Death Penalty

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The death penalty has consistently been one of the most controversial topics in history. Many countries around the world, such as the United Kingdom and most European countries, have abolished the death penalty. There are also many countries, including the United States, that have yet to do so. The United States is one of the top five executioners in the world, next to Iran, China, Saudi Arabia and Iraq. Out of all 50 states 32 still hold the death penalty. Congress or any state legislature may proscribe the death penalty (Death Penalty Information Center, 2014) but the number of crimes for which you can be executed is very small. The federal government has jurisdiction over the entire United States and state governments have jurisdiction of their particular state. Federal government authorizes lethal injection as the only method of execution. State governments can decide what forms of execution they want to use but the predominant type is lethal injection (DPIC, 2014).

In the United States the death penalty is widely driven by public opinion; as prosecutors, governors, judges, and other candidates for elected office generally take a get tough on crime stance (Lee, 2013, p. 643). There are multiple reasons that supporters of the death penalty feel the way they do. Supporters of the death penalty say it is an important tool for preserving law and order, deterring crime, and it costs less than life in prison. There have been many arguments against the death penalty that have to do with constitutional rights, deterrence and fairness of a convict’s trial.

A few of the abolitionists arguments are that the financial costs to taxpayers for executing someone, is several times that of keeping someone in prison for life. They feel that it is inhumane and violates the "cruel and unusual" clause in the Bill of Rights. They also think that as a society, the U.S has to move away from the "eye for an eye" revenge mentality if civilization wants to advance (ProCon). And one of the most controversial questions is about the possibility exists that innocent men and women may be put to death. Court cases such as Gregg v. Georgia, (1976), have reaffirmed the United States Supreme Court's acceptance of the use of the [death penalty in the United States](http://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States).

 Though approximately 61% of Americans still support the death penalty, support for the death penalty has been declining since 1994 (DPIC, 2014, Lee, 2014)). This decreasing rate of support may correlate with the presence of abolitionists. Abolitionists are people that are extremely opposed to the death penalty. Abolitionists argue that that the death penalty is not a good general deterrent. They prove their case by comparing the 32 states that still have the death penalty and the 18 that do not. In the states that have the death penalty the crime rate for death penalty worthy crimes is actually higher than those states that don’t have a death penalty in place. Another reason that the death penalty isn’t a good general deterrent is because executions are somewhat hidden. Unlike past centuries, they are no longer open to the public therefore executions are not in the forefront of people’s minds. There are also a lot of issues related to the death penalty presented by abolitionists in a court of law relating to the 8th and the 14th amendments.

The 8th amendment focuses on cruel and unusual punishment. In the case of Wilkerson vs. Utah, the trial court judge sentenced Wilkerson to death (Walker, 2014). Utah territorial law did not specify a method of execution, leaving that decision to the discretion of the judge. Wilkerson claimed that the common method of execution at that time was by hanging, making the firing squad a cruel and unusual punishment under the Eighth Amendment. The Supreme Court of Utah upheld the sentence but Wilkerson appealed again taking this case to the Supreme Court. The Supreme Court ruled that, “Persons guilty of murder in the first degree “shall suffer death”. The conviction is for murder in the first degree, subject, of course, to the constitutional prohibition, that cruel and unusual punishment shall not be inflicted (Walker, 2014).” The death penalty is not violation of the [8th Amendment's](http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentviii) ban on cruel and unusual punishment, but it does shape certain procedural aspects regarding when a jury may use the death penalty and how it must be carried out. In a recent case (Baze *v.* Rees, 2008) that argued that there was a risk of excess pain to the victim, the Supreme Court decided that the risk of pain to the prisoner does not constitute an 8th Amendment violation. The 8th Amendment applies against the states, as well as the federal government.

The 14th amendment has to do with cases that have investigated the claims that the death penalty is arbitrarily imposed due to factors such as race and gender. 1972 was the year of the most important death penalty case ever, Fuhrman v. Georgia. This case lead to the discovery that death penalty was being applied in ways that are unfair by race. The Supreme Court found that at the point in time death penalty was unfair and capricious (Moore, 1984). They decided that the death penalty should be taken away until each state finds a way to reduce bias in the system. In the case of Mcklesky v. Kemp, the defendant’s attorney showed research that in their particular case the judge or jury acted in ways that were racially biased and therefore they were granted an appeal. In 1976 the Supreme Court ruled in the case of Gregg v. Georgia, that the death penalty be reinstated but it must include a dual trial structure. This means two trials, one trial to determine guilt or innocence and one trial to determine the punishment. In 2002 the case of Ring v Arizona, decided that the jury must decide on aggravating and mitigating circumstances not the judge (Wood, 2014). This decision makes the rulings more fair because the decision is not up to one person, there is a multitude of people and opinions.

Other than the issues that arise from the 8th and 14th constitutional amendments abolitionists have other arguments. One such argument is that it is not fair to the innocent people who have been convicted of a crime and sentenced to death. They also bring up issues about official misconduct and error, and ineffective counsel. Since 1973, 138 offenders on death row have been exonerated. Not all of these people were exonerated before their deaths and this means innocent lives were lost (Clear, 2013, p. 514). Official misconduct relates to things such as when the defendant is persuaded to give a confession to get lower sentence and ineffective counsel is when a public attorney is appointed to a criminal who cannot afford a private attorney so one has been provided for them. Issues arise with this when the public attorney has had no prior experience with death penalty cases or the attorney failed to represent them to the best of their ability.

Abolitionists and proponents of the death penalty have feuded for at least the last century about whether the death penalty is humane or not. Proponents of the death penalty say it is an important tool for preserving law and order, deters crime, and costs less than life imprisonment. Opponents of capital punishment say it has no deterrent effect on crime, wrongly gives governments the power to take human life, and perpetuates social injustices by disproportionately targeting people of color and people who cannot afford good attorneys. They say lifetime jail sentences are a more severe and less expensive punishment than death (Clear, 2013).

Arguments against the death penalty have been more publicized and successful. Research shows that the successes of these abolitionist have swayed public opinion and caused some changes to be made to the statutes surrounding the death penalty, they haven’t changed the main “issue”. This is shown by the death penalty still being practiced. Some people may think that abolitionists are more justified and have made more headway in court cases and the legal system but this is shown inconclusive because if their arguments were valid the death penalty would have been removed. Having the death penalty reinstates the eye for an eye retribution theory stated previously and shows that the people who commit crimes worthy of the death penalty, in the United States, will have to pay.

References

Clear, T.R. & Cole, G.F & Reisig, M.D. (2013) American Corrections. 10th edition. Chapter 20.

Death Penalty. Pros and Cons. http://deathpenalty.procon.org

Fulkerson, A., & Suttmoeller, M. (2008). Current issues involving lethal injection. *Criminal Justice Studies*, *21*(4), 271-282. doi:10.1080/14786010802554071

Lee, G.M. & Bohm, R. & Pazzani, (2013) L.M., Knowledge and Death Penalty Opinion: The Marshall Hypotheses Revisited. *American Journal of Criminal Justice* (2014) DOI 10.1007/s12103-013-9229-z

Moore Jr., R. H., & Moore, S. R. (1984). The United States Supreme Court And The Death Penalty Since Furman: The Settlement Of Basic Issues. *American Journal Of Criminal Justice*, *9*(1), 1-16.

States with and without Death Penalty. *Death Penalty Information Center*. (2014) Retrieved on November 19, 2014 from

 http://www.deathpenaltyinfo.org/states-and-without-death-penalty

Top Five Executioners in 2011. Amnesty International. http://www.amnesty.org/en/death-penalty/top-5-executioners-in-2011

Walker, Thomas, J. (2014) Wilkerson vs. Utah*. Eligible for Execution.* http://walker.cqpress.com/cases/wilkerson\_vs\_utah.asp

Wood, S. E., Packman, W., Howell, S., & Bongar, B. (2014). A Failure to Implement: Analyzing State Responses to the Supreme Court's Directives in Atkins v. Virginia and Suggestions for a National Standard. *Psychiatry, Psychology & Law*, *21*(1), 16-45. doi:10.1080/13218719.2013.773847

Court Cases Cited

*Furman v. Georgia,* 1 408 U.S. 238 (1972).
*Gregg v. Georgia,* 429 U.S. 153 (1976).
*McCleskey v. Kemp,* 481 U.S. 279 (1987).

*Baze v. Rees*, [553 U.S. 35](http://en.wikipedia.org/wiki/United_States_Reports) (2008)