by mandating capital punishment for those convicted of capital crimes. However, this practice was held unconstitutional by the Supreme Court in *Woodson v. North Carolina* (428 U.S. 280 (1976)). Other states sought to limit that discretion by providing sentencing guidelines for the judge and jury when deciding whether to impose death. The guidelines allowed for the introduction of aggravating and mitigating factors in determining sentencing. These guided discretion statutes were approved in 1976 by the Supreme Court in *Gregg v. Georgia* (428 U.S. 153), *Jurek v. Texas* (428 U.S. 262), and *Proffitt v. Florida* (428 U.S. 242), collectively referred to as the *Gregg* decision. This landmark decision held that the new death penalty statutes in Florida, Georgia, and Texas were constitutional, thus reinstating the death penalty in those states. The Court also held that the death penalty itself was constitutional under the Eighth Amendment.

In addition to sentencing guidelines, three other procedural reforms were approved by the Court in *Gregg*. The first was bifurcated trials, in which there are separate deliberations for the guilt and penalty phases of the trial. Only after the jury has determined that the defendant is guilty of capital murder does it decide in a second trial whether the defendant should be sentenced to death or given a lesser sentence of prison time. Another reform was the practice of automatic appellate review of convictions and sentence. The final procedural reform from *Gregg* was proportionality review, a practice that helps the state to identify and eliminate sentencing disparities. Through this process, the state appellate court can compare the sentence in the case being reviewed with other cases within the state, to see if it is disproportionate. Because these reforms were accepted by the Supreme Court, some states wishing to reinstate the death penalty included them in their new death penalty statutes.

The ten-year moratorium on executions that had begun with the *Jackson* and *Witherspoon* decisions ended on January 17, 1977, with the execution of Gary Gilmore by firing squad in Utah with final words: 'Let's do it!' That same year, Oklahoma became the first state to adopt lethal injection as a means of execution. After World War II, many European countries abandoned or restricted the death penalty having signed and ratified the Universal Declaration of

Human Rights and subsequent human rights treaties. The U.S. retained the death penalty, but established limitations on capital punishment.

In 1977, the US Supreme Court held in *Coker v. Georgia* (433 U.S. 584) that the death penalty is an unconstitutional punishment for the rape of an adult woman when the victim was not killed.

**Execution:** In the USA, death sentence is carried out by lethal injection, electrocution, lethal gas, hanging, or firing squad. Until the 1890s, hanging was the primary method of execution used in the United States. Hanging is still used in Delaware and Washington, although both have lethal injection as an alternative method of execution. The last hanging to take place was January 25, 1996 in Delaware. Firing squad still remains a method of execution in Idaho, although lethal injection is allowed as an alternative method. The most recent execution by this method was that of John Albert Taylor. By his own choosing, Taylor was executed by firing squad in Utah on January 26, 1996.

Seeking a more humane method of execution than hanging, New York built the first electric chair in 1888 and executed William Kemmler in 1890. Today, electrocution is used as the sole method of execution only in Nebraska. In 1924, the use of cyanide gas was introduced as Nevada sought a more humane way of executing its inmates. Gee Jon was the first person executed by lethal gas. The state tried to pump cyanide gas into Jon's cell while he slept. This proved impossible because the gas leaked from his cell, so the gas chamber was constructed. (Bohm, 1999) Today, five states authorize lethal gas as a method of execution, but all have lethal injection as an alternative method. A federal court in California found this method to be cruel and unusual punishment. The last use of a gas chamber was on March 3, 1999, when Walter LaGrand, a German national, was executed in Arizona. In 1977, Oklahoma was the first to adopt lethal injection, and five years later Charles Brooks was the first person executed by this method in Texas in 1982. Today, all but 1 state use lethal injection as their primary method. Since 1976, the statistics by the method used is as follows: 1118 - Lethal Injection; 157 - Electrocution; 11 - Gas Chamber; 3 - Hanging; 3 - Firing Squad.

**The Federal Death Penalty:** In addition to the death penalty laws existing in many states, the federal government provides capital punishment for federal offenses, such as murder of a government official, kidnapping resulting in death, running of a large-scale drug enterprise, and treason (Find Law, 2012). In 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act that expanded the federal death penalty to some 60 crimes, some of which do not involve murder. There have

been three federal executions under these laws: Timothy McVeigh and Juan Garza in June of 2001, and Louis Jones in March 2003.

In response to the Oklahoma City Bombing, President Clinton signed the Anti-Terrorism and Effective Death Penalty Act of 1996 (Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)). The Act, which affects both state and federal prisoners, restricts review in federal courts by establishing tighter filing deadlines, limiting the opportunity for evidentiary hearings, and ordinarily allowing only a single habeas corpus filing in federal court. Proponents of the death penalty argue that this streamlining will speed up the death penalty process and significantly reduce its cost, although others fear that quicker, more limited federal review may increase the risk of executing innocent defendants (Bohm, 1999 and Schabas, 1997).

**Mental Disabilities:** In 1986, the Supreme Court banned the execution of insane persons in *Ford v. Wainwright* (477 U.S. 399). However, in 1989, the Court held that executing persons with mental retardation was not a violation of the Eighth Amendment in *Penry v. Lynaugh* (492 U.S. 584). Mental retardation would instead be a mitigating factor to be considered during sentencing. But on June 20, 2002, the Supreme Court issued a landmark ruling ending the execution of those with mental retardation. In *Atkins v. Virginia*, the Court held that it is unconstitutional to execute defendants with 'mental retardation'. Thus, the American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill and the American Bar Association have endorsed resolutions calling for an exemption of the severely mentally ill.

**Race:** In 1986 the Supreme Court held in *Batson v. Kentucky* that a prosecutor who exercises his or her peremptory challenges to remove a disproportionate number of citizens of the same race in selecting a jury is required to show neutral reasons for the strikes. Race was again in the forefront when the Supreme Court decided a 1987 case, *McCleskey v. Kemp* (481 U.S. 279). *McCleskey* argued that there was racial discrimination in the application of Georgia's death penalty by presenting a statistical analysis showing a pattern of racial disparities in death sentences, based on the race of the victim. The Supreme Court held that racial disparities would not be recognized as a constitutional violation of "equal protection of the law" unless intentional racial discrimination against the defendant could be shown.

Recent studies on race revealed the following: In Louisiana, the odds of a death sentence were 97% higher for those whose victim was white than for those whose victim was black (Radelet, 2005, 2011). A study in California found that those who killed whites were over 3 times

more likely to be sentenced to death than those who killed blacks and over 4 times more likely than those who killed Latinos (Radelet, 2005, 2011).

A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white (Unah, 2001). In 96% of states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. (Prof. Baldus report to the ABA, 1998). 98% of the chief district attorneys in death penalty states are white; only 1% is black (Prof. Jeffrey Pokorak, 1998). Accordingly, persons executed for interracial murders are as follows: the executions of white defendants in which the victims were black are 18, while the black defendants where victims were white are 253.

**Juveniles:** In March 2005, the US Supreme Court in *Roper v. Simmons* struck down the death penalty for those who had committed their crimes at under 18 years of age was cruel and unusual punishment and hence barred by the Constitution. The Court determined that today our society views juveniles as categorically less culpable than the average criminal. 22 defendants had been executed for crimes committed as juveniles since 1976.

In 1992, the United States ratified the International Covenant on Civil and Political Rights. Article 6(5) of this international human rights treaty requires that the death penalty not be used on those who committed their crimes when they were below the age of 18. However, although the U.S. ratified the treaty, they reserved the right to execute juvenile offenders. The Supreme Court addressed the constitutionality of executing someone who claimed actual innocence in *Herrera v. Collins* (506 U.S. 390 (1993)). *Herrera* was not granted clemency, and he was executed in 1993 (Michigan State University, 2006).

**Women:** Historically, women have not been subject to the death penalty at the same rate as men. From the first woman executed in the U.S., Jane Champion, who was hanged in James City, Virginia in 1632, to the 2012, women have constituted less than 2% of U.S. executions. There were 62 women on death row as of January 1, 2012 and 12 women have been executed since 1976.

The death penalty imposes an irrevocable sentence. Once an inmate is executed, nothing can be done to make amends if a mistake has been made. There is considerable evidence that many mistakes have been made in sentencing people to death. According to the updated data from 'Death Penalty Information Center Facts about Death Penalty' of April 2012, since 1973, at least 130 people have been released from death row with evidence of their innocence (Rights, 1993). From 1973-1999, there was an average of 3 exonerations per year. From 2000-2011, there has been

an average of 5 exonerations per year. During the same period of time, 1292 people have been executed. Among them were 726 White, 443 Black, 99 Hispanic and 24 other. 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. These statistics represent an intolerable risk of executing the innocent. A recent study by Columbia University Law School found that two thirds of all capital trials contained serious errors. When the cases were retried, over 80% of the defendants were not sentenced to death and 7% were completely acquitted. Wrongful executions are a preventable risk. By substituting a sentence of life without parole, we meet society's needs of punishment and protection without running the risk of an erroneous and irrevocable punishment.

**Religion:** In the 1970s, the National Association of Evangelicals (NAE), consisting of about 10 million conservative Christians and 47 denominations, and the Moral Majority, were among the Christian groups supporting the death penalty. NAE's successor, the Christian Coalition, also supports the death penalty. It should be noted that at the current stage, the Roman Catholic Church opposes the death penalty. In addition, most Protestant denominations, including Baptists, Episcopalians, Lutherans, Methodists, Presbyterians, and the United Church of Christ, oppose the death penalty.

**Innocence:** Since 1973, over 130 people have been released from death row with evidence of their innocence. (Rights, 1993). From 1973-1999, there was an average of 3 exonerations per year. From 2000-2011, there has been an average of 5 exonerations per year. Totally there have been 140 Death Row exonerations by State.

**Financial Facts:** Many defendants who face the death penalty lack financial stability to afford attorney and depend on the lawyers assigned by the state. It's also a fact that many of these lawyers are not experienced and professional, they are underpaid and lack motivation to investigate the case in a proper way. Thus, in such cases the defendant is much more likely to be convicted and given a death sentence.

A new study in California revealed that the cost of the death penalty in the state has been over \$4 billion since 1978. Study considered pre-trial and trial costs, costs of automatic appeals and state habeas corpus petitions, costs of federal habeas corpus appeals, and costs of incarceration on death row. (Williams, 2011). In Maryland, an average death penalty case resulting in a death sentence costs approximately \$3 million. (Urban Institute, 2008). In Kansas, the costs of capital cases are 70% more expensive than comparable non-capital cases, including the costs of incarceration. (Kansas Performance Audit Report, Decem-

ber 2003). In Florida it is \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out since 1976, that amounts to a cost of \$24 million for each execution. (Palm Beach Post, January 4, 2000). The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of sentencing murderers to life imprisonment. The majority of those costs occur at the trial level. (Duke University, May 1993). In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

**International Organizations:** President Clinton signed an Executive Order on the 50th anniversary of the U.N.'s Declaration on Human Rights in 1998. The Order stated: It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including . . . those of the United Nations . . . Despite this commitment, and despite the fact that the founding of the United States was based on the recognition of certain "unalienable rights," the concept of human rights per se as it applies within the U.S. is rarely discussed (W C. , 2012).

In April 1999, the United Nations Human Rights Commission passed a resolution supporting a worldwide moratorium on executions. The resolution calls on countries which have not abolished the death penalty to restrict its use, including not imposing it on juvenile offenders and limiting the number of offenses for which it can be imposed.

According to Amnesty International, 139 countries have abolished the death penalty. In 2010, only one country, Gabon, abolished the death penalty for all crimes. During 2010, 23 countries executed 527 prisoners and at least 2,024 people were sentenced to death in 67 countries. More than 17,833 people are currently under sentence of death around the world (Amnesty International, 2012).

According to the Center for Constitutional Rights' 2011 report titled 'The Death Penalty is a Human Rights Violation', capital punishment, applied in the US is expensive, racist, arbitrary, and fallible. 'It not only a fundamental human rights violation, but is also fundamentally flawed in design and implementation. Additionally, prisoners in the US spend decades on death row in dehumanizing conditions which amount to torture under international law'. The report suggests that the experience of American death row inmates fits the international legal definition of torture, as according to the statistics, among the approximately 3,250

**Table 1: Death Penalty Statistics**

Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Sentence	312	315	266	294	277	224	158	165	151	139	139	125	120	121	118	104	78

prisoners on death row in the US, the vast majority will serve years in solitary and crippling conditions, awaiting execution. Of the 34 states that still kill people, at least 25 hold death row inmates in solitary confinement for 23 hours or more a day. Of the 52 people executed in the US in 2009, the average length of time on death row was 169 months – over 14 years. Contact with family members is minimal: 17 out of 34 states do not allow prisoners any physical contact with family or friends for the duration of their time on death row, other than the weeks leading up to execution (Rights C. f., 2012)

**Statistics:** According to the NAACP Legal Defense Fund, “Death Row USA” dated January 1, 2012 statistics of Death Row inmates by state is as follows: California 723, Florida 402, Texas 312, Pennsylvania 211, Alabama 202, N. Carolina 166, Ohio 151, Arizona 153, Georgia 99, Louisiana 89, Tennessee 88, Nevada 80, Oklahoma 70, U.S. Gov’t 60, S. Carolina 58, Mississippi 56, Missouri 47, Arkansas 40, Oregon 37, Kentucky 35, Delaware 19, Idaho 14, Indiana 14, Virginia 12, Nebraska 11, Connecticut 11, Kansas 10, Utah 9, Washington 9, U.S. Military 6, Maryland 5, Colorado 4, S. Dakota 4, Montana 2, New Mexico 2, Wyoming 1, N. Hampshire 1. Totally there are 3,199 inmates (A Quarterly Report by the Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc, 2012).

For the research it number of executions by region might also be interesting. The South has biggest number – 1062, in Midwest there are 151 while in the West – 75. The lowest is in Northeast region with 4, Texas and Virginia result in 590 executions.

It should be noted that the number of death sentences per year has dropped dramatically since 1999. The information was obtained from the Bureau of Justice Statistics: “Capital Punishment, 2010,” based on DPIC’s research and is given in the Table 1 (Death Penalty Information Center, 2012).

**Public Opinion Regarding Death Penalty**

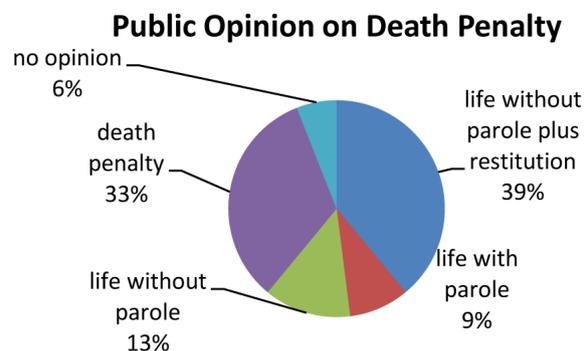
**Current Situation Analysis**

Society has been using punishment to discourage citizens from unlawful actions. Some people think that since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder, and that is the death penalty. If murderers are sentenced to death and executed, potential murderers will

think twice before killing for fear of losing their own life. Support for the death penalty has fluctuated throughout the century. In the present research annual statistics from the US Department of Justice regarding Capital Punishment were used to get more thorough notion of the public opinion.

According to Gallup surveys, in 1936, 61% of Americans favored the death penalty for persons convicted of murder. Support reached an all-time low of 42% in 1966. Throughout the 70s and 80s, the percentage of Americans in favor of the death penalty increased steadily, culminating in an 80% approval rating in 1994. Since 1994, support has declined and in 2008, 70% of Americans supported the death penalty. 2010 Gallup’s annual Crime Survey revealed that 64% of Americans continue to support the use of the death penalty for persons convicted of murder, while 29% oppose it – continuing a trend that has shown little change over the last seven years (Gallup Politics, 2012).

The 2009 poll, commissioned by DPIC found police chiefs ranked the death penalty last among ways to reduce violent crime (Death Penalty Information Center, 2012). The police chiefs also considered the death penalty the least efficient use of taxpayers’ money. A 2010 poll by Lake Research Partners found that a clear majority of voters (61%) would choose a punishment other than the death penalty for murder (Partners, 2010). (see Chart 1).



**Chart 1: Public Opinion on Death Penalty**

The fact that some states or countries which do not use the death penalty have lower murder rates than jurisdictions which do is not evidence of the failure of deterrence. States with high murder rates would have even higher rates if they did not use the death penalty. Ernest van den Haag, a Professor of Jurisprudence at Fordham University who studied the question of deterrence closely, wrote: “Even though statistical demonstrations are not conclusive, capi-

tal punishment is likely to deter more than other punishments because people fear death more than anything else. They fear most death deliberately inflicted by law and scheduled by the courts... Hence, the threat of the death penalty may deter some murderers who otherwise might not have been deterred. And surely the death penalty is the only penalty that could deter prisoners already serving a life sentence and tempted to kill a guard, or offenders about to be arrested and facing a life sentence. Perhaps they will not be deterred. But they would certainly not be deterred by anything else." Finally, the death penalty certainly "deters" the murderer who is executed.

Others consider that the death penalty is not a proven deterrent to future murders. Those who believe that deterrence justifies the execution of certain offenders bear the burden of proving that the death penalty is a deterrent. The conclusion from years of deterrence studies is that the death penalty is no more of a deterrent than a sentence of life in prison. Some criminologists, such as William Bowers of Northeastern University, maintain that death penalty has the opposite effect - society is brutalized by the use of death penalty, and this increases the likelihood of more murder.

It should be noted that States in the U.S. that do not employ death penalty have lower murder rates than states that do. The same is true when the U.S. is compared to countries similar to it. The U.S., with death penalty, has a higher murder rate than the European countries which do not use death penalty.

The death penalty is not a deterrent because most people who commit murders either do not expect to be caught or do not carefully weigh the differences between a possible execution and life in prison before they act. Frequently, murders are committed in moments of passion or anger, or by criminals who are substance abusers and acted impulsively. There is no conclusive proof that the death penalty acts as a better deterrent than the threat of life imprisonment. Most states now have a sentence of life without parole. Prisoners who are given this sentence will never be released. Thus, the safety of society can be assured without using the death penalty.

### ***Does a Just Society Require Death Penalty for the Taking of a Life?***

When someone takes a life, the balance of justice is disturbed. Only the taking of the murderer's life restores the balance and allows society to show convincingly that murder is an intolerable crime which will be punished in kind. Retribution has its basis in religious values, which have historically maintained that it is proper to take an "eye for an eye" and a life for a life (Michigan State University, 2006).

Although neither the victim nor the family can com-

pensate the pre-murder status still an execution brings closure to the murderer's crime and ensures that the murderer will cause no more danger to any member of society. Interestingly enough, many victims' families denounce the use of death penalty. For the most cruel and heinous crimes the ones for which the death penalty is applied criminals deserve the worst punishment that is death penalty. Robert Macy, District Attorney of Oklahoma City, described his concept of the need for retribution in one case: "In 1991, a young mother was rendered helpless and made to watch as her baby was executed. The mother was then mutilated and killed. The killer should not lie in some prison with three meals per day, clean sheets, cable TV, family visits and endless appeals. For justice to prevail, some killers just need to die."

According to U.S. Military Academy Professor Rowman, "Opponents of the capital punishment often put forth the following argument: Perhaps the murderer deserves to die, but what authority does the state have to execute him or her? Both the Old and New Testaments say, "'Vengeance is mine, I will repay,' says the Lord" (Prov. 25:21 and Romans 12:19). You need special authority to justify taking the life of a human being. He who resists what God has appointed, and those who resist will incur judgment.... If you do wrong, be afraid, for the authority does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer' (Romans 13: 1-4). So, according to the Bible, the authority to punish, which presumably includes the death penalty, comes from God. But we need not appeal to a religious justification for capital punishment. If the criminal, as one who has forfeited a right to life, deserves to be executed, especially if it will likely deter would-be murderers, the state has a duty to execute those convicted of first-degree murder" ('The Death Penalty: For and Against', Rowman & Littlefield Publishers, Inc., 1998).

Retribution is another word for revenge. Although our first instinct may be to impose immediate pain on someone who wrongs us, the standards of a mature society demand a more measured response. The passionate impulse that makes us revenge does not mean that it is an adequate justification for invoking a system of capital punishment. If we encourage the act of revenge by conducting another act of killing, it will extend the chain of violence and wrongdoing. It will not relieve the existing situation, it will cause more pain. For example, Bud Welch's daughter, Julie, was killed in the Oklahoma City bombing in 1995. Despite the fact that at once his wish was to kill those people who had committed the crime, he understood that such killing "is simply vengeance; and it was vengeance that killed Julie.... Vengeance has no place in the justice system." The notion of an eye for an eye, or a life for a life, is a simplistic one which our society has never endorsed. We should not allow torturing the torturer, or raping the rapist. Taking the life of a murderer is a similarly disproportionate punishment,

especially in light of the fact that the U.S. executes only a small percentage of those convicted of murder, and these defendants are typically not the worst offenders but merely the ones with the fewest resources to defend themselves.

### Conclusion

The issue of death penalty creates tension in the society whether it remains a justified and valid form of punishment. It is challenged as a violation of the Eighth Amendment stating that the U.S. cannot use "cruel and unusual" punishment. Due to the fact that "punishment" is a legal infliction of suffering, it must necessarily be "cruel." The general purpose of criminal justice system is protection of rights of life, liberty, and property for all citizens. To do this, some think that the punishment for crime must be harsh enough to deter potential criminals. Besides, punishment is meant to give justice to the wrongdoer and to keep him from doing it again.

The General notion of the federal courts regarding the issue of death penalty starts with the assumption that it is constitutional and not a "cruel and unusual punishment." That is mainly result of the fact that capital punishment existed as a legal punishment when the Eighth Amendment was adopted in 1791, thus manifesting the constitutional support of founding fathers. Besides, the Fifth Amendment clearly anticipates the deprivation of life, provided "due process" has been accorded the defendant. If the death penalty was minded towards violation of unalienable rights it would not be impossible to amend the Constitution so that the government could not take a person's life as a punishment for crime. But if all 50 states (and not only 15 and the DC) individually abolished this practice it would lead us to less violation of human rights.

As mentioned above, early American criminal law was brought from England, thus allowing death penalty for various crimes. The capital punishment could be applied for murder, robbery, rape, treason, and even blasphemy. Progressively, the list of death eligible crimes has been shortened to essentially one: murder as The Supreme Court determined that if such crimes as rape and robbery didn't result in death of a victim, death punishment would be disproportionate. There are still laws providing death penalty for other crimes, but everyone on the state or federal death rows are involved in a crime resulted the death of another person.

Once Robert M. Morgenthau, District Attorney in Manhattan, NY said in his interview: "Take it from someone who has spent a career in federal and state law enforcement, enacting the death penalty... would be a grave mistake. Prosecutors must reveal the dirty little secret they too often share only among themselves: The death penalty actually hinders the fight against crime."

The United States is a party to several fundamental hu-

man rights treaties that impact capital punishment but the U.S. has refrained from being a party to the treaties that have most direct effects through invoking domestic law. By involvement of the U.S. in these treaties it will initiate the reform and restrict the death penalty from a human rights perspective. It will reduce exercising any unnecessary measures which threaten innocent life.

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