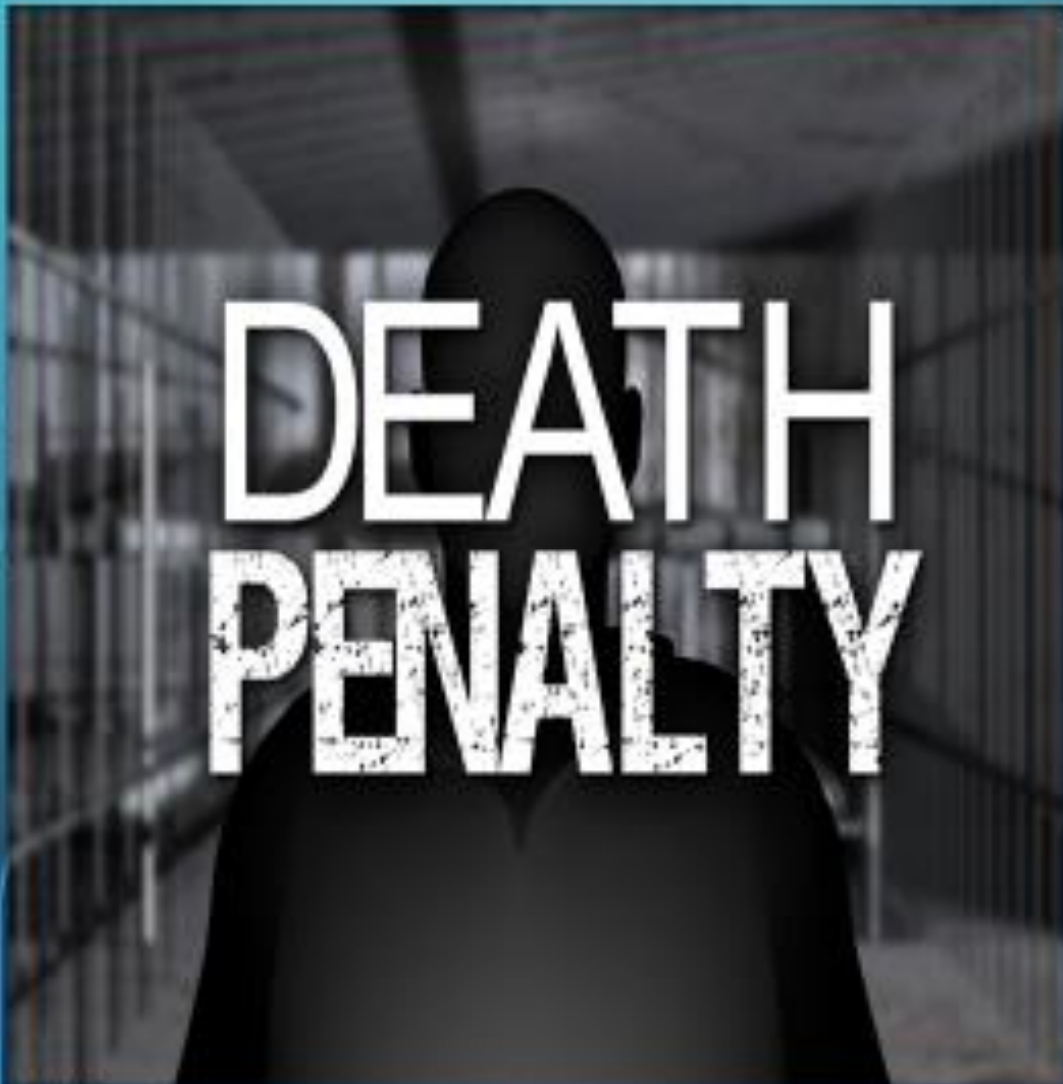


NOVEMBER 2015

POLITICAL DISCUSSION GROUP
PACKET



Death Penalty Information Center

2015

Illinois



General Information

Death Penalty: No

Date of Reinstatement (following *Furman v. Georgia*): July 1, 1974 (struck down in 1975), June 21, 1977

Date of Abolition: July 1, 2011

Capital: Springfield

Population: 12,830,632

Governor: [Bruce Rauner](#)

Legislative Information: [Senate](#)

[House of representatives](#)



History of the Death Penalty

Following the U.S. Supreme Court's decision in *Gregg v. Georgia*, Illinois's state legislature voted to reinstate capital punishment in 1974. The first execution under the new statute was that of **Charles Walker** in 1990, followed by eleven more executions until the final Illinois execution was carried out in 1999. All executions in Illinois since 1974 were carried out through lethal injection.

Notable Exonerations

Anthony Porter: Convicted in 1983 for a double murder committed near a pool on Chicago's South Side, Porter spent nearly 17 years on Illinois's death row for a crime he did not commit, all the while maintaining his innocence. The case was broken by investigator Paul Ciolino working with Professor David Protess and journalism students from Northwestern University, who tracked down both the original witnesses and the actual killer. Their investigation revealed that the state's sole eyewitness, in a total of 17 hours of interrogation, had been "threatened, harassed, and intimidated" into testifying that Porter was the killer. Porter was released in February, 1999 on the motion of the State's Attorney after Ciolino convinced another man to confess on videotape to the double murder that sent Porter to death row. Charges were filed against the other man, who claimed he killed in self-defense. Porter had come within 2 days of execution in 1998, granted a last minute reprieve because the Court wanted to look into his mental competency after an IQ test revealed that Porter has an IQ of 51. His conviction was officially reversed on March 11, 1999. Porter's case is credited with reigniting public debate on the death penalty in Illinois, eventually leading to a moratorium followed by abolition.

On January 11, 2003, at the same time that the Governor of Illinois issued a blanket commutation to all death row inmates in Illinois, four of the condemned were issued a pardon: **Aaron Patterson, Leroy Orange, Madison Hobley, and Stanely Howard**. These four belonged to the "Death Row Ten," a group of inmates who claimed that their convictions were due to false confessions obtained via police torture at the hands of notorious Chicago Police Commander Jon Burge. Among the tactics allegedly utilized by the police to elicit confessions were the use of cattle prods to shock suspects in the genitals, beating suspects over the head with phonebooks, and pointing guns in the face of minors.

Illinois has 20 exonerations from death row, the second most of any state. Visit [DPIC's Innocence page](#) to learn more about them.

Famous cases

The most notorious death penalty case in the history of Illinois, indeed one of the most famous in the United States, was that of infamous serial killer **John Wayne Gacy**. Gacy murdered 33 victims between 1972 and 1978. All of his victims were boys between the age of 14 and 21. In March of 1980 Gacy was convicted of the 33 murders and sentenced to death. After 14 years of appeals, Gacy was executed by lethal injection on May 10, 1994. At the time of his execution, no other person had been convicted of as many murders in the history of the United States.

Another famous execution in Illinois was that of **Girvies Davis**. Convicted of murdering an 89 year old man, the only evidence against Davis was a confession that Davis claims was obtained under threat of death. Prison guards claim that on September 9th, 1979, Davis, who was incarcerated on other charges, passed them a note admitting to several murders. Prison logs show that he was signed out at 10pm for what was supposedly a trip for Davis to help investigators gather evidence. At the end of this trip, investigators say Davis signed 20 confessions for separate crimes. Davis's story of the night is markedly different; in his clemency petition he states that at about 2am on the night of the trip the officers pulled over to the side of the road and let Davis out of the car. After removing his handcuffs and manacles, the officers produced a stack of confessions and unholstered their guns, pointing them directly at Davis. Davis says he was given two choices: sign the confessions or attempt to get away. His lawyers also say that Davis could not have penned the note that prison guards say Davis passed to them, because at the time Davis was functionally illiterate and only learned to read while in jail. Despite the doubts cast on his conviction, Davis's clemency petitions and appeals were denied, and he was executed in May of 1995.

Notable Commutations/clemencies

The exoneration and release in 1999 of death row inmate Anthony Porter sparked a statewide debate on the death penalty and its merits. Shortly after Porter's release, **Governor George Ryan** declared a

moratorium on executions and established a special Governor's Commission to study the death penalty system as administered in Illinois. Just 2 days before leaving office in January of 2003, Governor Ryan determined that the death penalty was "fraught with error" and commuted the sentences of all 167 death row inmates to "life" terms. While not the first blanket commutation in US history, it is by far the largest, representing roughly two-thirds of all commutations in the U.S. since 1976.

Milestones in abolition/reinstatement

The Illinois legislature passed a death penalty reinstatement bill in 1973, following the Supreme Court's decision to strike down all existing death penalty laws in 1972. That law took effect on July 1, 1974, but was struck down by the Illinois Supreme Court in 1975. On June 21, 1977, Governor James Thompson signed a new reinstatement bill that was upheld by the state Supreme Court in 1979 and remained in effect until 2011.

In January, 2000, Governor George Ryan established a moratorium on executions that would last over 10 years. At that point in Illinois' history, the state had exonerated 13 death row inmates in the same time that it had executed 12. Illinois has not executed anyone since the moratorium began, but it has exonerated 7 additional inmates, for a total of 20.

Although Ryan's successor Rod Blagojevich kept the moratorium in place, the state continued to seek death sentences, adding 15 defendants to the state's recently vacated death row. The death penalty was a major issue in the 2010 gubernatorial election. The election of Democrat Pat Quinn paved the way for votes on a bill to abolish the death penalty in the Illinois House and Senate, and on March 9th, 2011 **Governor Quinn** signed legislation that made Illinois the 16th state to abolish the death penalty. Since the legislation was not retroactive, Quinn commuted the death sentences of all 15 men on Illinois' death row.

Illinois Abolishes the Death Penalty

Cheryl Corley

NPR

March 09, 2011

Illinois Gov. Pat Quinn abolished the death penalty Wednesday, more than a decade after the state imposed a moratorium on executions out of concern that innocent people could be put to death by a justice system that had wrongly condemned 13 men.

Quinn also commuted the sentences of all 15 inmates remaining on Illinois' death row. They will now serve life in prison.

As he signed the bill, Quinn called it the "most difficult decision" he has made as governor. But he said the best step forward for Illinois was to be done with the death penalty altogether.

"We all know that our state has had serious problems with respect to the system of the death penalty for many years," he said.

State lawmakers voted in January to abandon capital punishment, and Quinn spent two months reflecting on the issue, speaking with prosecutors, victims' families, death penalty opponents and religious leaders.

Quinn said he studied every aspect of Illinois' death penalty and concluded that it was impossible to create a perfect system, "one that is free of all mistakes, free of all discrimination with respect to race or economic circumstance or geography."

Richard Dieter, the executive director of the Death Penalty Information Center, said no state has studied the death penalty more than Illinois.

"For a Midwest state that actually had one of the larger death rows in the country to come to this point, I think, is even more significant than some of the earlier states which hardly used the death penalty," he said.

Illinois' moratorium goes back to 2000, when then-Republican Gov. George Ryan made international headlines by suspending executions. He acted after years of growing doubts about the justice system and after courts threw out the death sentences of 13 condemned men.

Shortly before leaving office in 2003, Ryan also cleared death row, commuting the sentences of 167 inmates to life in prison. Illinois' last execution was in 1999.

When the new law takes effect on July 1, Illinois will join 15 other states that have done away with the executions. Quinn said he hoped other states would follow.

"I think if you abolish the death penalty in Illinois, we should abolish it for everyone," he said.

New Mexico had been the most recent state to repeal the death penalty, doing so in 2009, although new Republican Gov. Susana Martinez wants to reinstate it.

Quinn consulted with retired Anglican Archbishop Desmond Tutu of South Africa and met with Sister Helen Prejean, the inspiration for the movie *Dead Man Walking*.

Illinois Attorney General Lisa Madigan appealed directly to Quinn to veto the bill, as did several county prosecutors and victims' families. They said safeguards, including videotaped interrogations and easier access to DNA evidence, were in place to prevent innocent people from being wrongly executed.

Pam Bosley, who helped organize a group for families of children killed by gun violence, tried to talk Quinn out of signing the bill. Her 18-year-old son, Terrell, was shot to death in 2006 as he was coming out of church.

"I can't see my son at all no more. I can't see him grow old," she said. "They took all that from me, so I feel that their life needs to be ended."

But death penalty opponents argued that there was still no guarantee that an innocent person couldn't be put to death. Quinn's own

lieutenant governor, Sheila Simon, a former southern Illinois prosecutor, asked him to abolish capital punishment.

Quinn offered words of consolation to those who had lost loved ones and announced that there would be a death penalty abolition trust fund to provide resources to relatives of victims.

"You are not alone in your grief," he said. "I think it's important that all of us reach out through this trust fund in helping family members recover."

Twelve men have been executed in Illinois since 1977, when the death penalty was reinstated. The last was Andrew Kokoraleis on March 17, 1999. At the time, the average length of stay on death row for the dozen men was 13 years.

Kokoraleis, convicted of mutilating and murdering a 21-year-old woman, was put to death by lethal injection.

Illinois Lawmaker Wants To Restore Death Penalty, 4 Years After It Was Abolished

Kim Bellware

The Huffington Post

October 26, 2015

Four years after Illinois abolished the death penalty, a Republican state lawmaker wants to bring it back for killers he calls "the worst of the worst."

State Rep. John Cabello (R-Machesney Park) last week introduced a bill to restore capital punishment, but in a different form than when it was abolished in 2011.

"Obviously, we don't want the same bill -- the same language -- that we had before," Cabello told The Huffington Post Friday. "We have to have something in place for the worst of the worst. The bill is to make sure the discussion is there."

In 2003, troubled by questions of fairness, then-Gov. George Ryan (R) cleared the state's death row in the waning hours of his administration. Gov. Pat Quinn (D) ultimately signed legislation that abolished the death penalty outright. Quinn called it the hardest decision he ever had to make as governor. Because the legislation was not retroactive, Quinn commuted the sentences of the 15 men on death row. Illinois is now one of 18 U.S. states that have abolished the death penalty.

Cabello said he wants his bill to facilitate a discussion of reforming the justice system in the House Judiciary-Criminal Committee, for which he serves as spokesman. Even if his bipartisan bill makes it to the House floor, he said he wouldn't likely call for a vote.

"I want to make sure we're going to discuss every type of penalty, every type of issue, that could possibly come up within this

commission to see what and how we want our criminal justice system to look like," Cabello said.

The bill would bolster court-appointed defense teams, funding defense experts and investigators, allowing law students to help provide research and legal aid, and providing training to county public defenders.

Though Cabello said he personally supports the death penalty, he said it should only be brought back "if we came up with perfect reforms for the criminal justice system" and for "certain ironclad cases." The punishment would apply to the "worst of the worst," which he defined as including those convicted of murdering a first responder or a child under 12, or committing mass murder.

Cabello is on leave from his job as a detective at the Rockford Police Department. As a lawmaker, he said he'd like to reduce state's prison population by 25 percent within the next 10 years. He also has introduced legislation that would allow someone convicted of a non-forcible felony to have that record sealed upon successful completion of prison educational or vocational training.

"We do an excellent job of putting people in prison," Cabello said. "We do a lousy job of getting them back into society."

Cabello said his proposed legislation shouldn't define him as soft on crime. "I've unfortunately had the opportunity to investigate murders, child sex crimes, every kind of crime you can't possibly imagine and don't want to imagine," he said. "It's about getting smart on crime, not soft."

The Right Anti-Death Penalty Movement?

Colleen Eren

New Politics

Winter 2015, Vol. 15 Issue 2, p95-100. 6

The Right Anti-Death Penalty Movement?

Framing Abolitionism for the Twenty-first Century

COLLEEN EREN

SINCE THE YEAR 2000, VICTORIES CLAIMED by death penalty abolitionists have seemed significant. In 1999, the United States executed 98 death-row inmates, the highest number since capital punishment's reinstatement following the *Gregg v. Georgia* Supreme Court ruling in 1976. Subsequently, however, executions have been on the decline, with 39 inmates killed in 2013. Additionally, after peaking in 2000 with a death-row population of 3,593, there has been a reduction to 3,054 inmates awaiting execution, with a 62 percent decrease in new death sentences passed down between 1998 and 2007. Public support for the death penalty in 2014 in the United States remained around a 40-year low of 63 percent. Adding to the sense of optimism, Maryland abolished the death penalty in 2013, making it the sixth state in six years to do so, and raising the total number of states without the death penalty to 18 (Death Penalty Information Center, DPIC).

However the tactics and frames through which anti-death penalty organizations sought to obtain their objectives in the late 1990s and early 2000s, which I witnessed as a community organizer, deserve attention. Herbert Haines' excellent overview of abolitionist movements in the United States, *Against Capital Punish-*

ment, emphasizes that from the beginnings of abolitionism following the American Revolution through the mid-1990s, the anti-death penalty movement had primarily tried to achieve its objectives through a "moralistic critique" (Haines, 163). In other words, those arguing against capital punishment have linked their arguments to human rights, to concerns about racism and unequal treatment of the poor, and to religious concerns about the sanctity of life. These arguments, according to Haines and more recent scholarship by Jolie McLaughlin, have been unsuccessful because they have not sought to appeal to the rational self-interest of non-progressives. They have been too emotive, and to use the cliché, they have been preaching to the choir. And largely, the actions of key anti-death penalty organizations (ADPOs) indicate that they have philosophically sided with the analyses of McLaughlin and Haines.

My intent here is to explore how the leading ADPOs' framing of the issue since 2000 has shifted away from "moralistic," allegedly "emotional/non-rational," traditionally progressive arguments to "rational," "consensus-seeking," crime-prevention frames and arguments that parallel those found in rightist, conservative movements, in the false belief that doing so is the best way to win abolition. I make the case that recent advances in abolitionism should not be attributed primarily to this change in framing, and argue that the historical precedent for achieving progress in abolitionist sentiment in the United States is not predicated on a move to the right, but rather a move toward the *left*, and

COLLEEN EREN is an Assistant Professor of Criminal Justice at CUNY LaGuardia, and formerly served as Director of Organizing for New Yorkers for Alternatives to the Death Penalty. Her upcoming book, *The Crisis and Bernie Madoff*, will be published by Stanford University Press.

toward a paradigm of more radical economic and racial justice. I also argue that appealing to commonsense rationality as a strategy ignores the way in which the right's opposition to capital punishment has been primarily characterized by retributive emotionality. To obtain any type of significant change, the movement against the death penalty must be allied with a larger movement against mass incarceration that taps into the emotions of those individuals and communities whose lives have been most affected. Otherwise, ADPO strategies will have the unintended consequence of bolstering mass incarceration's impulse and logic, rendering any victories fragile and subject to swings of the economy.

New Century, New Frames, New Leaders

The anti-death penalty movement has never had extensive financial resources. In 1981, the National Coalition to Abolish the Death Penalty received contributions that after inflation would amount to \$23,000 today (Haines, 62). Certainly, even today its funding is insufficient to run television campaigns or take out ads in prominent newspapers. It has relied primarily on the efforts of volunteer activists, notably lawyers and clergy who have donated extensive amounts of time. However, several key ADPOs in the 2000s have been able to move away from relying only on volunteers and to increase their resources through grants given by foundations such as Atlantic Philanthropies, JEHT Foundation, and George Soros' Open Society Institute to hire full-time paid staff to strategize, organize, and lobby. For example, public records show that in 2013, the National Coalition to Abolish the Death Penalty had \$1.3 million in revenue, with its executive director garnering \$136,000 in compensation. Death Penalty Focus, located in California, in 2012 reported \$1.2 million in revenue. The same year, Equal Justice USA reported net assets of \$2.3 million.

With the hiring of full- and part-time staff,

messaging could be honed, and the ears of politicians reached without demonstrations or legal actions in court. Since the late 1990s, the framing of the debate against capital punishment by these largely white, middle-class professionals has moved increasingly to adopt center-right rationales for abolition that fit congruently with conservative ideologies. Most prominently, the issues that are brought to the forefront are cost-inefficiency benefits, innocence, the "true" needs of law enforcement, and better meeting the needs of particular (that is, white) victims of crime and their loved ones.

Cost, Inefficiency, and "Alternatives"

"[Capital Punishment's] fatal flaw is not its immorality ... but rather its enormous lack of cost-effectiveness," Herbert Haines concludes in *Against Capital Punishment* (193). Indeed, in the characteristic move away from 'moralistic' and emotional arguments in the late 1990s, ADPOs have endorsed this perspective: that we can all have different philosophical opinions about whether capital punishment is ethical, but during a period of budgetary restraint and slow economic recovery, we must all agree that it is too expensive. McLaughlin notes that arguments about cost were not used in the anti-death penalty movement until the late 1990s. "More and more anti-death penalty organizations now cite cost to taxpayers as the *number one reason*, or at least a top reason, why the death penalty should be abolished" (McLaughlin, 705). On Death Penalty Focus' webpage, the second reason they list for abolishing the death penalty (the first being innocence) is cost. "It costs far more to execute a person than to keep him or her in prison for life," they argue. The understanding here of course is that life without parole is the default, unquestioned alternative.

Along with the framing of the death penalty as *expensive*, there has been a concomitant emphasis on it being *ineffective* and *inefficient*. Inefficiency and costliness are entirely compatible with neoliberal discourses and conservative

framing of the issue, and hence more likely to garner support from at least some segments of the right-leaning constituency. The group Conservatives Concerned about the Death Penalty, in giving its primary reasons for supporting abolition of the death penalty, cites the “alarming cost,” calling it an “inefficient, bloated program.” Montana Conservatives Concerned about the Death Penalty joined the anti-death penalty movement because of their belief that the “death penalty is another institution of government that is wasteful and ineffective” (McLaughlin, 703). The language of cost effectiveness also gives “cover” to politicians who might want to take action to end the death penalty but not risk being accused of being too liberal (soft) on violent offenders. Governor Martin O’Malley, after signing the anti-death penalty bill in Maryland in 2012, was quoted as saying, “We have a responsibility to stop doing things that are wasteful and ineffective.”

Law Enforcement

The framing of the death penalty as wasteful or ineffective plays directly into a second narrative, which further confirmed the movement of ADPOs to the right—that of saving money on capital punishment in order to spend *more*, not *less* on law enforcement, part of a strategy to win over cops and corrections officers to the side of abolition, appealing to their needs. The obvious conservatism of tacitly upholding the prison-industrial complex by siphoning money from state-sanctioned executions to fund other law enforcement endeavors is striking. Haines goes so far in *Against Capital Punishment* as to suggest that abolitionists advocate for expanding the construction of prisons (182). It doesn’t appear that this suggestion has been taken up directly by anti-death penalty activists, but “In NJ, CT, and NM advocates proposed that the money saved as a result of abolishing the death penalty should be used to provide additional law enforcement officers or victim assistance” (McLaughlin, 692). In Illinois, law enforcement

programs have been directly granted resources that would have been allocated for the capital punishment system.

Key ADPOs have actively solicited the voices of law enforcement. Equal Justice USA, Death Penalty Focus, National Coalition to Abolish, and New Yorkers for Alternatives to the Death Penalty amongst others have reached out extensively to this group, positing them as voices that are honored and respected and authoritative on issues of safety. Equal Justice USA, for example, attempts to obtain the support of law enforcement on their website, writing, “As a current or former police officer, prosecutor, or corrections officer, the public looks to you for guidance about issues of crime and punishment. People respect your opinion about the effectiveness of our criminal justice system because you have been on the front lines, devoting your skills and your time to keeping our communities safe” (Equal Justice USA). While such organizing amongst law enforcement may bring nontraditional bedfellows into the anti-death penalty movement, it does nothing to challenge (and in fact, buttresses) mass incarceration. ADPOs have not acknowledged the conflict that has existed between police and minority communities, as evidenced in extensively documented accounts of police brutality, racial profiling, and dehumanizing treatment of prisoners.

Innocence

Using the possibility of executing innocent persons as a way of framing opposition to capital punishment is not entirely new to the anti-death penalty movement. The controversial executions of Barbara Graham and Caryl Chessman brought the issue national attention in the 1950s. However, it wasn’t consistently and deliberately used until the end of the twentieth century. Prior to the National Conference on Wrongful Conviction and the Death Penalty held in Chicago in 1998, “advocates had not focused on wrongful convictions in capital cases as

an area of serious concern” (McLaughlin, 691).

The way in which focusing a lion’s share of attention on the innocent plays into conservative narratives is twofold. First, it strengthens what Silvia Federici in “Why Feminists Should Oppose Capital Punishment” calls ontological apartheid—“the existence of two ... ontologically different humanities: on the one side the ‘rational’ citizens for whose benefit executions are allegedly carried on. On the other, the beastly criminals, to whom anything can be done, since ... they have placed themselves outside the boundaries of our humanity.” There are, then, two types of death-row inmates—those who are innocent, ontologically different from those who are guilty. Of course, the act of incarcerating an innocent human being is morally reprehensible and shocking. Yet, a progressive message should not be that we should not have the death penalty *because* innocent people are killed. Even if the death penalty were to be 100 percent error free, the right to take the life of one rendered defenseless must be beyond the reach of the state.

The second way in which focusing on innocence dovetails with conservative narratives is by appealing to the pro-life movement. While white conservatives are often staunchly anti-abortion, they are the least likely demographic group to oppose capital punishment. This seeming paradox is reconciled and rationalized by those on the right by pointing to the idea that a fetus is innocent, untarnished life, whereas the life of the death-row inmate has been sullied with sin and therefore forfeit.

Victims

The victims’ rights movement has been a powerful voice in the United States since the mid-1970s. To help neutralize the powerful retributionist language provided by the right in terms of providing justice for the families of murder victims, increasingly the voices of this group are sought by ADPOs, and proposals made to use “savings” from executions to give them support,

which is often severely lacking. In New Mexico, for instance, activists called attention to the ways in which the death penalty siphoned money away from victims’ families (McLaughlin, 698). Equal Justice USA writes on its website, “We believe repeal of the death penalty and increasing services for surviving families must go hand in hand. In many of the states where we have won repeal, we are still working to meet this second goal. ... As a surviving family member, your voice is so important in the death penalty debate—no matter how you feel.”

There have been advantages to the overtures, as organizations like Murder Victims’ Family Members for Reconciliation (MVFR) and Murder Victims’ Family Members for Human Rights have been visible and active in the anti-death penalty movement. MVFR, for instance, played a large role in the effort to defeat the death penalty in New Mexico, and murder victims’ family members have testified against the death penalty at the Maryland Judiciary Committee and at the California Commission on the Fair Administration of Justice, among many other examples.

Of course, the inclusion of voices of victims against capital punishment has the potential for a strong emotional and moral impact. And I am not suggesting that the voices of victims and their families should *not* be heard. However, the way in which the anti-death penalty movement has used victims and their families has the potential to advance an agenda that is useful to the right and which supports already-in-existence stereotypes of who the victims are and who the offenders are. In his work on the victims’ rights movement, Markus Dubber concludes (177), “The victims’ rights movement has been dominated by whites at all levels, and most certainly at the levels of power, both outside and inside government. ... The paradigmatic victim of the victims’ rights movement is white. The paradigmatic *offender* of the victims’ rights movement is black.”

Allegiance to those victims who do not

towards conservative politics. It appears that key, better-funded ADPOs have forgotten this radical history of using mass mobilizations around broader issues of justice when considering what leads to change on contentious issues, or have abandoned a grander vision as too idealistic.

ADPOs also, when claiming their victories vis-à-vis the 1980s or 1990s, have not considered the socio-historical reality of the 2000s and 2010s. Americans no longer place crime as a central concern—in fact it ranks amongst the least of Americans' worries (Gallup 2014). We have experienced starting in 2008 the Long Recession—the longest and deepest recession since the Great Depression. The lack of centrality of crime as an issue and excessive attention to fiscal austerity have made conditions unusually ripe for arguments framed around cost and efficiency. However, recessions do not last forever, and a high-profile violent crime is always waiting to receive national media attention and rekindle the retributive flames. Even in the absence of such factors, support for the death penalty increased in 2014, and the anti-death penalty movement is nowhere close to where it was in the 1960s, or even during earlier abolitionist eras. In the 1830s and 1840s, abolitionism was characterized by radical, broad demands that were not single-issue. Activists advocated for prison reform and an end to slavery. They realized that the connection amongst these issues was profound. During the second abolitionist era at the end of the nineteenth century leading up to World War I, abolitionists “rode the waves of Populist and Progressive Reform [and] a socially conscious form of Christianity,” which resulted in ten states banning capital punishment (Haines, 10).

It will not, in the final analysis, benefit progressive ADPOs to limit their vision of change,

to claim “neutrality” on other issues, to privilege a focus on the rational and non-emotive when rightist movements have been very successful in using emotional appeals for retribution to their benefit and rational arguments when convenient. Progressives have at their disposal the emotional power of recent events that have brought attention to the ways in which class and race have intersected to continue disparities and oppression in a system of mass incarceration, for example the Troy Davis, Trayvon Martin, Michael Brown, and Eric Garner cases. Abolitionists must harness this energy, and incorporate more black and brown voices—the populations who are at ground zero—into a movement that is almost exclusively white and affluent. Abolishing the death penalty would be a tremendous step forward, saving about 50 lives a year, but this must be achieved while not at the same time abandoning the 2.3 million behind bars for whom a struggle must also be waged.

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A Strong Argument against Capital Punishment

Lincoln Caplan

The New Yorker

August 14, 2015

When the Connecticut Supreme Court ruled yesterday that the death penalty is unconstitutional in the state, it reckoned squarely with the kind of questions that citizens often ask and that legal cases seldom answer: Is capital punishment moral? Is it necessary?

By 4–3, the court held that “capital punishment has become incompatible with contemporary standards of decency in Connecticut and, therefore, now violates the state constitutional prohibition against excessive and disproportionate punishments.” It also held that “the death penalty now fails to satisfy any legitimate penological purpose and is unconstitutionally excessive on that basis as well.” Justice Richard N. Palmer, a moderate liberal who has been on the court for twenty-two years, wrote the opinion.

In reaching the result it did, the court was dramatically divided: in addition to the majority opinion, there are two concurrences, agreeing on the majority’s reasoning but emphasizing reasons of their own, and three different dissents. But the clarity, thoroughness, and persuasiveness of the majority opinion indicate that this landmark decision will likely be remembered not for the divisions among the Justices but for where the majority came out. The 2003 ruling of the Massachusetts Supreme Judicial Court in the Goodridge case is a fair comparison: it is remembered not as a 4–3 decision, but as the first by an American court to legalize same-sex marriage.

The Connecticut decision drew on history:

The acceptability of imposing death as a form of judicial punishment has declined steadily over Connecticut’s nearly 400 year history. Secularization, evolving moral standards, new constitutional and procedural protections, and the availability of incarceration as a viable alternative to execution have resulted in capital punishment being

available for far fewer crimes and criminals, and being imposed far less frequently, with a concomitant deterioration in public acceptance.

It confronted a long, consistent record of unfairness:

What has *not* changed is that, throughout every period of our state's history, the death penalty has been imposed disproportionately on those whom society has marginalized socially, politically, and economically: people of color, the poor and uneducated, and unpopular immigrant and ethnic groups. It always has been easier for us to execute those we see as inferior or less intrinsically worthy.

And it explained why the death penalty is unnecessary as a punishment:

The legislature necessarily has made a determination that he who lives by the sword need not die by it; that life imprisonment without the possibility of release is an adequate and sufficient penalty even for the most horrific of crimes; and that we can express our moral outrage, mete out justice, bring some measure of solace to the families of the victims, and purge the blemish of murder on our community whilst the offender yet lives. If this is true, then, although the death penalty still might serve some minimal retributive *function* in Connecticut, it lacks any retributive *justification*.

The Connecticut Legislature seemed to make these issues superfluous when it repealed the state's death penalty, in 2012, but that law, identified as Public Act 12-5, contained a prominent exemption: it did not apply to the eleven men then on the state's death row, or to anyone who had committed a capital felony before the law was enacted. Two of the death-row inmates had been sentenced to death for killing a woman and her two daughters five years earlier, in an infamous crime known as the Cheshire home-invasion murders, and the repeal law seemed to support both the abolition of the death sentence going forward and the holdover of capital punishment for those men. Governor Dannel Malloy described the signing of the law as "a moment for sober reflection, not celebration." He signed it, he

went on, because, as a former prosecutor, he understood that “our system of justice is very imperfect” and because of the “unworkability” of Connecticut’s previous death-penalty law.

A scholarly study of every murder case in the state from 1973—when Connecticut enacted a new death-penalty law to comply with the Supreme Court’s ruling that the penalty had previously been applied arbitrarily nationwide and was thus unconstitutional—until 2007 found that the state was still applying capital punishment arbitrarily. The crimes committed by defendants sentenced to death were no more egregious than those by defendants sentenced to life in prison with no chance of parole. A minority defendant who killed a white person was six times as likely to receive a death sentence as a white defendant whose victim was white. A murderer charged and convicted in the city of Waterbury whose crime made him eligible for capital punishment was at least seven times as likely to receive a death sentence as someone whose case was prosecuted elsewhere in the state.

As the Connecticut Supreme Court ruled, Public Act 12–5

held a mirror up to Connecticut’s long, troubled history with capital punishment: the steady replacement by more progressive forms of punishment; the increasing inability to achieve legitimate penological purposes; the freakishness with which the sentence of death is imposed; the rarity with which it is carried out; and the racial, ethnic, and socio-economic biases that likely are inherent in any discretionary death penalty system.

The court interpreted the state constitution, so its ruling can neither be appealed to the U.S. Supreme Court nor serve as a binding precedent on any court outside Connecticut. But, in explaining why it is time for the demise of the death penalty in Connecticut, the court has a lot to say about why it is time for the penalty’s demise throughout the country. The resolve and the reasoning of the Connecticut Supreme Court’s ruling make it far more important than simply a declaration by one more state that capital punishment is cruel and unusual and must be ended.

Emotions Roil as Legislature Debates the Death Penalty

Jamey Dunn
Illinois Issues
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STATE OF THE STATE

Jamey Dunn



Emotions roil as the legislature debates the death penalty

by Jamey Dunn

The topic of the death penalty is always weighty. Fear, morality, religious beliefs, often-shocking violence, the mourning of victims' families and our ideas of what justice should be all come into play.

Those emotions surfaced again as Illinois lawmakers debated and ultimately passed legislation to abolish executions in the waning hours of the two-year legislative session that ended in January. And the state's dubious history of wrongful convictions made the subject even thornier.

In 1972, the U.S. Supreme Court found that the process of sentencing people to death, which gave a jury full discretion on sentencing, could result in inconsistent and arbitrary death sentences and constituted "cruel and unusual punishment." The ruling (*Furman v. Georgia*) nullified death penalty statutes across the country. That resulted in the commutation of more than 600 sentences and effectively led to a brief break from the death penalty while states across the country, including Illinois, redrafted their capital punishment laws.

Illinois reinstated the death penalty in 1973, but the Illinois Supreme Court ruled the new version of the statute unconstitutional, in part because it violated the requirement for a direct appeal of capital cases to the Supreme Court. Illinois legislators passed a new

version in 1977, after other states' newly written statutes survived challenges and were upheld by the U.S. Supreme Court in the *Gregg v. Georgia* ruling. Former Supreme Court Justice John Paul Stevens, a Chicago native who was seated about six months before the ruling, was a co-author of the decision. Stevens' views on capital punishment grew more moderate over his time on the court, and he took several votes to limit its scope. He recently wrote an essay that was highly critical of the death penalty for the *New York Review of Books*.

Illinois Issues reported a few weeks before the General Assembly voted to reinstate capital punishment in 1977:

"Few issues stir public passions and individual soul-searching as much as capital punishment. Legislative debate and public hearings sometimes become forums for scriptural exhortations, libertarian denunciations, legal analyses and a variety of emotional outbursts. There is no doubt, however, that the public, like its lawmakers, is firmly in favor of the death penalty as the best way to deal with murderers. Yet, vocal opponents claim murder by states is no less perverse or senseless than murder by individuals.

With last summer's U.S. Supreme Court ruling (*Gregg v. Georgia*) upholding capital punishment within certain strict guidelines, Illinois, like the rest of the states, is rushing to revive the death

penalty. ... Yet, there are profound and persistent questions in the capital punishment debate that have gone unanswered for centuries as civilized societies have sought ways to protect themselves and punish criminals. Against this backdrop, it is only a matter of time before an Illinois governor signs the death penalty into law," *Illinois Issues* reported in 1977.

Since the 1970s, many of the states that reinstated the death penalty have sought to perfect the legal process, which is always open to human error, as well as to determine the most humane way to carry out the ultimate punishment. A few of those states have since chosen to forgo capital punishment, and execution numbers are down in recent years.

According to a report by the Death Penalty Information Center, based in Washington, D.C., executions in America dropped 12 percent in 2010 from 2009. The number of executions has dropped by more than half since 1999. Twenty-six of the 53 jurisdictions in the United States — which includes the 50 states, the District of Columbia, the federal court system and the military — either do not have the death penalty or have not executed anyone in the last 10 years, and many have not executed anyone since capital punishment was reinstated nationally in 1976. A dozen states executed prisoners in the last year.

Illinois, which has executed 12 prisoners since reinstating the death penalty, last carried out an execution 1999.

2010 marked the 10th anniversary of Illinois' moratorium on the death penalty. Former Gov. George Ryan, then a supporter of capital punishment, called for Illinois to take a break from using it after 13 prisoners on death row were exonerated. He created a Commission on Capital Punishment and tasked its members to propose reforms to Illinois' flawed death penalty system. Ryan also commuted the sentences of 167 death-row inmates to life in prison shortly before leaving office in 2003.

From the executive order creating the commission: "The people of the State of Illinois must have full and complete confidence that when the death penalty is imposed and final appeals of that sentence are completed, the guilt of the defendant has been justly, fairly, thoroughly and accurately established."

Ryan's commission found serious problems in the system. Some of the individuals who had been exonerated were convicted without any physical evidence to tie them to the crimes. Some were sent to death row based solely on testimony from individuals who would potentially benefit from their statements, such as prison informants or accomplices. "In some cases, the evidence was so minimal that there was some question not only as to why prosecutors sought the death penalty, but why the prosecution was even pursued against the particular defendant."

A study that was conducted in tandem with the commission's assessment of Illinois' death penalty process found that the odds of a defendant receiving a death sentence had a correlation to both the geographic location of the crime and the race of the victim. Killers in rural areas were more likely to be sentenced to death. "All other things being equal, the study showed the odds of a convicted killer in Cook County receiving a death sentence are 84 percent lower than for a similar defendant in the state's rural counties," Daniel Vock, now a reporter for Stateline.org in Washington, D.C., wrote in an *Illinois Issues* article on the study. Someone who killed a black person was 60 percent less likely to receive a death sentence. "While [the study] did

find that white offenders were twice as likely to receive death sentences as blacks on a percentage basis, that distinction vanished once researchers factored in the victim's race." Studies on other states and the federal system found similar results.

Ryan's commission made 85 recommendations intended to improve the system. The General Assembly enacted reforms in 2003, including:

- Reliability screenings for testimony from criminal informants.
- Access to DNA databases both before trial and after conviction.
- A specific set of instructions that must be given to witnesses before they pick suspects out of police lineups.
- Prohibiting prosecutors from seeking the death penalty in cases that are based on a single witness's testimony with no corroborating evidence.

The reforms broadened the Illinois Supreme Court's ability to overturn capital cases. They also require trial judges who disagree with a jury's decision to impose a death sentence to submit their opposition in writing for the record. Another bill, which passed separately from the larger reform package and requires police officers to make a video recording of murder confessions, was sponsored by then-Chicago Democratic Sen. Barack Obama.

Former Chicago Democratic Rep. Art Turner, the sponsor of a 2003 bill to repeal the death penalty, did not believe the changes went far enough. "If I'm not around [in the legislature] five years from now," Turner told *Illinois Issues* in 2003, "you can say that Art Turner said that those reforms are not going to change a damn thing."

Others, however, heralded the changes as real reform, and current supporters of capital punishment, including many states' attorneys, say they have worked.

Although Illinois has not executed anyone in more than 10 years, prosecutors have continued to seek the death penalty, with 15 prisoners sitting on death row when the General Assembly voted to abolish executions. The Capital Litigation Fund has spent more than \$100 million since it was created in the 2003 reform push to aid defendants in building their cases when prosecutors

seek the death penalty. About \$17 million was spent from that fund on capital cases last year. Under the legislation to end the death penalty, the money from that fund would go toward services for victim's families and training for law enforcement.

The debate in both chambers of the General Assembly was emotional and even gruesome at times, when speakers recalled some of the most violent crimes in the state's past. While the issue is not one with much potential for middle ground, there were concerned individuals making earnest pleas on both sides. Both sides have tragic stories of lives destroyed. Both sides have support from crime victims' families. The Commission on Capital Punishment's report said, "Surviving family members expressed diverse views on the system and the question of capital punishment itself."

Legislators who support the death penalty say they may introduce bills in the current session to reinstate it. It's likely that the debate about whether the state should have the option to put prisoners to death for the most heinous of crimes will likely always be with us, and capital punishment will continue to be a significant part of Illinois history.

During House debate, Rep. Susana Mendoza said she supports the death penalty and admitted to experiencing emotional turmoil over the issue. She said she thought she could personally execute a serial killer or someone who murdered a police officer and easily sleep at night. However, her decision to vote for the repeal came after she put aside her own emotions and acknowledged how flawed Illinois' system has been.

"We've come horrifyingly close to executing innocent men, and it could happen again," Mendoza said.

Moving forward, public officials should follow Mendoza's lead to put aside the emotion and shocking details, tone down the rhetoric, retrace the history and seek to do what they see as truly best for the state — be it abolition or implementing a drastic revamp of the capital punishment system and revisiting other potential reforms. □

With Death Penalty, Let Punishment Truly Fit the Crime

Robert Blecker

CNN

August 22, 2013

No matter how vicious the crime, no matter how vile the criminal, some death penalty opponents feel certain that nobody can ever deserve to die -- even if that person burned children alive, massacred a dozen strangers in a movie theater, or bombed the Boston Marathon. Other opponents admit the worst of the worst do deserve to die. They just distrust the government ever to get it right.

Now that pharmaceutical companies refuse to supply the lethal drugs that U.S. corrections departments have used for years to execute criminals -- whether from their own genuine moral objections or to escape a threatened economic boycott -- states have begun to experiment. Death penalty opponents, who call themselves abolitionists, then protest the use of these untried drugs that just might cause a condemned killer to feel pain as he dies.

Let the punishment fit the crime. We've mouthed that credo for centuries, but do we really mean it? We retributivists who believe in justice would reward those who bring us pleasure, but punish severely those who sadistically or wantonly cause us pain. A basic retributive measure -- like for like or giving a person a taste of his own medicine -- satisfies our deepest instincts for justice.

When the condemned killer intentionally tortured helpless victims, how better to preserve some direct connection short of torture than by that murderer's quick but painful death? By ensuring death through anesthesia, however, we have nearly severed pain from punishment.

An unpleasant life in prison, a quick but painful death cannot erase the harm. But it can help restore a moral balance.

I, too, oppose lethal injection, but not because these untried new drugs might arbitrarily cause pain, but because they certainly cause confusion.

Lethal injection conflates punishment with medicine. The condemned dies in a gurney, wrapped in white sheets with an IV in his veins, surrounded by his closest kin, monitored by sophisticated medical devices. Haphazardly conceived and hastily designed, lethal injection appears, feels, and seems medical, although its sole purpose is to kill.

Witnessing an execution in Florida, I shuddered. It felt too much like a hospital or hospice. We almost never look to medicine to tell us whom to execute. Medicine should no more tell us how. How we kill those we rightly detest should in no way resemble how we end the suffering of those we love.

Publicly opposing this method of execution, I have found odd common ground with Deborah Denno, a leading abolitionist scholar who relentlessly attacks lethal injection protocols. Although Denno vigorously opposes all capital punishment, we both agree that the firing squad, among all traditional methods, probably serves us best. It does not sugarcoat, it does not pretend, it does not shamefully obscure what we do. We kill them, intentionally, because they deserve it.

Some people may support the firing squad because it allows us to put blanks in one of the guns: An individual sharpshooter will never know whether he actually killed the condemned. This strikes me as just another symptom of our avoidance of responsibility for punishment. The fact is, in this society, nobody takes responsibility for punishing criminals. Corrections officers point to judges, while judges point to legislators, and legislators to corrections. Anger and responsibility seem to lie everywhere elsewhere -- that is, nowhere. And where we cannot fully escape responsibility -- as with a firing squad -- we diffuse it.

My thousands of hours observing daily life inside maximum security prisons and on death rows in several states these past 25 years have shown me the perverse irony that flows from this: Inside prisons, often the worst criminals live the most comfortable lives with the best hustles, job opportunities and sources of contraband, while the relatively petty criminals live miserably, constantly preyed upon.

Refusing to even contemplate distinguishing those few most sadistic murderers who deserve to die painfully, states seem quite willing haphazardly and arbitrarily to expose prisoners in general, regardless

of their crimes, to a more or less painful life, or even death at the hands of other criminals.

Ironically, even as we recoil from punishing those who most deserve it, we readily over-punish those who don't. A "war on drugs" swells our prisons. We punish addiction and call it crime; we indiscriminately and immorally subject a burglar or car thief to the same daily life in prison we also reserve for rapist murderers.

The time has come to make punishment more nearly fit the crime. To face what we do, and acknowledge, with regret but without shame, that the past counts.

So part of me hopes the abolitionists succeed with their latest campaign against death by lethal injection. We should banish this method. Let the abolitionists threaten to boycott gun manufacturers. See where that gets them. Meanwhile, the rest of us will strive to keep our covenants with victims, restore a moral balance, and shoot to kill those who deserve to die.

Rest assured, when we can only achieve justice by killing a vicious killer, We, the People will find a constitutional way to do it.

Studies: Death Penalty Discourages Crime

Associated Press

Fox News

June 11, 2007

Anti-death penalty forces have gained momentum in the past few years, with a moratorium in Illinois, court disputes over lethal injection in more than a half-dozen states and progress toward outright abolishment in New Jersey.

The steady drumbeat of DNA exonerations — pointing out flaws in the justice system — has weighed against capital punishment. The moral opposition is loud, too, echoed in Europe and the rest of the industrialized world, where all but a few countries banned executions years ago.

What gets little notice, however, is a series of academic studies over the last half-dozen years that claim to settle a once hotly debated argument — whether the death penalty acts as a deterrent to murder. The analyses say yes. They count between three and 18 lives that would be saved by the execution of each convicted killer.

The reports have horrified death penalty opponents and several scientists, who vigorously question the data and its implications.

So far, the studies have had little impact on public policy. New Jersey's commission on the death penalty this year dismissed the body of knowledge on deterrence as "inconclusive."

But the ferocious argument in academic circles could eventually spread to a wider audience, as it has in the past.

"Science does really draw a conclusion. It did. There is no question about it," said Naci Mocan, an economics professor at the University of Colorado at Denver. "The conclusion is there is a deterrent effect."

A 2003 study he co-authored, and a 2006 study that re-examined the data, found that each execution results in five fewer homicides, and commuting a death sentence means five more homicides. "The results are robust, they don't really go away," he said. "I oppose the death penalty. But my results show that the death penalty (deters) — what am I going to do, hide them?"

Statistical studies like his are among a dozen papers since 2001 that capital punishment has deterrent effects. They all explore the same basic theory — if the cost of something (be it the purchase of an apple or the act of killing someone) becomes too high, people will change their behavior (forego apples or shy from murder).

To explore the question, they look at executions and homicides, by year and by state or county, trying to tease out the impact of the death penalty on homicides by accounting for other factors, such as unemployment data and per capita income, the probabilities of arrest and conviction, and more.

Among the conclusions:

- Each execution deters an average of 18 murders, according to a 2003 nationwide study by professors at Emory University. (Other studies have estimated the deterred murders per execution at three, five and 14).

- The Illinois moratorium on executions in 2000 led to 150 additional homicides over four years following, according to a 2006 study by professors at the University of Houston.
- Speeding up executions would strengthen the deterrent effect. For every 2.75 years cut from time spent on death row, one murder would be prevented, according to a 2004 study by an Emory University professor.

In 2005, there were 16,692 cases of murder and nonnegligent manslaughter nationally. There were 60 executions.

The studies' conclusions drew a philosophical response from a well-known liberal law professor, University of Chicago's Cass Sunstein. A critic of the death penalty, in 2005 he co-authored a paper titled "Is capital punishment morally required?"

"If it's the case that executing murderers prevents the execution of innocents by murderers, then the moral evaluation is not simple," he told The Associated Press. "Abolitionists or others, like me, who are skeptical about the death penalty haven't given adequate consideration to the possibility that innocent life is saved by the death penalty."

Sunstein said that moral questions aside, the data needs more study.

Critics of the findings have been vociferous.

Some claim that the pro-deterrent studies made profound mistakes in their methodology, so their results are untrustworthy. Another critic argues that the studies wrongly count all homicides, rather than just

those homicides where a conviction could bring the death penalty. And several argue that there are simply too few executions each year in the United States to make a judgment.

"We just don't have enough data to say anything," said Justin Wolfers, an economist at the Wharton School of Business who last year co-authored a sweeping critique of several studies, and said they were "flimsy" and appeared in "second-tier journals."

"This isn't left vs. right. This is a nerdy statistician saying it's too hard to tell," Wolfers said. "Within the advocacy community and legal scholars who are not as statistically adept, they will tell you it's still an open question. Among the small number of economists at leading universities whose bread and butter is statistical analysis, the argument is finished."

Several authors of the pro-deterrent reports said they welcome criticism in the interests of science, but said their work is being attacked by opponents of capital punishment for their findings, not their flaws.

"Instead of people sitting down and saying 'let's see what the data shows,' it's people sitting down and saying 'let's show this is wrong,'" said Paul Rubin, an economist and co-author of an Emory University study. "Some scientists are out seeking the truth, and some of them have a position they would like to defend."

The latest arguments replay a 1970s debate that had an impact far beyond academic circles.

Then, economist Isaac Ehrlich had also concluded that executions deterred future crimes. His 1975 report was the subject of mainstream news articles and public debate, and was cited in papers before the U.S. Supreme Court arguing for a reversal of the court's 1972 suspension of executions. (The court, in 1976, reinstated the death penalty.)

Ultimately, a panel was set up by the National Academy of Sciences which decided that Ehrlich's conclusions were flawed. But the new pro-deterrent studies haven't gotten that kind of scrutiny.

At least not yet. The academic debate, and the larger national argument about the death penalty itself — with questions about racial and economic disparities in its implementation — shows no signs of fading away.

Steven Shavell, a professor of law and economics at Harvard Law School and co-editor-in-chief of the *American Law and Economics Review*, said in an e-mail exchange that his journal intends to publish several articles on the statistical studies on deterrence in an upcoming issue.

Death Penalty: Right or Wrong?

Amy Miller

Junior Scholastic

March 22, 1999

Is the U.S. system of capital punishment fair? Or are some people unfairly put to death?

In 1983, Anthony Porter was convicted of killing a young couple on Chicago's South Side. He spent the next 16 years on death row. But there was one problem. He wasn't guilty.

Every year, David Protess, a college journalism professor, asks his students to re-investigate a murder case. Last year, Protess assigned five students to look into the Porter case.

With the help of a private investigator, the students found convincing evidence that Porter was innocent. When they questioned another man who eventually confessed to the crime, Porter was finally released from prison. "It's like a heavy load's been lifted," Porter said. "I'm just thankful to be alive."

The death penalty came to America with the English colonists. English law required public hangings for many crimes, such as murder, kidnapping, treason, and armed robbery. Today, executions are no longer public spectacles. And the only crime that people in the U.S. are still being executed for is murder.

The Wrongfully Accused

But as the Anthony Porter case illustrates, the system of capital punishment in the United States is not foolproof. Since 1976, a total of 75 men and women have been released from death row after evidence proved they were wrongfully convicted.

Why do innocent people like Anthony Porter end up on death row? There are several reasons. One reason, says Ron Taybak of the American Bar Association (ABA), is that "many people do not receive adequate legal representation."

If a defendant cannot afford a lawyer, the court will appoint one for him or her. Sometimes, the court will appoint a lawyer who is not trained to handle capital-punishment cases. In addition, court-appointed lawyers

often work on several cases at once and sometimes cannot devote enough time to one particular case.

Race discrimination may also affect the outcome of a trial. "The odds of getting the death penalty are much higher if you're black than if you're white," says Richard Dieter, executive director of the Death Penalty Information Center.

Although African Americans make up 12 percent of the U.S. population, they account for 39 percent of the people on death row. The facts also show that prisoners, regardless of race, are more likely to be executed if they have killed a white person, rather than a person of color.

Public outrage also contributes to wrongful convictions, says David Thomas, a lawyer who has worked on several death-penalty cases. "There is a great deal of public pressure to solve these horrible crimes quickly" Thomas says. "Police, prosecutors, judges, and juries will often look for shortcuts because someone has to pay."

International Criticism

The execution of innocent people is not the only problem with capital punishment in the U.S., according to the United Nations (UN). The UN has criticized the U.S. for executing juvenile offenders. Since 1973, the U.S. has executed 160 people who committed crimes when they were juveniles--more than any other country in the world.

The UN has also expressed concern that the U.S. executes mentally retarded prisoners, since they may not understand their crime or their punishment. The U.S. Constitution prohibits the execution of a criminal who is insane (having a mental disorder that makes the person not responsible for his or her actions). But only 12 states prohibit executing a person who is mentally retarded (having limited intelligence). Since 1976, 12 mentally retarded people have been executed.

During his recent visit to St. Louis, Pope John Paul II urged America's Roman Catholics to oppose the death penalty. "Modern society has the means of protecting itself," the Pope said, "without definitively denying criminals the chance to reform."

Because of these concerns, the ABA issued a report in 1997 calling for all executions in the U.S. to be suspended. The report states that "administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices."

Support for the Death Penalty

Despite criticism at home and abroad, popular support for the death penalty in the U.S. remains strong. Today, there are more than 3,500 death-row prisoners in a total of 38 states. A recent survey found that more than 77 percent of all Americans favor capital punishment.

Why do so many Americans support the death penalty? Some supporters of capital punishment believe that it helps to deter people from committing murder, and thus saves innocent lives.

"You don't run a red light or steal because you know it would be bad for you to do that. If you know you will be put to death for murdering someone, you won't do it," says Michael Rushford of the Criminal Justice Legal Foundation.

Death penalty supporters say that it prevents repeat crimes. "Even if the death penalty doesn't deter a murderer," says Dudley Sharp of Justice for All, "we do know that executed murderers can never harm anyone again."

Other people argue that the death penalty gives the families of murder victims a real sense that justice has been served. "Families that are victimized wouldn't be comfortable seeing the people who murdered their loved ones living out their lives," Rushford told JS. "Every day for them is torture."

Debbie Morris watched as a man named Robert Willie brutally murdered her boyfriend. "Robert Willie's death ... definitely reduced the fear I had to live with," she says. "I couldn't help the fact that I simply felt better knowing Robert Willie was dead."

Some people have another reason for supporting the death penalty. They say that murder is morally wrong and evil, and as a society, we are required to respond. "It is the ultimate punishment for the ultimate crime. We must respect life," says Diane Clements, president of Justice for All.

"We execute murderers in order to make a communal proclamation: that murder is intolerable," writes professor David Gelernter. "Deliberate murder is absolutely evil and absolutely intolerable." Law professor Robert Blecker agrees. "The death penalty insures that murderers get their moral just desserts."

While serving as a Supreme Court Justice, Harry Blackmun supported the death penalty. But in 1994, as he prepared to retire, he changed his mind. "From this day forward," he wrote, "I no longer shall tinker with the machinery of death."

What Is the Answer?

Justice Blackmun knew the many problems facing our system of capital punishment. Can we prevent what happened to Anthony Porter from happening again--and still make sure that murderers are punished? It is a question Americans will be struggling to answer for many years to come.

The Global Debate on the Death Penalty

Sandra Babcock

Human Rights

Spring 2007

The debate over capital punishment in the United States--be it in the courts, in state legislatures, or on nationally televised talk shows--is always fraught with emotion. The themes have changed little over the last two or three hundred years. Does it deter crime? If not, is it necessary to satisfy society's desire for retribution against those who commit unspeakably violent crimes? Is it worth the cost? Are murderers capable of redemption? Should states take the lives of their own citizens? Are current methods of execution humane? Is there too great a risk of executing the innocent?

We are not alone in this debate. Others around the world--judges, legislators, and ordinary citizens--have struggled to reconcile calls for retribution with evidence that the death penalty does not deter crime. They have argued about whether the death penalty is a cruel, inhuman, or degrading treatment or punishment. They have weighed its costs against the need for an effective police force, schools, and social services for the indigent. National leaders have engaged in these discussions while facing rising crime rates and popular support for capital punishment. Yet, while the United States has thus far rejected appeals to abolish the death penalty or adopt a moratorium, other nations have--increasingly and seemingly inexorably--decided to do away with capital punishment.

Indeed, the gap between the United States and the rest of the world on this issue is growing year by year. In June 2007, Rwanda abolished the death penalty, becoming the one hundredth country to do so as a legal matter (although eleven of these countries retain legislation authorizing the death penalty in exceptional circumstances, most have not executed anyone in decades). An additional twenty-nine countries are deemed to be abolitionist in practice since they have either announced their intention to abolish the death penalty or have refrained from carrying out executions for at least ten years. As a result, there are now at least 129 nations that are either de facto or de jure abolitionist.

According to Amnesty International, there are sixty-eight countries that retain the death penalty and carry out executions. But even this number is misleading. In reality, the vast majority of the world's executions are carried out by seven nations: China, Iran, Saudi Arabia, the United States, Pakistan, Yemen, and Vietnam. Many Americans know that the nations comprising Europe (except Belarus) and South America are abolitionist. But how many are aware that of the fifty-three nations in Africa only four (Uganda, Libya, Somalia, and Sudan) carried out executions in 2005? Even in Asia, where many nations have long insisted that the death penalty is an appropriate and necessary sanction, there are signs of change. The Philippines abolished the death penalty in 2006, and the national bar associations of Malaysia and Japan have called for a moratorium on executions.

The international trend toward abolition reflects a shift in the death penalty paradigm. Whereas the death penalty was once viewed as a matter of domestic penal policy, now it is seen as a human rights issue. There are now three regional human rights treaties concerning the abolition of the death penalty: Protocols 6 and 13 to the European Convention on Human Rights, and the Additional Protocol to the American Convention on Human Rights. The International Covenant on Civil and Political Rights, ratified by 160 nations (including the United States), restricts the manner in which the death penalty may be imposed and promotes abolition. Many human rights organizations and intergovernmental organizations, such as the European Union, see the death penalty as one of the most pressing human rights issues of our time and accordingly have taken an active role in persuading countries to halt executions.

The Supreme Court's View of International Law

As the international chorus of abolitionist voices swells, domestic courts and policy makers have engaged in a heated debate over the role of international law in U.S. death penalty cases. The debate came to a head in mid-2005 after the Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005), that the execution of juvenile offenders violated the Eighth Amendment's prohibition of cruel and unusual punishment. Writing for the majority, Justice Anthony Kennedy observed that although international law did not control the Court's analysis, it was both "instructive" and "significant" in interpreting the contours of the Eighth Amendment.

The Roper Court noted that only seven countries had executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. But even those countries had disavowed the practice in recent years, leaving the United States as "the only country in the world that continues to give official sanction to the juvenile death penalty." *Id.* at 575. The Court looked to treaties that prohibit the execution of juvenile offenders, such as the Convention on the Rights of the Child, which has been ratified by every country in the world apart from the United States and Somalia. After examining these sources and reviewing international practice, the Court concluded that the "overwhelming weight of international opinion" was opposed to the juvenile death penalty.

The Court's majority opinion prompted a scathing dissent by Justice Antonin Scalia. After noting that the Court's abortion jurisprudence was hardly consistent with the more restrictive practices of most foreign nations, he commented: "I do not believe that approval by 'other nations and peoples' should buttress our commitment to American principles any more than ... disapproval by 'other nations and peoples' should weaken that commitment." *Id.* at 628. Conservative commentators and legislators likewise attacked the Court's citation of foreign law.

What many critics of Roper failed to recognize, however, is that the Court has long looked to the practices of the international community in evaluating whether a punishment is cruel and unusual. In *Wilkerson v. Utah*, 99 U.S. 130 (1879), the Court cited the practices of other countries in upholding executions by firing squad. And in its oft-cited opinion in *Trop v. Dulles*, 356 U.S. 86 (1958), the Court declared that banishment was a punishment "universally deplored in the international community of democracies." Since then, the Court has frequently referred to international law in a series of death penalty cases interpreting the meaning of the Eighth Amendment.

The Court's attention to international practice in death penalty cases is undoubtedly related to the flexible and evolving character of the Court's Eighth Amendment jurisprudence. In *Weems v. United States*, 217 U.S. 349 (1910), the Court held that the "cruel and unusual punishments" clause "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." *Id.* at 378. In *Trop*, the Court reaffirmed that the clause "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." 356 U.S. at 100. The Eighth Amendment involves

nothing more, and nothing less, than evaluating whether a punishment violates human dignity.

Courts around the world have wrestled with these same questions. When South Africa's Constitutional Court decided that the death penalty was an unconstitutionally cruel, inhuman, and degrading punishment, it surveyed the decisions of several foreign courts, including the U.S. Supreme Court. Like that Court, the South African court did not consider foreign sources to be controlling. Nevertheless, it observed that "international and foreign authorities are of value because they analyse [sic] arguments for and against the death sentence and show how courts of other jurisdictions have dealt with this vexed issue. For that reason alone they require our attention." *State v. Makwanyane*, Constitutional Court of the Republic of South Africa, 1995, Case No. CCT/3/94, ¶ 34, [1995] 1 LRC 269. The high courts of India, Lithuania, Albania, the Ukraine, and many others have likewise cited international precedent in seminal decisions relating to the administration of the death penalty.

In light of this history, the practice of citing international precedent hardly seems to warrant the storm of controversy surrounding it. But whether one agrees or disagrees with the Court's approach, a majority of the current justices favors consideration of international law. In the next few years, a number of capital cases will once again offer the Court an opportunity to look beyond U.S. borders and survey international law and the practices of foreign states.

Execution of Persons Who Did Not Kill

Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that the death penalty may only be imposed for the "most serious crimes." The United Nations (UN) Human Rights Committee, which interprets the ICCPR's provisions, has observed that this provision must be "read restrictively to mean that the death penalty should be a quite exceptional measure." Human Rights Committee, General Comment 6, Art. 6 (Sixteenth session, 1982) ¶ 7; *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994). In a death penalty case from Zambia, where the prisoner received a death sentence for participating in an armed robbery, the committee held that the sentence was not compatible with Article 6(2) because the petitioner's use of firearms did not cause death or injury to any person.

The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, defines "most serious crimes" as "intentional crimes with lethal or other extremely grave consequences." Referring to those safeguards, the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has concluded that the term "intentional" should be "equated to premeditation and should be understood as deliberate intention to kill." United Nations, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, U.N. Doc. CCPR/C/79/Add.85, 19 Nov. 1997, ¶ 13.

Yet in the United States, several states authorize the death penalty for persons who are "major participants" in a felony, such as burglary or robbery, even if they never killed, intended to kill, or even contemplated that someone would be killed while committing the crime. In California and Georgia, persons may be sentenced to death for accidental killings during a felony or attempted felony.

Moreover, Texas, South Carolina, Georgia, Louisiana, Oklahoma, and North Carolina allow for the imposition of a death sentence in some cases for the rape of a minor, even if the victim did not die. These laws will be subject to strong legal challenges in coming years, although this will not be an easy battle, as demonstrated by the recent Louisiana supreme court decision upholding a death sentence against an offender who was convicted of raping a child. *Louisiana v. Kennedy*, No. 05-KA-1981 (La. May 22, 2007).

Available data indicate that prosecutors rarely seek the death penalty against "non-triggermen," and executions of these persons are few and far between. These two factors alone indicate that the imposition of the death penalty on persons who have committed nonlethal crimes may be ripe for challenge. In the event that the Supreme Court examines the issue, it is highly likely it will consider international practice. In *Enmund v. Florida*, 458 U.S. 782 (1982), a case involving a defendant sentenced to death under the felony-murder rule, the Court noted that international norms were "not irrelevant" to its analysis, observing that the doctrine of felony murder had been abolished in England and India, severely restricted in Canada and a number of other Commonwealth of Nations countries, and was unknown in continental Europe.

Execution of the Severely Mentally III

Although the Supreme Court has held that the Eighth Amendment prohibits the execution of the mentally incompetent, state and federal

courts have routinely concluded that severely mentally ill prisoners are sufficiently competent that they may lawfully be executed. Consequently, dozens of prisoners suffering from schizophrenia, bipolar disorder, and other incapacitating mental illnesses have been executed in the United States during the last ten years. In June 2007, however, the Court overturned a decision by the U.S. Court of Appeals for the Fifth Circuit, holding that the court had used an overly restrictive definition of incompetence. *Panetti v. Quarterman*, 127 S. Ct. 2842 (2007). This decision may encourage state and federal courts to take greater care in evaluating the mental status of those facing imminent execution, but it does not prohibit courts from sentencing severely mentally ill prisoners to death, nor does it guarantee that severely mentally ill prisoners will not be executed in the future.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), in which the Court struck down the execution of the mentally retarded, the Court cited an amicus curiae brief submitted by the European Union (EU) as evidence that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved." *Id.* at 316 (citing in n.21 Brief for European Union as Amicus Curiae at 4). The current Court likely would be open to considering similar amicus briefs in a future case challenging the execution of the severely mentally ill.

A substantial body of international precedent exists regarding the execution of the severely mentally ill. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty prohibit imposing the death penalty "on persons who have become insane." In 1989, the UN Economic and Social Council expanded this protection to cover "persons suffering from ... extremely limited mental competence, whether at the stage of sentence or execution." United Nations Economic & Social Council, Implementation of the Safeguards Guaranteeing Protection of Rights of those Facing the Death Penalty, E.S.C. Res. 1989/64, U.N. Doc. E/1989/91 (1989), at 51, ¶ 1(d). The UN Commission on Human Rights has urged countries not to impose the death penalty on persons suffering from any form of mental disabilities. And the EU has consistently asserted that executions of persons suffering from severe mental disorders "are contrary to internationally recognized human rights norms and neglect the dignity and worth of the human person." EU Memorandum on the Death Penalty (Feb. 25, 2000), at 4, www.eurunion.org/legislat/deathpenalty/eumemorandum.htm.

Racial and Geographic Disparities

Arbitrariness in capital sentencing was one of the factors that led the Supreme Court to strike down existing state death penalty laws in *Furman v. Georgia*, 408 U.S. 238 (1972). Four years later, in *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court's decision to uphold the newly revised laws was based on its determination that the statutes minimized the risk of arbitrary sentencing by channeling the discretion of capital juries. But thirty years later, factors such as race and geography continue to lead to great disparities in capital sentencing. These disparities have led to a different sort of arbitrariness, one that may not be consistent with international norms.

Studies have repeatedly shown that race matters when determining who is sentenced to death. It has been said that, as a statistical matter, race is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease. In Philadelphia, the odds that an offender will receive a death sentence are nearly four times higher when the defendant is black. A 2006 study confirmed that defendants' skin color and facial features play a critical role in capital sentencing. And over the last twenty years, social scientists have repeatedly observed that capital defendants are much more likely to be sentenced to death for homicides involving white victims.

Enormous geographical disparities arise as well. This derives, in part, from the lack of uniform standards to guide the discretion of state prosecutors in seeking the death penalty. Prosecutors are almost always elected officials, and their support or opposition to the death penalty in a given case is often influenced by the level of popular support for capital punishment within a given community. In San Francisco, for example, the local prosecutor never seeks the death penalty because she is morally opposed to it. In Tulare County, located in California's conservative Central Valley, the chief prosecutor is a zealous advocate of capital punishment. As a result, two persons who commit the same crime, and who are ostensibly prosecuted under the same penal code, may be subject to two radically different punishments.

Article 6(1) of the ICCPR provides that nations may not "arbitrarily" take life. The term is not defined in the text of the treaty, nor has the UN Human Rights Committee had an opportunity to elaborate on its meaning in the context of an otherwise lawfully imposed capital sentence. In evaluating "arbitrary arrest and detention," however, that committee concluded that arbitrariness encompasses elements of

inappropriateness, injustice, and lack of predictability. The Inter-American Commission on Human Rights, a human rights body of the Organization of American States, has found that geographic disparities in the application of the death penalty in the United States can result in a "pattern of legislative arbitrariness" whereby an offender's death sentence depends not on the crime committed but on the location where it was committed. In *Roach and Pinkerton v. United States*, Case 9647, Annual Report of the IAHCR 1986-87, the Inter-American Commission concluded that such geographic disparities constituted an arbitrary deprivation of the right to life and subjected the petitioners to unequal treatment before the law in contravention of the American Declaration of the Rights and Duties of Man.

These sources are generally considered to be nonbinding. But that does not mean that they are not persuasive. Five justices of the Supreme Court--like many judges throughout the world--find it a worthwhile endeavor to consider international norms in evaluating whether the application of the death penalty comports with basic human dignity, whether it constitutes cruel and unusual punishment, and whether it is consistent with contemporary standards of decency. As the community of nations continues to debate the pros and cons of capital punishment, the United States should take a seat at the table, listen, and learn.

Countries and Territories That Retain the Death Penalty for Crimes in Addition to Such Exceptional Crimes as Wartime Crimes

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Burundi, Cameroon, Chad, China, Comoros, Congo (Democratic Republic), Cuba, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kazakhstan, Korea (North), Korea (South), Kuwait, Laos, Lebanon, Lesotho, Libya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Palestinian Authority, Qatar, Saint Christopher & Nevis, Saint Lucia, Saint Vincent & Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States of America, Uzbekistan, Vietnam, Yemen, Zimbabwe.

Discussion Questions

1. Why is the death penalty criticized? Why is it supported?
2. Do you believe the death penalty deters crime? Why or why not?
3. Which criminals should be executed, if any?
4. Do you believe the majority of Americans are for or against capital punishment?
5. Do you believe capital punishment is cruel and unusual punishment, or is it justified?

6. What about executing criminals who are mentally ill?

7. Let's talk about the risks of executing innocent people.

8. How does someone end up on death row?

9. Is lethal injection the best way to execute prisoners?