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Death Penalty

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Death is the ultimate penal sanction, which has made it controversial worldwide. Consequently, social scientists have long gravitated to it as a subject for policy-relevant, empirical research. In most nations, however, moral concerns have since World War II led to the death penalty's abolition as cruel and inhuman, which has mooted empirical research. As late as 1998, there were 1,625 official executions in 37 countries, 83 percent of which occurred in the People's Republic of China (1,067), the Democratic Republic of Congo (100), the United States (68), Iran (66), and Egypt (48).

By 2003, 111 countries had abolished capital punishment. The European Court of Human Rights banned the death penalty in all nations within the Council of Europe, stating it violated the European Convention of Human Rights. The Council has thus indirectly persuaded countries in central Europe that have not already joined the Council to abolish this punishment. Other nations, such as the United Kingdom, have refused to extradite prisoners to the United States if they would face possible execution.

Many human rights organizations favor the abolition of the death penalty in those countries that continue to maintain it. The Death Penalty Information Center, the National Coalition to Abolish the Death Penalty, and the Campaign to End the Death Penalty are illustrations. Most of these and other organizations focus their effort on the United States, which they argue should not find itself in the company of the world's major executing nations.

The Traditional Research Agenda

Much of the social science research agenda on the death penalty is centered in the United States, a country that permits the federal government and state governments to use death as a punishment for homicide. Scholars such as Franklin Zimring designed the agenda to speak to issues thought to be important in the ongoing campaign against capital punishment. These traditionally cover three topics: (1) whether the death penalty deters; (2) whether it is compatible with contemporary standards of decency; and (3) whether courts administer it in a racially neutral or in a discriminatory manner.

Deterrence

With respect to deterrence, most social science research finds no evidence that the death penalty deters crime. The comparison made in the deterrence calculus is between a death sentence and a sentence of life in prison, not between a death sentence and no punishment at all. Because many murders are crimes of passion, no criminal justice policy may be able to deter them.

Deterrence studies have used many different methodologies. Some examine murder rates before and after well-publicized executions; others compare murder rates in adjoining states, one with capital punishment and the other without. The economist Isaac Ehrlich conducted controversial research on the deterrent effect of capital punishment in the 1970s. Unlike most other scholarship, it showed statistically significant deterrent effects and used sophisticated statistical techniques to control for confounding variables. If Ehrlich was correct, execution did indeed save lives. He claimed that for every person executed between [p. 389 ↓] 1933 and 1967 in the United States, the lives of eight potential victims were saved (Ehrlich 1975: 398).

Ehrlich's research was the object of sustained and rather persuasive criticism. Most of the critics—including Daniel Glaser, Lawrence Klein and colleagues, Richard Lempert, and Hans Zeisel (1905–1992)—focused on the particular statistical techniques used. Today, despite Ehrlich's research, few social scientists believe that the death penalty has distinct and discernible deterrent effects. One must find its justification elsewhere.

Retribution

The most powerful alternative justification suggests that even if the death penalty does not deter, one may justify it on retributive grounds or as a way of expressing a society's legitimate moral condemnation of heinous criminality. Researchers such as Neil Vidmar and Phoebe Ellsworth tried to determine whether this retributive attitude and the death penalty that it supports are compatible with contemporary standards of decency by conducting research on public opinion.

Does the American public support the death penalty? Social scientists have repeatedly documented strong support for capital punishment, which is highly correlated with retributive attitudes. This suggests, as Ellsworth and Samuel Gross argue, that it is a particular view of justice, rather than the death penalty's utility, that helps explain its persistence in the United States. However, research has also demonstrated the malleability of this public embrace of capital punishment and its retributive justification.

Austin Sarat and Neil Vidmar took up a hypothesis first advanced by Justice Thurgood Marshall in *Furman v. Georgia* (408 U.S. 238, 1972), which found that the more people know about the death penalty, about how it works, and about the evidence on deterrence, the less they support it. William Bowers, moreover, discovered that public support for capital punishment decreased dramatically when the investigator presented survey respondents with alternative forms of punishment and asked them to choose which they preferred. He found that people tend to accept the death penalty because they believe that currently available alternatives are insufficiently harsh, but when asked whether they prefer the death penalty or life without parole combined with a restitution requirement, “expressed death penalty support plummeted” (Bowers 1993: 163).

Fair Process and Nondiscrimination

The final traditional interest of social scientists raises questions about the compatibility of capital punishment with democratic values. Does the state administer capital punishment fairly and, more particularly, in a racially nondiscriminatory manner? Before *Furman*, research tended to focus on the race of the offender. Social scientists documented in rape and homicide cases, for example, that between 1930 and 1967 almost 50 percent of those executed for murder were black. However, this early research was unable to disentangle the impact of race from other legitimate factors on capital sentencing. Merely showing that courts were more likely to impose the death penalty on black defendants, by itself, could not establish that that difference was the result of racial discrimination.

In the mid-1980s, David Baldus and colleagues undertook research in Georgia designed to remedy this defect. Using sophisticated multiple regression techniques and a large database, they set out to isolate the effect of race on capital sentencing. First,

they found no evidence of discrimination against black defendants because of their race in the period after *Furman*. On the other hand, they found strong effects for the victim's race. Taking over two hundred variables into account, Baldus concluded that someone who killed a white victim was 4.3 times more likely to receive the death penalty than the killer of a black victim was. Juries, or so it seemed, even after the sustained efforts of the Supreme Court to prevent arbitrariness or racial discrimination in capital sentencing, still valued the lives of whites more highly than the lives of African Americans and were, as a result, more likely to sentence some killers to die on the basis of illegitimate considerations of race.

The Baldus study was the high point of policyrelevant, empirically rigorous social science research on capital punishment. It spoke directly to issues that the U.S. Supreme Court had put at the heart of its death penalty jurisprudence, and it did so using the best social science methods. However, it did not persuade the [p. 390 ↓] Court. While the Court accepted the validity of the Baldus study, it concluded in *McCleskey v. Kemp* (481 U.S. 279, 1987) that such statistical evidence could not prove discrimination in any *individual* case. This rejection stunned those who believed that social science could help shape policy in the area of capital sentencing.

Recent Research

Following *McCleskey*, the Supreme Court became more conservative, unreservedly embracing the death penalty, at first even for the mentally retarded (until 2002) and juveniles (until 2005). For most defendants, the Court rejected what in earlier years seemed to be persuasive challenges rooted in social science research. As a result, scholars hoping to influence the Supreme Court's death penalty decisions have had to chart new courses. They “have responded with research that is more deeply critical, more theoretically informed, and more broadly concerned about the culture and politics of the death penalty” (Munger 1993: 6).

Some of this new research has focused on analyzing the processing of capital cases, with special attention to the issue of how and why actors in the death penalty process behave as they do. Among the most important of these actors are jurors, ordinary citizens who must decide not only questions of guilt or innocence, but also whether

those whom they find guilty of murder should be sentenced to life in prison or should be executed. Juror research has examined how they process the information provided to them, how they understand their responsibilities in capital cases, how they function in an atmosphere surrounded by the portrayal of violence, and how they balance their folk knowledge with the legal requirements of capital cases.

In addition, Austin Sarat has conducted research on lawyers and the lawyering process in capital cases, with special attention to the use of stories as persuasive devices and to other narrative strategies. He has also examined capital trials as events in which law attempts to put violence into discourse, and to differentiate state violence from the extralegal violence that it opposes.

David Garland's argument about the cultural impact of punishment has influenced other scholars: Punishment, Garland contends, "helps shape the overarching culture and contribute to the generation and regeneration of its terms" (1991: 193). It is a set of signifying practices with pedagogical effect that "teaches, clarifies, dramatizes and authoritatively enacts some of the most basic moral-political categories and distinctions which help shape our symbolic universe" (1991:195). Punishment teaches us how to think about categories like intention, responsibility, and injury, and it models the socially appropriate ways of responding to injury. What is true of punishment in general is particularly true for the death penalty.

Punishment and Culture

Punishment, in general, and the death penalty in particular, lives in a culture as a set of images, as a marvelous spectacle of condemnation. The semiotics of punishment is all around us, not just in the prison's architecture or the judge's speech as she sends someone to the penal colony, but in both high and popular cultural iconography, in novels, television, and film. Punishment has traditionally been one of the great subjects of cultural production, suggesting the powerful allure of the fall and our prospects for redemption. Émile Durkheim (1858–1917) and George Mead (1863–1931), among others, remind us that it is through practices of punishment that cultural boundaries are drawn, that solidarity is created through acts of marking difference between self and other, through disidentification as much as imagined connection.

The public execution has been historically one of the great spectacles of power and instruction in the mysteries of responsibility and retribution. The 2006 state hanging of Saddam Hussein reminds us that this still may be true. Making execution private has not ended the pedagogy of the scaffold, which the state now redirects into the medium of the capital trial. Execution itself, the moment of what Sarat called “state killing,” is still in the United States and a few other nations an occasion for rich symbolization, for the production of public images of evil or of an unruly freedom whose only containment is in a state-imposed death.

The cultural politics of state killing has focused on shoring up distinctions of status and distinguishing particular ways of life from others. It is not surprising today that in the United States the death penalty marks an important fault line in contemporary culture wars.

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To be for capital punishment is to be a defender of traditional morality against rampant permissiveness; it is to be a defender of the rights of the innocent over the rights of the guilty; it is to be a defender of state power against its anarchic critics. To oppose it is to carry the burden of explaining why the state should not kill killers, producing a new theory of responsibility and responsible punishment, humanizing inhuman deeds.

Yet, all of this may miss the deepest cultural significance of state killing. As Jean Baudrillard suggests, concerning capital punishment: “the thought of the right (hysterical reaction) and the thought of the left (rational humanism) are both equally removed from the symbolic configuration where crime, madness and death are modalities of exchange” (1993: 169). In this symbolic configuration, capital punishment research is essential if we are to understand not only what execution does for the societies in which it continues, but also what it does to them and to democratic values.

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See also

- [Analysis of Variance](#)

- Cause Lawyers
- Crime, Economics of
- Databases
- Durkheim, Émile
- Human Rights, International
- Juries
- Morality and Law
- Nongovernmental Organizations
- Public Opinion and Legal Consciousness
- Punishment and Sentencing Alternatives
- Race and Ethnicity
- Semiotics
- Statistical Inference
- Zeisel, Hans

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