

THE DETERRENT EFFECT OF CAPITAL PUNISHMENT

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INTRODUCTION

One argument states that the death penalty does not deter murder. Dismissing capital punishment on that basis requires us to eliminate all prisons as well because they do not seem to be any more effective in the deterrence of crime.

Others say that states which do have the death penalty have higher crime rates than those that don't, that a more severe punishment only inspires more severe crimes. I must point out that every state in the union is different. These differences include the populations, number of cities, and yes, the crime rates. Strongly urbanized states are more likely to have higher crime rates than states that are more rural, such as those that lack capital punishment. The states that have capital punishment are compelled to have it due to their higher crime rates, not the other way around.

Abolitionists also hold the notion that criminals do not fear death because they do not take time to think about the consequences of their acts. If that were true, then I wonder how police officers manage to arrest criminals without killing them. When a policeman holds a criminal at gunpoint and tells him to get on the ground, the criminal will comply fully in the vast majority of these cases.

Why would they do that unless they were afraid of the lethal power of the gun? It is because regardless of what abolitionists claim, criminals are not immune to fear! It is a common misconception to believe that fear is a thought process that has to be worked out with a piece

of paper. It's not! It is an instinct that automatically kicks in when one is faced with lethal force! The examples below should confirm that point.

During the temporary suspension on capital punishment from 1972-1976, researchers gathered murder statistics across the country. In 1960, there were 56 executions in the USA and 9,140 murders. By 1964, when there were only 15 executions, the number of murders had risen to 9,250. In 1969, there were no executions and 14,590 murders, and 1975, after six more years without executions, 20,510 murders occurred rising to 23,040 in 1980 after only two executions since 1976. In summary, between 1965 and 1980, the number of annual murders in the United States skyrocketed from 9,960 to 23,040, a 131 percent increase. The murder rate -- homicides per 100,000 persons -- doubled from 5.1 to 10.2. So the number of murders grew as the number of executions shrank. Researcher Karl Spence of Texas A&M University said:

"While some [death penalty] abolitionists try to face down the results of their disastrous experiment and still argue to the contrary, concludes that a substantial deterrent effect has been observed...In six months, more Americans are murdered than have killed by execution in this entire century...Until we begin to fight crime in earnest [by using the death penalty], every person who dies at a criminal's hands is a victim of our inaction."

The deterrent effect of a particular type of punishment depends upon several factors. These are:

1. The social structure & value system under consideration.
2. The particular population in question.
3. The type of law being upheld.
4. The form & magnitude of prescribed penalty.
5. The certainty of apprehension & punishment.
6. The individual knowledge of law as well as the prescribed punishment, and his definition of the situation relative to these factors. Bent have this goes on to the suggest that punishment may help in control of crime in three ways: -

7. By making it impossible or difficult for criminal to commit the offence again, at least in certain ways.
8. By deterring both offenders & others.
9. By providing an opportunity for the reforming of offenders.

DEATH PENALTY AND DETERRENCE

Society has always used punishment to discourage would be criminals from unlawful action. Since society has the highest interest in preventing murder and that is the death penalty. The purpose of deterrent theory is to create some kind of fear in the mind of others by providing adequate penalty and exemplary punishment which keeps the offenders away from criminality. It is one of the effective penal policies accepted by most every penal system.

The doctrine of deterrent punishment is closely associated with the primitive theories of crime. Earlier society preferred severe and the deterrent punishment to the criminals. Punishment was to be a terror to evil doer and an awe full warning to all others who might be tempted to imitate them. Death penalty had a deterrent effect in reducing the murder rate in the United States.

DETERRENT EFFECT AGAINST THE OFFENCE OF MURDER

We usually associate capital punishment with the crime of murder murderers may be classified into three categories: -

1. Those who suffer from serious physical, mental & cultural deficiencies that make it possible for them to contemplate murder as a more or less natural form of conduct. such persons are not normal individuals and death penalty does not deter them from taking human life.
2. Those who are relatively normal physically, mentally & culturally, but are subjected to intensely difficult or inciting emotional situation which laid to them to commit, murder

whereas under normal circumstances they would lead a law-abiding life. In these cases, also capital punishment may not have different effect.

10. The third group consists of professional persons who in the matter of taking life, bear a close resemblance in their mental habits to members of the standing army. Their attitude towards the taking of human life is very much like that of the soldier on the battle field, namely it is taken as a matter of course, not involving any personal responsibility or depravity. The gangsters is to obey his superior. It is obvious that the gunman is the victim of bad social habits that have deprived him of his sense of socially approved responsibility & the normal value place on human life. From the above, it may be said that death penalty does not act as an effective deterrent to those murderers who commits murders as a result of psychopathic compulsion or grave & sudden provocation. It also does not act as effective deterrent to those who commit murders as a result of defective personality or highly in fortunate social conditions. Death penalty can also not act as effective highly determined in case of professional murderers mainly because the death is not certain even after a the arrest of the murders and the murderers know it that he runs a fair chance to get acquittal of benefit of doubt. He also knows, that in case that the death sentence is awarded by the trial court it can be set aside by the higher courts in appeal from different grounds. even if it is not set aside and finally he is sentenced to death he likely to have the sentence commuted to lesser sentence and may ultimately to pardoned by President of India or governor of state.

According to Dr. James “No other punishment determines show effectually from committing crimes as the punishment of death. In any secondary punishment hew ever, terrible, there is hope, but death is death its terrors cannot be described forcibly.

The consensus of sociologists and criminological experts have concluded that the death penalty cannot reduce crime. Statistical studies of India have shown that capital punishment does not deter criminal behavior. The restoration of death penalty did not lead to any decrease in numbers of murders.

According to Dr. Kiran Bedi, India's top women cop sentence of death act was a warning to all those who are like minded with him. punishment is justified to control individual crime and to have a deterrent effect on other criminals.

Capital punishment is likely to deter more than other punishment because people feared more than anything else hence the threat of death penalty may deter some murderers. The principal of death penalty to the criminals who commits heinous crimes as a murder act as a deterrent to other.

The law commission of India also considered the deterrent aspect of capital punishment and concluded in the case of *Jagmohan Singh versus state of U.P* acts as effective deterrent. The commission states that: -

11. Every human being dread death.
12. Death, as a penalty, stands on totally different level for imprisonment for life or any other punishment
13. Death penalty has the maximum deterrent.

In Paras Ram's case Krishna Iyer observed that when the disease in social death sentence has a deterrent must operate. He again said in **Edigahanamma v/s state of A. P** that deterrence through threat of death is an effective strategy in some frightful areas of heinous crimes. He reiterated this approval in **Shiv Maihan Singh v/s state. Charles Shobraj v Superintendent, central jail, Tihar** again this court reiterated that deterrence was one of the vital considerations of punishment.

In **Furman v/s Georgia** justice Stewart said that death penalty serve both as a deterrent as well as retributive .Sir Fitzjames Stephen ,said that no other punishment deter men so effectively from committing crimes as the punishment of death .In a study of conducted by the well-known penologist, Issac Ehrlich has concluded that there was reduction in the murder rate due to the use of capital punishment because of its deterrent nature .

The British royal commissions report that the death penalty has a stronger deterrent effect of normal human than any other form of punishment. Sellin said that “As a deterrent the death penalty is playing its part for which there is no substitute.”

Society has always used punishment to discourage would-be criminals from unlawful action. Since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder, and that is the death penalty. If murderers are sentenced to death and executed, potential murderers will think twice before killing for fear of losing their own life.

For years, criminologists analyzed murder rates to see if they fluctuated with the likelihood of convicted murderers being executed, but the results were inconclusive. Then in 1973 Isaac Ehrlich employed a new kind of analysis which produced results showing that for every inmate who was executed, 7 lives were spared because others were deterred from committing murder. Similar results have been produced by disciples of Ehrlich in follow-up studies.

Moreover, even if some studies regarding deterrence are inconclusive, that is only because the death penalty is rarely used and takes years before an execution is actually carried out. Punishments which are swift and sure are the best deterrent. The fact that some states or countries which do not use the death penalty have lower murder rates than jurisdictions which do is not evidence of the failure of deterrence. States with high murder rates would have even higher rates if they did not use the death penalty.

Ernest van den Haag, a Professor of Jurisprudence at Fordham University who has studied the question of deterrence closely, wrote: "Even though statistical demonstrations are not conclusive, and perhaps cannot be, capital punishment is likely to deter more than other punishments because people fear death more than anything else. They fear most death deliberately inflicted by law and scheduled by the courts. Whatever people fear most is likely to deter most. Hence, the threat of the death penalty may deter some murderers who otherwise might not have been deterred. And surely the death penalty is the only penalty that could deter

prisoners already serving a life sentence and tempted to kill a guard, or offenders about to be arrested and facing a life sentence. Perhaps they will not be deterred. But they would certainly not be deterred by anything else. We owe all the protection we can give to law enforcers exposed to special risks."

Finally, the death penalty certainly "deters" the murderer who is executed. Strictly speaking, this is a form of incapacitation, similar to the way a robber put in prison is prevented from robbing on the streets. Vicious murderers must be killed to prevent them from murdering again, either in prison, or in society if they should get out. Both as a deterrent and as a form of permanent incapacitation, the death penalty helps to prevent future crime.

Those who believe that deterrence justifies the execution of certain offenders bear the burden of proving that the death penalty is a deterrent. The overwhelming conclusion from years of deterrence studies is that the death penalty is, at best, no more of a deterrent than a sentence of life in prison. The Ehrlich studies have been widely discredited.

In fact, some criminologists, such as William Bowers of North-eastern University, maintain that the death penalty has the opposite effect: that is, society is brutalized by the use of the death penalty, and this increases the likelihood of more murder. Even most supporters of the death penalty now place little or no weight on deterrence as a serious justification for its continued use.

States in the United States that do not employ the death penalty generally have lower murder rates than states that do. The same is true when the U.S. is compared to countries similar to it. The U.S., with the death penalty, has a higher murder rate than the countries of Europe or Canada, which do not use the death penalty.

The death penalty is not a deterrent because most people who commit murders either do not expect to be caught or do not carefully weigh the differences between a possible execution and

life in prison before they act. Frequently, murders are committed in moments of passion or anger, or by criminals who are substance abusers and acted impulsively.

As someone who presided over many of Texas's executions, former Texas Attorney General Jim Mattox has remarked, "It is my own experience that those executed in Texas were not deterred by the existence of the death penalty law. I think in most cases you'll find that the murder was committed under severe drug and alcohol abuse."

There is no conclusive proof that the death penalty acts as a better deterrent than the threat of life imprisonment. A survey of the former and present presidents of the country's top academic criminological societies found that 84% of these experts rejected the notion that research had demonstrated any deterrent effect from the death penalty.

Once in prison, those serving life sentences often settle into a routine and are less of a threat to commit violence than other prisoners. Moreover, most states now have a sentence of life without parole. Prisoners who are given this sentence will never be released. Thus, the safety of society can be assured without using the death penalty.

LIMITATION OF DETERRENT THEORY

The efficacy of criminal punishment as a deterrent has often been doubted by those who assert that many people do become criminals and will continue to do so in spite of threat of condemnation and fear of punishment, for deterrence is negative, whereas the purpose of law is positive. It has also to be borne in the mind that many crimes are undeterrable.

The next point is that the punishment to be effective and deterrent must be certain. The criminal justice system, which follows the principle that the prosecution should establish the guilt beyond reasonable doubt & benefit of doubt goes to the accused, has never been able to use the

punishment in a deterrent manner. it is said that it is more important that punishment should be swift & sure” like a seal to hot wax “to use.

Personality of on individual whom the punishment is awarded has its own limitations as regard its deterrent aspects. For instance, the deterrent effect will not be similar on all offenders. Punishment is more likely to deter those who are respected person due to educational attainments, family background & social and economic status etc. On contrary it will have very insignificant impact on hardened criminals. It is likely that even mild punishment would be effective deterrent for many crimes, especially white-collar crimes, if they swift & certain.

In general deterrence, so far as the threat of punishment is concerned, a survey of young men carried out by Willcock& Stokes in 1968 suggests that most people over rate their chances if detection and rank fear of what others will think about fear of punishment as deterrent.

General deterrence has a limited effect because of the delay in punishing the criminals. It generally takes 6-7 years to finally dispose of a criminal case as a appeal in the higher courts against the conviction/acquittal. By that time the general public may not remember the offence for which the punishment was awarded. In addition, general deterrence depends upon the publicity given to the general public about the arrest, conviction & the punishment of offenders.

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