

# Capital Punishment in American Society

**Mark A. Tripp**

The use of capital punishment in our culture has been a source of varying amounts of debate and disagreement throughout our history. The killing of human beings is among the most serious of human actions, and properly stimulates a process of rationalization which is commensurate with its consequences. The decision for methodically choosing to end the lives of individuals in response to actions found to be unacceptable to society is unique in its finality and in its severity. Like the other forms of socially-sanctioned killing, war and police actions, capital punishment usually ensues from a process of political enforcement of social aims. Unlike war, it rationally targets specific individuals whose actions and attributes are deemed socially unacceptable and who are selected for death by a system which functions to serve the need of the citizenry to express its strongest disapproval.

The use of capital punishment is problematic from many points of view: political, legal, philosophical, religious, sociocultural, and psychological. This account seeks to examine those factors which are of particular interest to the behavioral scientist; those which determine our responses to criminal behavior, criminal motivation, and to criminals themselves. It will take into account such concerns as the history of capital punishment, its deterrent effectiveness, the varying cultural nature of the expression of punitive ness, public opinion versus expert opinion regarding its implementation, its cost effectiveness, its utilitarian impact, fairness of application, and the moral implications of its use.

## **Historical Background**

The deliberate killing of people for socially inappropriate acts probably has a history as old as humanity, but is known to date back to the era of the Old Testament (Dash, 1997), where it was implemented for almost every crime defined by the Ten Commandments, and is noted in the oldest of accounts from Egypt and Mesopotamia. The death penalty in our present social context is carried out only for premeditated murder, but in early America was the penalty for additional offenses, including rape, treason, military desertion, and bestiality (Hale, 1994).

In the present century, the use of the death penalty has been modified due to changing Supreme Court interpretations of the [Eighth and Fourteenth Amendments](#) of the U.S. Constitution, most notably, in [Furman v. Georgia](#), in which a moratorium on executions was imposed from 1972 to 1977. Since reinstatement of the death penalty, in the period from 1977 to 1997 a total of 432 executions have taken place, with approximately 3000 persons now on death rows around the country (Kaplan, 1997).

## **Fairness of Application**

Statistical records of executions dating back to the earliest times in American history show an unquestionable over-representation of males, the poor, and racial/ethnic minorities among those put to death for criminal activity, or for what has been interpreted as criminal activity in a given cultural context. The earliest record of a juvenile put to death in our country was 1642, for the crime of bestiality, for which the perpetrator was hanged (as were his alleged accomplices, the mare and the cow. As a matter of record, the second juvenile execution was also for the crime of bestiality, in 1674), (Hale, 1994). The last youth put to death was in 1959 (age 16). In our history, we have executed 332 people under age 18, mostly males, and 67.7% were African Americans and 6.9% members of races other than Caucasian or African American (Hale, 1994).

Similarly, adults put to death have historically been over-represented by ethnic minorities, as documented among Hispanics (Aguirre & Baker, 1997), and particularly among African Americans. Death row populations are currently comprised of 48% white, 41% black, and 8% Latino (Gest, 1996). Between 1930 and 1966, 455 people were executed for rape, with 405 of them being black, 2 Asian, and the remainder white (Dispoldo, 1995). Also, even though whites were victims of less than half of all murders overall, most of those executed during the past two decades were convicted of killing white victims (57%), with the large majority of these occurring in Southern states. Interestingly, a study by Borg (1997) found little difference between southern and nonsouthern attitudes toward the death penalty, while finding significant contextual factors concerning racial prejudices, religious fundamentalism, and political conservatism which apparently correlate with an overall disproportionate level of executions between southern and other regions. Another study by Kazyaka (1989) found that in an analysis of 299 homicides in South Carolina between 1977 and 1981, criminal charges were largely brought on the basis of relevant considerations, but that prosecutors were less likely to request capital punishment when blacks killed blacks rather than when blacks killed whites. The author concludes that discriminatory claims by defendants under these circumstances are valid and that only the highest levels of aggravation should be considered in order to avoid arbitrary sentencing.

The poor also find disproportionate representation among the statistics of capital punishment. According to Dispoldo (1995), during the past 300 years of American history, only six persons were executed who could be considered to be influential or affluent. According to Anderson (1996), it's usually those without capital that receive this punishment. Kevin Doyle, the manager of the NY Capital Defender Office, states that those lawyers who are court appointed to defend indigents unable to afford council, work for an average of \$4 per hour. These services cannot favorably compare with those afforded by the wealthy. While public perception seems often to focus on the problem of violence among minorities living in poverty, Greenburg and Schneider found that the origins of violence are more properly attributable to the effects of economic and political policies which create marginal urban areas. This structural functionalist perspective accounts for the creation of unwanted populations by studying three specific urban centers where violent death rates are high for all ethnic, racial, age, and gender groups.

Here high violent death rates include not just homicide but drug abuse, suicide, fires, and accidents. The authors conclude that it is the marginalization of land uses and castoff population groups which need to be addressed for the reduction of urban violence, rather than the application of punishment aimed at these groups.

Reasons for the unfair application of the death penalty can readily be attributed to racial prejudices and the desire to remove the poor and dysfunctional from society. In a pair of studies of the judicial system, more concrete reasons for its unevenness of application have been described. Weiss, et. al. (1996) examined judicial decisions in California related to capital charging of defendants in homicides. Carrying out an analysis of capital charging to evaluate the capriciousness of the system of applying capital charges, the authors found that inherent factors account for one third of the variability which exists in capital charging, and that two thirds can be removed by the explanatory variables available in the system, an action the authors conclude is necessary for correcting the judicial charging system. Further revision of our system of applying capital decisions is made by a study by Burgins (1995). In this research the author found that jurors routinely misunderstand and/or misapply instructions for evaluating guilt and sentences in capital cases. The author concludes that ordinary citizens should not be used to evaluate capital cases until more effective guidelines are formulated.

Further analysis of the unevenness of capital punishment application is given by the [American University Law Review](#). This contains the transcript of a conference on capital punishment which addresses such concerns as poverty and minority over-representation in capital charging. Further persuasive evidence for misapplication of death sentences can be found at [The Death Penalty Information Center](#). This site offers statistical evidence of racial prejudice in charging and sentencing, as well as for judicial assessment of the value of the lives of victims of capital crimes. Evidence of gender discrimination for application of death sentencing is offered by Pederson (1998) in which the author discusses the recent case of Carla Faye Tucker. Only one woman, prior to 1998 had been put to death since the death penalty was restored in 1976, out of 392 total executions (Kaplan, 1997).

### **Public Versus Expert Opinion Regarding Capital Punishment**

The basis for the debate over capital punishment derives from whether it is seen to be an effective deterrent to further capital crimes, as well as for its appropriateness as a punitive response to certain behaviors. As discussed earlier (e.g. the hanging of juveniles for having sex with animals), the public's interpretations and feelings toward certain behaviors may be seen to vary and change over time. According to Kaplan (1997), the American public currently overwhelmingly favors the death penalty for the crime of homicide, yet the most frequent cause of death for death row inmates is attributed to natural causes: there were 392 executions between 1976 and 1997, yet there are well over 3,000 prisoners on death row at present. The author attributes this discrepancy to the ambivalence displayed by the American public between the concepts of killing convicts as opposed to the actual practice.

One factor which may affect this public lack of confidence in the effectiveness of the death penalty may be cost effectiveness, which is tied to the concept of utility. Coincidentally, [J. S. Mill](#), the father of the concept of utility was a supporter of the death penalty, yet its financial and social costs can be seen to have mushroomed in modern times to reduce its utility to a lower value than that of life imprisonment. When the financial costs of investigating, prosecuting, defending against appeals, and carrying out executions is compared to institutionalizing convicts for a life term, it can be seen to be inordinately expensive. According to Kaplan (1997) and Ross (1995), incarceration costs approximately \$20,000 per year per prisoner. A death penalty case costs at least \$2 million per execution when all legal and institutional costs are factored. A prisoner would have to live for 100 years in order to cost the taxpayer as much as an execution. Others might also argue against the social costs attributable to the states sanctioning the process of human killing, which can be seen to devalue human life generally and foster the atmosphere in which murder is seen as an acceptable behavioral option (Dash, 1997). Utility as an argument for capital punishment can be seen to be flawed.

Public perceptions of capital punishment methods were the subject of a study by Mendyuk (1995), in which the author examined the attitudes of college students about various means of execution. This study found that subjects found lethal injection to be the most acceptable form of execution, with the firing squad rated least acceptable. Ranking in the middle, from second most acceptable to second least acceptable, were the gas chamber, electrocution, and hanging. Another study compared adolescent's evolving attitudes toward capital punishment by comparing high schoolers with college students (Lester et. al., 1997). The high schoolers tended to consider more acts of criminal behavior as deserving the death penalty than did the college students. For neither group were measures of gender, age, neuroticism, or extraversion associated with favoring the death sentence. The differences could be seen either to correlate with higher punitive ness among high schoolers, or a greater tendency for less punitive students to go on to college.

There are three potential goals for criminal punishment, namely rehabilitation, deterrence, or retribution. There is obviously no potential for rehabilitating an executed criminal. The actual effectiveness of a deterrent effect for capital punishment has not been demonstrated (Dash, 1997). Evidence of a discrepancy between the public's perception of a deterrent effect and actual deterrence is given by Radelet and Akers (1996). The authors show that statistical evidence exists which demonstrates that the death penalty has virtually the same impact as long-term prison sentences on homicide rates, and further, that public support for the death penalty drops from 70% to 51% when the assumption of deterrent effects are removed. Given that deterrence is one of the most important foundations for public support of the death penalty, the existence of incorrect assumptions of its effectiveness is a problem for the reasoned enactment of this public policy.

Experts in criminology are shown in this article to be less than half as likely as the general population to believe that capital punishment lowers the homicide rate, or that states which have utilized it have lower homicide rates. Similar beliefs are seen in police personnel as in criminologists, namely that little or no deterrent value exists for killing

criminals. The experts, however, also do not tend to support the devaluing of human life that some opponents of the death penalty attribute to its use, and which some would argue tends to actually increase rates of homicide. Nevertheless, it is clear that the experts do not agree that the death penalty serves any deterrent purpose for reducing any form of criminal behavior, thereby standing in opposition to one of the key elements for the public justification of killing criminals. The authors suggest, therefore that the debate about reducing criminal violence in this country be shifted away from the death penalty to actions which would be more likely to effect real change.

An article by Crespi and Rigazio-DiGilio (1996) is concerned with the root causes of violence in one segment of society which is prone to its effects both as victims and perpetrators, that of the young. Among 1.5 million juveniles arrested annually, 2,000 are arrested for murder. In 1990 there were 30 juveniles on death rows in the U.S. The authors of this study found a surprising and disturbing lack of attention and research done on the family backgrounds of violent youth. The authors recommend an increased concentration upon a family perspective of adolescent violence because of several factors, the main one being that, despite a marked concern among the general population about adolescent violence, there is little research data available to guide formation of public policy which might address this health concern. What data is available strongly suggests that juvenile murderers come from homes where they have been victimized by violence, have witnessed extreme violence, and whose families were characterized by disorganization, marital conflict, economic insecurity, and parental brutality.

Another study which looked at the root causes of juvenile violence focused on African American male adolescents. King (1997), found that African American teens are three to five times more likely than their white counterparts to be murder victims, and that they commit 80% of the violent crimes against their own group. Of these victims and perpetrators, 90% are males. According to King, these behaviors were practically nonexistent among the African cultures from which slaves were taken, and that the culture of violence which has bred current conditions is born of the brutality of institutionalized slavery, racism, and poverty. History has shown that the process of enslavement has proven to have been the most violent set of actions inflicted upon any group in history, and served to begin a pattern of legitimizing physical violence against African males. Between 1885 and 1921 for example, 4,096 lynchings were reported in the U.S involving African American males, including one three year period in which 28 were publicly burned alive. King cites a great deal of similarly horrifying statistical data which serve to illuminate the historical factors in which the seeds of today's violent patterns were planted. Particularly relevant are the statistics concerning the state sponsored violence of police brutality and capital punishment. Despite their numerical minority status, during the years from 1930 to 1988 50% of those put to death were black and 89% of those executed for rape were black. As of 1990, 40% of those on death row were black, with the great majority of those being convicted of murdering whites. Along with the "social, economic, educational, and political deprivation and oppression" contributing to the high rates of violence among young African American males, "this legal and extralegal violence...has led to the devaluation of their lives and a systematic and pervasive disregard for their basic humanity," according to King. The author strongly

asserts that these conditions undermine the psychosocial development of many African American males and limits their opportunities for developing the competencies required to function in our "Eurocentric, racist, and competitive" society. The continuing implementation of capital punishment, therefore, in large part functions to continue the pattern of victimization of the descendants of slaves.

The third goal of criminal punishment, retribution, came under close public scrutiny with the recent execution of Carla Faye Tucker, in Texas, and with the award-winning movie, "Dead Man Walking", (Mcgraw, 1998; [Angel on Death Row: The real life cases in "Dead Man Walking"](#)). Tucker's case came to public attention as her execution date approached, making her only the second woman to be put to death since the reinstitution of capital punishment in 1976. Her example showed Texans a person who, in the 14 years she spent on death row, changed from the drug-crazed daughter of a drug-addicted prostitute who had become addicted to drugs by age 8 and a prostitute herself by age 13, to a born-again Christian active in prison ministry and married to a prison chaplain. While 75% of Texans favor the death penalty, only 45% came to feel that Tucker should be killed, calling into broad discussion whether capital punishment should serve to protect society or merely as retribution, and whether rehabilitation is a worthy goal of punishment or if some crimes are not worthy of forgiveness. The profiles of Carla Faye Tucker showed that she was a person who did not have a chance to develop in a functional manner early in her life, and that to a large extent she was the victim of circumstances imposed upon her for which society has no functional remedies. Her eventual execution was seen by many as a sacrifice to our own cultural failings.

Helen Prejean, a member of the order of the Sisters of St. Joseph and the model for the character in the popular film "Dead Man Walking", has served to elevate the discussion to include consideration of the concept of forgiveness to others who have not achieved rehabilitation. In an interview with Anderson (1996), Sister Prejean contends that her experiences with both murderers and their victims' survivors shows a lack of identification with those condemned to be executed. She relates that survivors tend to expect closure from the process of execution, but what actually takes place is a repetition of reliving the murder again and again as the case goes through the courts in a convoluted and expensive process of trial and appeal. Those who remain fixated on revenge are usually those parents who lack other children to focus and rebuild their lives upon or those who lack community supports. When execution finally takes place, if it ever does, they often find that the experience does not bring closure or the relief they'd imagined it would.

Brownlee, et. al. (1997) question this goal of seeking comfort and closure by victims' families as an expected outcome of capital punishment, in the face of western civilization's history of evolution toward maintaining systems of justice based on law rather than emotion. Here the authors characterize the families of murder victims as being further victimized by prosecutors who use cases to promote their own career aims, often manipulating the family's feelings and actions to promote their own agendas which may not serve the best interests of those who need to heal from their tragedies. Grief counselors contend that focusing hatred upon the killer is an unhealthy substitute for

facing feelings of sorrow, and that survivors usually do not experience relief from their grief when executions are carried out. The authors conclude that retribution violates the central tenet of Western law, that "criminals should be punished on behalf of society as a whole, not the victim." Also, as Kevin Doyle points out (Anderson, 1996), undue attention is given by the news media to those who speak for retribution, and that those such as the group Murder Victims' Families for Reconciliation, tend to be ignored as not newsworthy. Such groups take exception to efforts to console or pay tribute to their loved ones' memories with further killings, instead favoring those acts which serve the healing process and which support the dignity of human life.

## **Conclusions**

When I began this study, I imagined that one of my own children had been horribly murdered, and attempted to base my opinion of capital punishment on such a personal experience. The opinions, [discussions](#), and research encountered in the course of this project has given me a sense of a much greater scope of the issues involved than my own personal feelings, which would likely involve the overwhelming desire for vengeance. Of primary importance to me in determining an ethical course of action in responding to criminality or any other type of offense, is the cultural context in which the behavior and its response(s) takes place. I can agree with the utilitarian argument of Mill for his time and place. But I think that the arguments of Carol Gilligan and Annette Baier for consideration of the inherent chauvinism in which we experience cultural immersion take precedence when assessing a system of justice which has historically been largely influenced by the male gender and the Western school of thought.

Aristotle held that virtue was the product of action and habit. Responding to a behavior such as murder with the like behavior of killing cannot lead to virtue, in my opinion, in our present cultural context. We live in an extremely complex cultural milieu which differs greatly from that which existed when those who passed down ancient codes of conduct lived. The societal circumstances which create the responses of criminality today bear a great deal of responsibility for these actions. While this makes criminal behaviors no more acceptable than in simpler times, their remedies and consequences must reflect the changes which have increased their likelihood of occurring. In this debate I, at last, find complete agreement with Kant in his admonition against using humans as means toward ends. Disposing of humans as a response to their behaviors which are themselves maladaptations to social inequities, brutality, and injustices serves the end of attacking symptoms rather than social problems.

I do not believe that criminals should go unpunished, but that, as Justice Brennan wrote in dissenting to the Supreme Court decision in *Gregg v. Georgia*, death is an unusually severe punishment which serves no more purpose than the less severe punishment of life imprisonment. Our culture does not allow for immediate punishment of criminals in the manner which would be possible in smaller and more personal societies. If a murder was followed by an immediate response of death to the perpetrator, perhaps the outcome would be some relief and healing for the victim's loved ones. Without the recuperative potential in such an immediate form of justice, the more severe form of punishment



serves no such purpose, and therefore violates the constitutional right of the defendant against unusual punishment. Our penal system which has been shown to mete out this form of punishment so unevenly, serves to reinforce this assessment.

Finally, in the past twenty years, 63 people have been released from death row, proved innocent conclusively by incontrovertible evidence. Our system of justice has shown itself to be not only uneven, but inconsistent, fallible, prejudicial, and incapable of providing fair and competent representation to all members of society. The finality of this most unusual of criminal punishments condemns its own use in our culture.

## **Appendix A**

[The Capital Defender's Toolbox](#)

[Friends Committee to Abolish the Death Penalty](#)

[Legislative Services Commission](#)

[HUMAN RIGHTS THE AMERICAN WAY](#)

<http://www.msnbc.com/news/158608.asp>

[Directory of Programs Serving Families of Adult Offenders published by the National Institute of Corrections \(NIC\)](#)

[Amnesty International Facts and Figures on the Death Penalty](#)

[Death Penalty News](#)

[Associated Press Report](#)

[Associated Press Report](#)

[the struggle to free Mumia Abu-Jamal](#)

[Equal Justice USA](#)

[Feminst Majority](#)

## **References**

Aguirre, A. Jr., & Baker, D.V. (1997). A descriptive Profile of Mexican American Executions in the Southwest. The Social Science Journal, 34, 389-402.



American University Law Review, (1995 ). Conference: The death penalty in the twenty-first century. [WWW Document]. [URL  
http://www.wcl.american.edu/pub/journals/lawrev/death.htm](http://www.wcl.american.edu/pub/journals/lawrev/death.htm)

Anderson, G.M. (1996). Opposing the death penalty: an interview with Helen Prejean. *America*, 175, 8-13.

Anderson, G.M. (1996). Capital punishment in perspective: an interview with Kevin Doyle.(manager of the New York State Capital Defender Office). *America*, 174, 16-20.

Borg, M.J. (1997). The southern subculture of punitiveness? Regional variation in support for capital punishment. *Journal of Research in Crime and Delinquency*, 34, 25-46.

Brownlee, S., McGraw, D., & Vest, J. (1997). The place for vengeance: many grieving families seek comfort and closure in the execution of a murderer. Do they find it? *U.S. News & World Report*, 122, 24-32.

Burgins, S. (1995). Jurors ignore, misunderstand instructions; the result is a bias in favor of death penalty. *ABA Journal*, 81, 30-32.

Carelli, G. & Klein, M. (editors and owners),(1998). ABOLISH (the death Penalty) Discussion List Archives. [WWW Document]. [URL  
http://www.soci.niu.edu/~archives/ABOLISH/abolish.html](http://www.soci.niu.edu/~archives/ABOLISH/abolish.html)

Constitution of the United States of America. Legal Information Institute, Cornell Law School [WWW Document], [URL  
http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentviii](http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentviii)

Crespi, T. D., & Rigazio-DiGilio S. A. (1996). Adolescent homicide and family pathology: implications for research and treatment with adolescents. *Adolescence*, 5, 353-368.

Dash, S. & Kozinski, A. (1997). Panel Discussion: The modern view of capital punishment. *American Criminal Law Review*, 34, 1353-1385.

Death Penalty Information Center. [WWW Document]. [URL  
http://www.essential.org/dpic/](http://www.essential.org/dpic/)

Dispoldo, N. (1995). Capital punishment and the poor. *America*, 172, 18-20.

Hale, R.L. (1994). A social-historical analysis of juveniles and capital punishment. Doctoral dissertation, Mississippi State Univ., Miss.

Henderson, K. (1997). How many innocent inmates are executed? An Illinois coalition moves to stop the death penalty in the wake of startling statistics. *Human Rights*, 24, 10-12.

Hinman, L. M. (1998). Selected Internet Resources on Punishment and the Death Penalty [WWW Document]. [URL http://ethics.acusd.edu/death\\_penalty.html](http://ethics.acusd.edu/death_penalty.html)

Gest, T. (1996). A house without a blueprint: after 20 years, the death penalty is still being meted out unevenly. U.S. News & World Report, 121, 4143.

Greenberg, M. & Schneider, D. (1994). Violence in American cities: young black males is the answer, but what was the question. The Journal of the American Medical Association, 273, F1730-F1731.

Kaplan, D.A. (1997). Life and death decisions. Newsweek, 129, 28-31.

Kazyaka, A.M. ((1989). Guarding the gateway to discrimination: developing a constitutional model for capital sentencing. Doctoral dissertation, Univ. Maryland, College Park, Md.

King, A.E.O. (1997). Understanding violence among young African American males: an Afro centric perspective. Journal of Black Studies, 29, 79-97.

Lester, D., Maggioncalda-Aretz, M., & Stark, S.H. (1997). Adolescents' attitudes toward the death penalty. Adolescence, 32, 447-450.

McGraw, D. (1998). When is forgiveness unforgivable? U.S. News & World Report, 124, 7-8.

Mendyuk, D.B. (1995). Dying on death row: public perceptions of methods of execution in the U.S. Master's thesis, Cal. St., Fullerton.

Mill, John Stuart. (1868). Speech In Favor of Capital Punishment. Ethics Updates [WWW Document]. Edited by Lawrence M. Hinman, [URL http://ethics.acusd.edu/Mill.html](http://ethics.acusd.edu/Mill.html). Pedersen, D. (1998). Praying for time. Newsweek, 131, 66-68.

PBS Frontline, (1998), Angel on Death Row: The real life cases in "Dead Man Walking"; [WWW Document]. [URL http://www.pbs.org/wgbh/pages/frontline/angel/](http://www.pbs.org/wgbh/pages/frontline/angel/)

Pedersen, D. (1998). Praying for time. Newsweek, 131, 66-68.

Radelet, M. L. & Akers, R.L. (1996). Deterrence and the death penalty: the views of the experts. Journal of Criminal Law and Criminology, 87, 1-16.

Ross, M. (1995). A voice from death row (death penalty costs to the taxpayer). America, 172, 6-8.

Univ. of Alaska, Anchorage. Justice Center Web Site. (1998). Focus on The Death Penalty . [WWW Document]. [URL http://www.uaa.alaska.edu/just/death/](http://www.uaa.alaska.edu/just/death/)

Weiss, R.E., Berk, R.A., & Lee, C.Y. (1996). Assessing the capriciousness of death penalty charging. Law and Society Association.