

CAPITAL PUNISHMENT IN THE UNITED STATES

AN ANALYSIS OF ITS WIDESPREAD SUPPORT

BY Laura Hart

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## INTRODUCTION

Capital punishment in the United States has existed ever since colonists carried over the English tradition to America in the seventeenth and eighteenth centuries.<sup>1</sup> The methods by which executions are carried out have evolved from hanging, burning, and shooting to the electric chair, to what finally seems to be the most humane in lethal injection. This tradition, though it has evolved over the years to be applicable to fewer crimes, has maintained widespread support in the United States as an absolute principle of justice. The years between 1967 and 1976 marked a unique sentiment among Americans regarding the death penalty: no executions were carried out by neither the state nor the federal government, and the polls indicated that support for the institution was as low as 42%.<sup>2</sup> Indeed, capital punishment was actually declared unconstitutional in *Furman v. Georgia* because of arbitrariness and discrimination.<sup>3</sup> With the exception of that time period, however, executions have been performed consistently in this country with the overwhelming consent of its people. Even during that phase, many states passed new death penalty statutes attempting to get around the arbitrary and discriminatory nature of capital punishment. Presently, most polls place public support for capital punishment in the US at approximately 65%.

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<sup>1</sup> Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press: Cambridge 2002. p. 5.

<sup>2</sup> Galliher, John F., Larry W. Koch, David Patrick Keys, Teresa J. Guess. *America Without the Death Penalty: States Leading the Way*. Northeastern University Press: Boston 2002. p. 6.

<sup>3</sup> Bright, Stephen N. "Discrimination, Death, and Denial: Race and the Death Penalty." *Machinery of Death: The Reality of America's Death Penalty Regime*. Eds. David R. Row and Mark Dow. New York: Routledge. 2002. p. 46.

The tremendous support that the majority of Americans provide the institution of capital punishment is upheld in spite of a great deal of evidence that demonstrates several extremely serious problems that are inherent in the system. Americans should withdraw their support. The first chapter will explore five principal arguments against capital punishment in the United States. The first drawback to employing the death penalty as a punitive response to crime is that it goes against international norms and laws. Second, death sentences are handed down disproportionately to racial minorities for crimes committed against white victims, and to the indigent. Third, the possibility of the ultimate sentence does not deter criminal activity, making it a symbol of vengeance rather than a tool with which to improve safety of the general public. The next defect of the current system is that death sentences are distributed arbitrarily, largely depending on geographic region, individual prosecutor, and the current political climate rather than the severity of the crime. The final and most appalling flaw in the United States' implementation of the death penalty is that it sentences innocent people to die. Thus, the death penalty should be abolished from the United States' repertoire of punishments for any and all criminal offenses.

Though capital punishment is largely supported by many Americans, there are many movements and campaigns that recognize the problems mentioned above, and fight for its abolition. Chapter two will investigate several prominent movements working against the death penalty. Tens of thousands of Americans belong to and support grassroots movements like the Campaign to End the Death Penalty, Amnesty International, American Civil Liberties Union, and the National Coalition to End the

Death Penalty only to name a few. Other organizations working to end the death penalty have a more spiritual focus, including almost every religion that Americans represent. The last primary movement to end the death penalty is inconsistent, but is the most central to abolition actually materializing into United States judicial policy: courts, and the Supreme Court in particular. This chapter will track the various Supreme Court decisions that had and continue to have an impact on the implementation of the death penalty in the United States.

With genuine respect to all of these forms of abolitionist activity, the fact is that they ultimately have not been effective: the United States executes prisoners every year. The next chapter will discuss some of the possible reasons why these movements have not realized their goal. Explanations include broad structural obstacles such as ideological principles enforced by various powerful pedagogical institutions, and also specific Supreme Court justices who wish to retain capital punishment. Crucial to the effectiveness of various movements is public opinion. Therefore, popular culture and media have integral roles to play in either preserving or rejecting the status quo regarding capital punishment. The way justice is perceived and the value placed on human life must change at a fundamental level in order to abolish the death penalty. This change should be reflected in the general public and in their leaders. By raising awareness of the inhumanity perpetuated by executing prisoners, abolition becomes an infinitely more feasible outcome than the current environment of ignorance and denial. In short, this

paper will outline not only why the death penalty is ineffective public policy, but will also discuss how to abolish it in the United States.

## Chapter One

### A Flawed System

The United States' system of justice is not perfect—this is not a widely disputed statement. However, when its imperfection is applied to deciding whether a human being lives or dies, its flaws are magnified to a point at which they do not outweigh the benefits of the system's implementation. Therefore, the problems that this chapter will address are specific to the death penalty in the nature and severity of their consequences.

The overwhelming majority of evidence suggests that capital punishment is not an effective deterrent to crime,<sup>4</sup> making the only purpose for executing a criminal punitive vengeance and an abstract conception of justice. A consistent, significant difference in homicide rates has not been found between states that employ the death penalty and those that do not.<sup>5</sup> In fact, “comparisons show that murder rates are higher in death penalty states than in non-death penalty states,” and are the absolute highest in Texas, Georgia, and Florida, the three states leading the rate of executions.<sup>6</sup> Similarly, when capital punishments were most common and severe in England, crime thrived.<sup>7</sup> The probability that the death penalty actually increases the crime rate is significantly higher than the likelihood of its serving as a deterrent. By sanctioning any murder, the state is confirming that violence, more specifically, that the destruction of a life, is an acceptable solution to wrongs committed. While this is not means to cite causation, the positive correlation between crime rates and preserving the death penalty is instructive in

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<sup>4</sup> Jasper, Margaret. *The Law of Capital Punishment*. Oceana Publications, Inc.: Dobbs Ferry, NY 1998. p. 21

<sup>5</sup> Costanzo, Mark. *Just Revenge*. New York: St. Martin's Press, 1997. p. 98.

<sup>6</sup> Notis, Christine. “The Death Penalty Does Not Deter Crime.” *The Death Penalty: Opposing Viewpoints*. Ed. Mary E. Williams. San Diego: Greenhaven Press, Inc. 2002. p. 121-122.

<sup>7</sup> Forer, Lois. *A Rage to Punish*. New York: W.W. Norton & Company, 1994. p. 102.

considering effective methods of reducing crime rates, especially murder rates. And states that maintain the death penalty have the highest murder rates.

So what? Is deterrence actually the reason for Americans' support of capital punishment? Its support appears to be more a result of a perceived symbolic value rather than as an appropriate penal method. In a Harris Poll in July 2000, 44% of Americans believed that capital punishment deters others from committing murder<sup>8</sup>. Therefore, at least 20% of supporters of capital punishment support it for reasons other than the utilitarian creed of losing fewer lives. But, would the 44% who believe in its effect as a deterrent remain supportive of the death penalty were the deterrent factor stripped away? There have been studies that indicate an insignificant effect on people's support for the death penalty when they are informed of its uselessness as a deterrent. Rather, this information only polarizes existing opinions. Though revenge is not explicitly valued, and it may even have negative connotations, it has somehow escaped serious criticism from American people regarding the death penalty. Lois Forer offers a useful explanation of this phenomenon: "Revenge, a sentiment formerly denounced as primitive and ignoble, has achieved new respectability under the euphemism 'retribution.'"<sup>9</sup> Thus, the injustices rampant throughout the institutionalization of capital punishment are seen in terms of retribution, implying anything less than the ultimate punishment is disregarding the victim's life. Opposing death sentences is in no way suggesting that the

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<sup>8</sup> Taylor, Humphrey. "Support for Death Penalty Down Sharply Since Last Year, But Still 64% to 25% in Favor." Available from: [www.harrisinteractive.com/harris\\_poll/printfriendly/index.asp](http://www.harrisinteractive.com/harris_poll/printfriendly/index.asp). Accessed 5/12/03

<sup>9</sup> Forer p. 101.

crimes committed are not heinous or devastating to the victims' families, but rather it is recognizing the sanctity of all life, especially the victim's.

***\*Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die. -Justice Harry Blackmun, 1994\****

One of the most primary flaws of capital punishment in the US is its propensity to be inflicted upon racial minorities and upon those convicted of murdering whites. It is administered disproportionately to racial minorities. A comprehensive study of the racial makeup of death row inmates concluded, "Black defendants were nearly three times as likely to receive a death sentence than were non-black defendants."<sup>10</sup> Retentionists argue that this is merely an effect of the black population committing more crimes as a whole, and therefore deserve to receive a proportionate percentage of death sentences.<sup>11</sup>

However, the aforementioned study took into account aggravating circumstances, levels of culpability, and mitigating factors, and recalculated the ratio, rendering this argument moot. More significant than the black defendant's disproportionate chance of receiving the death penalty is the importance of the race of the victim of the crime in question. In a set of 28 studies performed by the U.S. General Accounting Office, 82% of them found that the race of the victim "influence[d] the likelihood of being charged with capital murder or receiving the death penalty, i.e. those who murdered whites were found more

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<sup>10</sup> Costanzo, Mark. "The Death Penalty is Discriminatory." *The Death Penalty: Opposing Viewpoints*. Ed. Mary E. Williams. San Diego: Greenhaven Press, Inc. 2002 p. 173-178.

<sup>11</sup> Sharp, Dudley. "The Death Penalty is not Discriminatory." *The Death Penalty: Opposing Viewpoints*. Ed. Mary E. Williams. San Diego: Greenhaven Press, Inc. 2002. p. 179-187.

likely to be sentenced to death than those who murdered blacks.”<sup>12</sup> The intersection of these two disparities is devastating to the United States’ objective of treating all humans equally. According to the NAACP’s Legal Defense Statistics, 21% of executions have been of blacks that murder whites while just over 1% have involved executing a white man for the murder of a black victim.<sup>13</sup> In fact, Texas, the country’s execution leader, just executed its first white man convicted of killing a black victim since 1854.<sup>14</sup>

Additionally, the race of most prosecutors and juries are not representative of the defendants being tried. In fact, 98% of prosecutors responsible for death penalty decisions are white.<sup>15</sup> This, compounded with the vague guidelines as to which crimes are punishable by death, create a system that undoubtedly involves the personal racial considerations of prosecutors as well as those of the juries selected by those prosecutors to determine who deserves to live and die, and the value of the life which has already been taken. To admit that race plays a part in the United States’ death penalty institution should indicate that the system is irredeemably unjust and should be abolished.

Another issue that is significant to the use of state sanctioned killing but is commonly ignored by retentionists is the significance of the history of the United States’ treatment of African Americans. The disproportional implementation of the death

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<sup>12</sup> U.S. General Accounting Office. “Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities.” *The Death Penalty in America*. Ed. Bedau, Hugo Adam. Oxford University Press: New York 1997. p. 269.

<sup>13</sup> GRACZYK, Michael. “Hayes first white executed in Texas for killing a black.” *The Associated Press State and Local Wire*. 9/14/2003.

<sup>14</sup> Ibid

<sup>15</sup> Death Penalty Information Center. Online. Internet, 1/4/04. Available URL: <http://www.deathpenaltyinfo.org/article.php?scid=45&did=539#Study II>.

penalty to blacks is reminiscent of the history of lynching in the South. For example, crimes were punishable by varying degrees in the 19<sup>th</sup> century according to the race of both the criminal and the victim. The rape of a white woman by a black man was punishable by death.<sup>16</sup> On the other hand, the rape of a black woman by a white man was punishable by a monetary fine (if at all).<sup>17</sup> In the 1920s, when the viciousness of lynch mobs became impossible to ignore, and Congress began rumbling about anti-lynching statutes, white men in the south “replaced lynching with a more humane method of race control—the judgment and imposition of capital sentences by all-white juries.”<sup>18</sup> Georgia, as a case in point, was at the forefront of racially disproportionate executions in the early-mid 20<sup>th</sup> century, executing 337 black people and 75 white people between 1924 and 1972 (when it was declared unconstitutional). The United States cannot reverse its past atrocities, but they must be acknowledged and taken into account, particularly when studying such a grave issue as the termination of a life.

The indigent also have a serious disadvantage in the United States judicial system as they rarely have access to adequate representation from an attorney. This shortcoming is particularly loathsome when it comes to capital cases: not only because the consequences of an incompetent defense are much more severe, but also because the cases are much more complex, and require a tremendous amount of time and commitment, which is seldom available to underpaid and overworked public defenders. Accounts of public defenders assigned to capital cases sleeping through trials, ignoring

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<sup>16</sup> Bright, 46.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

crucial evidence, and neglecting the entire jury selection process are profuse.<sup>19</sup> This is no small problem being that a full “ninety percent of criminal defendants in this country who are charged with a capital crime are indigent when arrested.”<sup>20</sup>

For those that do not accept the argument that capital punishment is racist, it is inconsistent in other ways. The death penalty in the U.S. is geographically arbitrary and inconsistent. A person’s likelihood of receiving the death penalty is not only highly dependent on race and socioeconomic status, but also on the state or county where that person is tried and convicted. Death penalty sentences are much more common in the South, and states such as Texas and California usually employ it much more than others. There have been periods in which more executions took place in the South than in all other regions combined.<sup>21</sup> Twelve states have abolished capital punishment while others use it profusely. Hawaii’s modern colonial history and its complex racial makeup influenced its decision to abolish the death penalty.<sup>22</sup> Nonwhite Hawaiian laborers were constantly threatened with more severe punishments for minor crimes, and the disparate distribution of wealth and power on sugar plantations created a situation where the death penalty was not scrutinized because it was only applied to nonwhites and nonwhites did not have any political power. The increased activism of native Hawaiians as well as

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<sup>19</sup> Dwyer, Jim, Peter Neufeld, and Barry Scheck. *Actual Innocence*. Doubleday: New York 2000. p. 188-189.

<sup>20</sup> American Civil Liberties Union. “ACLU Execution Watch.” Online. Internet, 5/12/03 Available URL: <http://archive.aclu.org/executionwatch.html>

<sup>21</sup> Zimring and Hawkins

<sup>22</sup> Galliher, 167.

Asian immigrants led to the abolition of capital punishment in 1957.<sup>23</sup> Hawaii's relationship with the death penalty is an indicator that the dominant race and class have a frightening degree of power over who receives death sentences. This relationship maintains its significance when applied to the United States as a whole.

Which crimes are punishable by death can also be highly variable within an individual state. For example, a study by *Newsday* examining the use of the death penalty in New York concluded that, "whether death is pursued in any particular case in New York turns out not to be the seriousness of the crime or the culpability of the defendant but rather the county in which the crime occurred."<sup>24</sup>

Differences in prosecutors and the current political climate also undoubtedly affect the likelihood of death sentences. This is a problem inherent in the death penalty in the US because being opposed to capital punishment has become equated with being "soft on crime", and is ultimately a political liability. Therefore, prosecutors looking to advance politically, (especially with the current leadership in place), essentially have an interest in being responsible for as many death sentences as possible. As the governor of Texas, President Bush presided over an astounding 150 executions in five years.<sup>25</sup> Bush has continued his zeal for executions as president through his appointments and policies. For example, "Attorney General John Ashcroft, heretofore an ardent advocate of deferring to local control over federal edict, has now countermanded his own U.S.

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<sup>23</sup> Galliher, 163.

<sup>24</sup> Dunn, Christopher. "The Death Penalty Skips Across County Lines." *Newsday*. 2/25/2003.

<sup>25</sup> Galliher, p.4

attorneys' recommendations for life imprisonment instead of death at least 28 times"<sup>26</sup> [in under three years]. Attorney General Ashcroft claims these actions are an attempt to make the application of the death penalty more consistent. While he may be evening out its distribution geographically, the demographic makeup of the defendants whose sentences were changed was 25 Black, Latino and Asian defendants, and two white defendants. Regardless of how one looks at Ashcroft's choices, it is clear that there is a heightened pressure for prosecutors to seek the death penalty in more cases if they desire to advance their careers, giving them an incentive to ignore more significant yet subtle guidelines for mitigating factors and levels of culpability.

There is also pressure for elected officials to support the death penalty, or at least to not voice or act on any opposition he or she may have because of the negative connotations that have unfairly been associated with opposition to capital punishment. This became brutally evident to Michael Dukakis in the 1988 presidential election, as his ratings dropped significantly almost immediately after he announced his opposition to the death penalty.<sup>27</sup> Conversely, during the 2000 presidential campaigns, Bush's hastiness to approve and encourage a record-breaking number of executions was never a major issue in the debates. In the current 2004 presidential election, the two most outspoken opponents of capital punishment have been two serious long shots, Carole Mosely Braun and Dennis Kucinich, further supporting the notion that opposing the death penalty is not a healthy political move. Therefore, the application of capital punishment is directly correlated with the political ambitions of individual judges and prosecutors, and not

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<sup>26</sup> Kroll, Michael. "Demanding the Death Penalty." *Pacific News Service*. 04/9/2003.

<sup>27</sup> Ibid

necessarily with the severity of the crime or the strength of the evidence against the accused.

The problems outlined thus far are important for reasons apparent in their explanations, (i.e. capital punishment in the US is racist, classist, arbitrary, and ineffective). These injustices are contrary to the principles with which the vast majority of Americans associate themselves and their country. Why, then, is there such overwhelming support for this institution, and what can be done to change this?

Abolition of capital punishment in other countries has often gone against public opinion, but that opinion has gradually changed as the public sees that the threat of death has not provided any useful purpose. In the European nations that no longer employ the death penalty, the trend for public opinion is that “as time passes after abolition and increases in violent crime do not materialize, the felt necessity of the capital sanction diminished gradually.”<sup>28</sup>

Support of capital punishment decreases greatly when individuals being polled are asked about seeing the death penalty actually carried out by being either on the jury or actually “flipping the switch.” Violence in many forms, and certainly in capital punishment, has been so sanitized and such distance has been placed between it and the majority of U.S. citizens, that it has become an abstraction, rather than an actual life being taken. Methods of execution have been repeatedly revised to make executions more palatable to society. For now, lethal injection has been settled upon as the most humane way to terminate a life, but just as hanging and the electric chair produced

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<sup>28</sup> Zimring p.12

concerns about the amount of pain the executed person is in, now the employment of lethal injection is being scrutinized as well. Recent exploration of the combination of substances used in lethal injections has provided the evidence for substantial doubts as to how painless this form of execution is. One Yale Professor displayed disbelief to hear of the drugs used in lethal injections. “It strikes me that it makes no sense to use a muscle relaxant in executing people,” he said. “Complete muscle paralysis does not mean loss of pain sensation.”<sup>29</sup> Thus, as with laser-guided bombs and wars fought on foreign soil, lethal injections in remote prisons in the middle of the night spare Americans, once again, the gruesome reality of the pain inflicted by the violence with which they comply.

This phenomenon is further evidence as to why capital punishment should not even be a possibility. Opinions about the death penalty are not always informed, and may simply be a product of living in a country that treats it as doctrine without questioning its morality. Although more research is needed in terms of the public’s knowledge (or ignorance as the case may be) when it comes to capital punishment, preliminary studies have raised “the strong possibility that people are largely ignorant about capital punishment and support it out of tradition, questionable assumptions, or conformity with the statements of public leaders.”<sup>30</sup> Also, research has shown that “some people may *favor* the idea of capital punishment either without realizing or without accepting its implications.”<sup>31</sup>

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<sup>29</sup> Liptak, Adam. “Critics Say Execution Drug May Hide Suffering.” *The New York Times*. 10/07/03.

<sup>30</sup> Vidmar, Neil and Phoebe Ellsworth. “Public Opinion and the Death Penalty.” *Capital Punishment in the United States*. Eds. Hugo Adam Bedau and Chester M. Pierce. New York: AMS Press. 1975, p. 138.

<sup>31</sup> *Ibid*

Though the United States adopted this policy from its Western European fathers, it is currently the only Western industrialized nation that still practices state sanctioned executions.<sup>32</sup> However, as some proponents of the death penalty point out, the United States differs from European nations on other issues such as health care, gun control, and education. The United States does not automatically adopt all popular Western European policy. Why, then, should the United States scrutinize its implementation of capital punishment simply because all of Europe has identified it as a “denial of human dignity?”<sup>33</sup> It is significant that the U.S. ignores international laws and norms regarding the death penalty for many reasons. Not only does it intensify the impression abroad that the United States disregards international laws and opinions, but more importantly the correlations associated with governments that do continue to practice capital punishment are reason alone to seriously rethink the morality and legitimacy of killing even the most heinous criminals. Human rights levels are strongly negatively correlated to the retention of the death penalty.<sup>34</sup> This is further supported by the United Nations Commission on Human Rights, which recommended a moratorium on the death penalty in nations that currently maintain it.<sup>35</sup> The United Nations has repeatedly expressed its “conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the

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<sup>32</sup> Zimring, Franklin E. and Gordon Hawkins. *Capital Punishment and the American Agenda*. New York: Cambridge UP, 1986. p. 3.

<sup>33</sup> European Union. *EU Law and Policy Overview*. “The Common Basis for Abolition: Values, Principles and Criminal Policy.” Available from: <http://www.eurunion.org/legislat/DeathPenalty/eumemorandum.htm#4>. Accessed 1/4/04.

<sup>34</sup> American Civil Liberties Union. “ACLU Execution Watch.” Online. Internet, 5/12/03 Available URL: <http://archive.aclu.org/executionwatch.html>

<sup>35</sup> Galliher, 6.

progressive development of human rights.”<sup>36</sup> Though the United States has relatively high standards on most scales of human rights, there is evidence that the implementation of the death penalty severely endangers those standards. Correlations alone are not necessarily grounds for abolition, but in conjunction with the other flaws that are inherent to the United States’ capital punishment structure, there is enough doubt to incite abolition.

In short, the death penalty is fatally flawed in that it can never be both consistent and fair in its implementation. It is not a deterrent, it is implemented in a racist manner, it is geographically arbitrary, and it violates international law. Therefore, capital punishment is a serious offense to all Americans that value the fundamental right to life, and it should be abolished from the American system of justice.

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<sup>36</sup> United Nations High Commissioner for Human Rights. *Commission on Human Rights resolution 2001/68, The Question of the Death Penalty*. Available from: [www.eurunion.org/legislat/DeathPenalty/UNCHRRes2001\\_68.htm](http://www.eurunion.org/legislat/DeathPenalty/UNCHRRes2001_68.htm). Accessed 1/4/04.

## Chapter Two

### Pressures to Abolish the Death Penalty

The majority of Americans generally accept the United States' system of capital punishment despite its numerous undesirable characteristics. However, there are many movements both within and outside of the United States working incessantly to abolish the practice of executing people in this country. The previous chapter demonstrated major negative aspects of going against international opinion and law. The first groups of activists discussed in this chapter are some of these international bodies such as the United Nations, the European Union, and Amnesty International.

As the previous chapter indicated, there are severe consequences to the United States' obstinate attitude toward the United Nations' policies and mandates. The UN has made clear its disdain for the death penalty on the grounds that "abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights."<sup>37</sup> The UN has reprimanded the United States on several occasions for blatantly ignoring international law. Recently, the most common situation in which the UN becomes involved is when citizens of other countries are sentenced to death in the United States. The UN's judicial body, the International Court of Justice, intervened when Mexico appealed that 52 of its citizens received death sentences without being informed that they had the right to seek help from the Mexican consulate, deeming their trials unfair.<sup>38</sup> The United States has ignored the court's mandate to postpone the executions of the Mexican men until it comes to its decision refusing to hear any appeals

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<sup>37</sup> UN Commission on Human Rights. Resolution 2003/67.

<sup>38</sup> Sterling, Toby. "International court to hear Mexico-United States death penalty suit." Associated Press Worldstream. 12/14/03.

based on this mandate.<sup>39</sup> In fact, the United States has already executed a German man, Walter LaGrand, who was denied the information regarding his right to German assistance in his trial. The UN had ruled that the U.S. had violated international law, but the U.S. was defiant, and executed LaGrand in 2001 despite the UN's injunction.<sup>40</sup> Ultimately, the UN's criticisms of capital punishment have not been effectively persuasive in changing the United States' policy of the death penalty.

The European Union is at the forefront of the trend toward abolition. It has made the abolition of the death penalty a condition of membership, and urges outside bodies that continue executions to abolish the practice.<sup>41</sup> The European Union is clearly an important body of nations with whom it is in the United States' best interest to comply and cooperate. This compliance is deficient in terms of the death penalty. The EU states clearly that it is, "is deeply concerned about the increasing number of executions in the United States of America (USA)."<sup>42</sup> Though US Secretary of State, Colin Powell, consistently promotes the importance of the EU and the US relations, the death penalty continues to be a source of tension between the two bodies. Powell said, "a strong united Europe is good, indeed essential, for the United States, for Europe, and for the world,"<sup>43</sup> thus the EU has an influential voice in United States' policies, and it has used this influence regarding the death penalty. The EU has sent over a hundred letters on behalf

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> European Union. *EU Law and Policy Overview*. Available from <http://www.eurunion.org/legislat/DeathPenalty/deathpenhome.htm>. Accessed 2/7/04.

<sup>42</sup> Ibid

<sup>43</sup> European Union in Brief. *A Major Partner for the United States*. Available from <http://www.eurunion.org/profile/brief.htm#three>. Accessed 2/7/04.

of individual recipients of the death penalty in the United States since 1998, and produces articles and official statements on a regular basis concerning the US's capital punishment policy.<sup>44</sup> The EU's efforts have yielded limited but nonetheless real results. The most explicit evidence of success in the EU's campaign to abolish the death penalty in the US was in 2003, when a letter that the EU wrote was cited as a primary reason that the Oklahoma Board of Pardons and Parole voted unanimously to convert the death sentence of Hung Tranh Le to life in prison.<sup>45</sup> This recent victory for abolitionists is extremely encouraging and it renews the significance of international law and opinion, though it is narrow in its scope being limited primarily to Western Europe.

The United States' non-cooperation with the UN and the EU is clearly detrimental, but there are other groups that work outside of the scope of international law, and have membership bases which transcend national policies on the death penalty. Amnesty International is an extremely influential and far reaching organization on many human rights issues, and the death penalty is one of its largest campaigns. AI provides statistics and facts about the injustices perpetuated by the death penalty worldwide. The United States is ranked number three in committing the most executions each year globally.<sup>46</sup> Amnesty International has a membership upwards of 1.5 million people, and the organization appeals to these members to fight to end the death penalty.<sup>47</sup> Amnesty

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<sup>44</sup> Ibid

<sup>45</sup> European Union. Available from <http://www.eurunion.org/legislat/DeathPenalty/EUActionsUSCases2003.htm>. Accessed 2/7/04.

<sup>46</sup> Amnesty International. *The Death Penalty*. Available from <http://web.amnesty.org/pages/deathpenalty-index-eng>. Accessed 2/3/04.

<sup>47</sup> Ibid.

has backed many countries' move toward abolition and it has been quite successful—an average of three countries per year have abolished the death penalty in the last decade.<sup>48</sup> Amnesty examines racial and socioeconomic factors as they are pertinent to the American capital punishment institution, and rallies campaigns to halt the executions of individuals on death row in the United States. Most importantly, it seems, Amnesty provides thoughtful insights as to why abolition is necessary to maintain a high level of human rights. Amnesty argues that the death penalty is on its way out and provides statistics that support this assertion. For example, in the last decade an average of three countries per year has abolished the death penalty, and many more have not actually executed anyone in years.<sup>49</sup> Though it is difficult to say how successful AI has been in slowing down the rate of executions in the United States it is helpful to have an organization reassure its membership that the worldwide trend of the death penalty overwhelmingly leans toward abolition. While AI has achieved large victories worldwide, it still has not been able to puncture the United States' position on the death penalty.

These three entities are, in reality, likely to be the most influential because of the United States' and most of the world's Western bias. The UN, Amnesty International, and the EU overlap largely in terms of membership and philosophy. All three place a premium on human dignity, and are essentially based on the ideas behind Universal

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<sup>48</sup> Amnesty International. "The death penalty: List of abolitionist and retentionist countries (1 February 2004)." Available from <http://web.amnesty.org/library/Index/ENGACT500052004?open&of=ENG-392>. Accessed 3/30/04.

<sup>49</sup> Ibid.

Declaration of Human Rights of 1948. Perhaps this conventional way of thinking needs to be scrutinized in order to break through to the next level of abolition. Empty threats and scolding of the United States is not an effective way to actually cause action. If international bodies are going to have a role in the United States' abolition of the death penalty, more severe consequences must arise at an international level.

While most of the international community is pushing for the United States to abolish capital punishment, there are many Americans movements working from within to end the practice as well. Grassroots movements across the nation are building in strength and numbers due to the increasing attention given to the death penalty from the media as well as the powerful technology of the internet. History has proved that one of the most effective tools to changing public policy in the United States is public rage and discontent. The movements work toward this goal of raising awareness and causing action in everyday citizens. This awareness is visible in the members of the movements, yet there is still a great deal of work to be done. There are numerous movements with varying objectives and motives; however, I have chosen only three which appear to have significant influence, as well as the largest memberships. The organizations that I have chosen to examine are The Campaign to End the Death Penalty, Murder Victims Families for Reconciliation, and The Death Penalty Information Center.

The first establishment is titled **The Campaign to End the Death Penalty (CEDP)**. Founded in 2000, this is a fairly new organization. However, CEDP is truly

nationwide, and it has over 800 members.<sup>50</sup> CEDP has 11 chapters across the country ranging from California to Texas to Washington, DC. The organization holds “meetings and forums to help educate the public and expose the truth about the racism and unfairness of the death penalty.”<sup>51</sup> The establishment also organizes and promotes rallies and demonstrations to apply pressure to elected officials and other individuals contributing to the system that condones the death penalty.

CEDP enjoyed recent success when the governor of Illinois, George Ryan, commuted all 167 death sentences in Illinois to life imprisonment.<sup>52</sup> This was an important development for several reasons which will be discussed further in the following section. CEDP was influential in the Governor’s controversial and rather surprising final decision to overturn all of death row’s sentences. CEDP was one of many influences, but its participation in hearings and meetings throughout the process was notable in the outcome. They organized meetings between Governor Ryan and death row inmates’ family members to attach human faces to the other side of the victims of capital crimes.<sup>53</sup> Whether guilty or innocent, killing a death row inmate creates an entirely new set of surviving family members who are forced to deal with the pain of the premature loss of a loved one. Though many of CEDP’s plights to decrease the use of

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<sup>50</sup> Campaign to End the Death Penalty. Available from [http://groups.yahoo.com/group/CEDP\\_National\\_Office/](http://groups.yahoo.com/group/CEDP_National_Office/). Accessed 2/8/04.

<sup>51</sup> Campaign to End the Death Penalty. Available from <http://www.nodeathpenalty.org/about.html>. Accessed 2/8/04.

<sup>52</sup> Elejalde-Ruiz, Alexia. “ILLINOIS GOVERNOR EMPTIES DEATH ROW LABELS STATE'S SYSTEM A 'CATASTROPHIC FAILURE.’” *Boston Globe*. 1/12/2003.

<sup>53</sup> Campaign to End the Death Penalty. *Recent Victories in Chicago*. Available from <http://www.nodeathpenalty.org/about.html>. Accessed 2/9/04.

capital punishment go unanswered, they have contributed to important victories for the movement as a whole.

An older and perhaps more philosophical organization working for abolition is Murder Victims Families for Reconciliation. Founded in 1976 by a woman who had lost her mother-in-law to a brutal murder, MVFR is committed to ending the cycle of violence in all cases<sup>54</sup>. This group of individuals probably has the most legitimacy in making an argument against the death penalty. It is made up of murder victims' family members, so they cannot be accused of disregarding the pain of the original victims' families. MVFR's 5000 person membership dispels the common conception that all murder victims' families are in favor of execution.<sup>55</sup> The name Murder Victims' Families for Reconciliation is a result of the desire to have a positive outlook, rather than focusing on doing away with something. They are working for reconciliation, and the only way victims' families will be able to reconcile the tremendous loss they have endured is if executions are halted and dignity is returned to all humans involved. They argue that "revenge is not the answer. The answer lies in reducing violence, not causing more death."<sup>56</sup> Through active lobbying, MVFR pressures the legislature to pass bills for victims' and defendants' rights with the ultimate goal being abolition of the death penalty in all cases. Kate Lowenstein, National Director of MVFR, said in a telephone interview,

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<sup>54</sup> Murder Victims Families for Reconciliation. *Our Story*. Available from <http://mvfr.org/index.jsp>. Accessed 2/15/04.

<sup>55</sup> Lowenstein, Kate. Interview, 2/25/04.

<sup>56</sup> Deans, Marie, Founder, Murder Victims' Families for Reconciliation. Available from <http://mvfr.siteinhouse.com/index.jsp>. Accessed 2/15/04.

that the way to achieve national abolition is through “chipping away at the states. Eventually, if enough states cease using capital punishment, the Supreme Court will recognize the changing standards of decency, and declare it unconstitutional.”<sup>57</sup>

Lowenstein says that in 1998 an MVFR member “tipped the scales enough to stop the state of Massachusetts from reinstating the death penalty.”<sup>58</sup> MVFR members have the ability to neutralize the strongest component of the advocates of the death penalty’s argument, which is the victims’ surviving family members.

An important aspect of what MVFR does is assisting victims’ family members in upholding their rights as active participants in the judicial process in each applicable case. However, once prosecutors are aware of the victim’s family member’s opposition to the death penalty, they often discard them as an inadmissible witness<sup>59</sup>. Thus, a prosecutor can prevent an individual that opposes capital punishment from testifying because of that individual’s view of the death penalty. In one case of many, the husband and daughter of a murder victim were denied the right to appeal to the Nebraska Board of Pardons and Appeals while another daughter was granted access to the Board. The daughter who was able to speak was in favor of the death penalty and the father and daughter who were denied were in favor of abolition.<sup>60</sup> This type of explicit discrimination against individuals based on their political, moral, or philosophical views

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<sup>57</sup> Lowenstein, Kate. Interview, 2/25/04.

<sup>58</sup> Ibid.

<sup>59</sup> MVFR. *Victims’ Advocacy*. Available from <http://mvfr.siteinhouse.com/index.jsp>. Accessed 2/15/04.

<sup>60</sup> Ibid.

is a blatant offense to our constitutional rights, and supports further claims that capital punishment is unfair to the majority of individuals whom it affects.

Another important and influential group of abolitionists are the various religious movements that vehemently oppose the death penalty. Indeed, all of the major faiths representing the vast majority of Americans oppose capital punishment.<sup>61</sup>

Incongruously, many of the members of these religious groups either do not know of, or choose to defy their faith's position on capital punishment. At the forefront of religious movements against the death penalty is the Quaker organization, the American Friends Service Committee. They head numerous programs that address the various problems with the death penalty, and have an overarching and consistent theme of nonviolence as a central aspect of the faith. In particular, AFSC attempts to harness the momentum of religious tendencies in the United States to abolish the death penalty. One of its projects is called, Religious Organizing against the Death Penalty. This organization draws from Protestant, Catholic, Gandhian, and Jewish traditions to prove the moral and spiritual injustice of killing individual under *any* circumstances.<sup>62</sup> RODP provides information and raises awareness among interested parties and also supplies them with other various outlets to learn and become more involved in the national movement.

The Catholic Church is one of the more forthright religions concerning its opposition to the death penalty. The most important factor behind the Church's

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<sup>61</sup> Religious Organizing against the Death Penalty. *Call to All People of Faith*. Available from: <http://www.deathpenaltyreligious.org/>. Accessed 2/24/04.

<sup>62</sup> ROADP. *Faith Based Communities*. Available from <http://www.deathpenaltyreligious.org/action/current/dream.html>. Accessed 2/24/04.

disapproval of the death penalty is that in today's society the death penalty simply is not necessary to protect its innocent members. Pope John Paul II consistently demonstrates his opposition to capital punishment for this reason: "Modern society has the means of protecting itself, without definitively denying criminals the chance to reform."<sup>63</sup> The Catechism clearly states that if through nonviolent means a society can effectively protect its members from the dangerous criminals then it is not justified in using the death penalty.<sup>64</sup>

Ultimately, in the Catholic Church's opinion, it is difficult to see the reasoning behind executing someone if the rest of society does not gain anything. In the United States, the death penalty does not protect the rest of us—we have the means to isolate violent individuals and perhaps even rehabilitate them. In addition to not making the United States any safer, some Catholics argue that the death penalty perpetuates the cycle of violence and sends the erroneous message that violence is an effective way of dealing with conflict and actually "diminishes society as a whole."<sup>65</sup> Catholic social thought rejects the idea that killing a violent offender will teach a society how to live peacefully together. It is not in the best interest of the common good to eliminate its undesirable members. According to the Catholic tradition relationships and the interactions

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<sup>63</sup> **A Statement of the Administrative Board of the United States Conference of Catholic Bishops. *A Good Friday Appeal to End the Death Penalty*. April 2, 1999. Available from <http://www.usccb.org/sdwp/national/criminal/appeal.htm>. Accessed 3/23/04.**

<sup>64</sup> Mahony, Roger. "A Witness To Life: The Catholic Church and the Death Penalty." May 25, 2000. Available from <http://www.usccb.org/sdwp/national/criminal/death/mahony1.htm>. Accessed 3/24/05.

<sup>65</sup> Ibid

surrounding relationships of all kinds are central to our spiritual health. Individuals on their own are not their strongest; therefore we all have an obligation to one another. This obligation is even enhanced when an individual has committed such a horrible transgression as murder.

These movements, as a composite whole, have enjoyed various successes in the last several years. Individual death row inmates have been exonerated, others have been granted clemency, and still others given a voice through the compassion and conviction of thousands of dedicated abolitionists. Since 1973, 113 death row inmates have been declared innocent and 225 have been granted clemency.<sup>66</sup> On February 10, 2004 Kevin Cooper was awarded a stay of execution by a federal appeals court merely eight hours before he was scheduled to die.<sup>67</sup> The flurry of opposition to Cooper's execution generated by many abolitionist groups was undoubtedly influential. Groups wrote editorials, gathered polls, held rallies and protests, and wrote letters and e mails. Aggressive action like this clearly makes a difference, however, the ultimate problem still exists: Kevin Cooper and 3500 other people in the United States remain on death row. The answer lies in larger actions that can only truly be realized through individual states, the president, the legislature, and the courts. While clearly these governmental bodies are influenced by the groups outlined previously, they are the parties that can make change happen quickly. The case of Illinois is a perfect example of how the conscientiousness of

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<sup>66</sup> *Death Penalty Information Center*. Available from [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org). Accessed 3/30/04.

<sup>67</sup> Egelko, Bob. "Supreme Court Denies Execution." *The San Francisco Chronicle*. 2/10/04.

the governor led to a moratorium on the death penalty, the commutation of all death row inmates' sentences, and even the exoneration of several victims of severe legal injustices.

Governor Ryan, a Republican, was once a supporter of the death penalty and his political party undoubtedly still is. He placed a moratorium on executions because evidence of capital convicts' innocence surfaced repeatedly. Governor Ryan had a commission of legal experts from all different backgrounds and opinions regarding capital punishment carefully examine the state's institution. One member of the commission whose experience on it turned out to be particularly insightful is lawyer and author, Scott Turow. In fact, Turow's experience had such a profound affect on him that he dedicated his next book, *Ultimate Punishment,*" to the issues that he and the other panelists encountered. Turow went into the commission with a significant amount of experience dealing with capital cases and he consequently deemed himself a "death penalty agnostic."<sup>68</sup> Certain cases he was certain deserved the most extreme punishment while others he realized were not well served by the death penalty. However, this two year scrutiny on Governor Ryan's commission swayed him to believe that the law cannot fairly and consistently administer a system of capital punishment as it stands now, and he doubts the ability to craft a legal system that would repair it to a point at which it could be called justice.<sup>69</sup> Turow articulates his position aptly in a CBS interview.

[The] death penalty asks the law to do more than the law possibly can.  
One of the great paradoxes of capital punishment is that is it works the

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<sup>68</sup> Turow, Scott. *Ultimate Punishment: A Lawyers Reflections on Dealing with the Death Penalty.* Farrar, Straus and Giroux: New York. 2003.

<sup>69</sup> Syler, Renee and Scott Turow. "Author Scott Turow Talks about his New Book, *Ultimate Punishment,* that Deals with the Death Penalty." *CBS, The Early Show.* 10/7/03.

way we want it to work, which is that it's only the worst of the worst, the most unimaginable crimes, those are the cases that are most subject to emotion on the part of prosecutors, police, juries, judges, even defense lawyers. And it's those cases, ironically, where it's easiest to convict the innocent and certainly nobody, whether they believe in the death penalty or oppose the death penalty, nobody wants to convict innocent people and sentence them to death. And we've done that far too often.<sup>70</sup>

Turow and many others who are not philosophically against the practice of the death penalty realize that it cannot practically be implemented in a fair and consistent way.

The individuals on death row who were either exonerated or granted clemency and isolated cases such as Illinois are each examples of the composite effect of abolitionists working to end the death penalty. However, international pressure and domestic activists still have not abolished the death penalty in the United States. The following chapter will analyze obstacles that these bodies have failed to address.

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<sup>70</sup> Ibid

## Chapter Three

### Obstacles to Abolition

Laws signed by Congress and Supreme Court decisions must occur to change policies regarding capital punishment. In the past, success has occurred when leaders have taken a bold stance on the issue. While the governing bodies of the United States are charged with the responsibility to represent and respond to their constituencies' concerns and desires, they also have the ability to lead public opinion with their specialized knowledge of the state of the country, and of the effects a policy will have on this state. The aforementioned Illinois Governor, George Ryan is an excellent example of this type of leadership. He used his authority to critically assess capital punishment throughout the state. He did not pretend to know the answer to the problems that surrounded the institution, but he knew that they existed and that they needed to be addressed. Because numerous death row inmates on death row had been found innocent after being convicted, as well as the torturous methods Illinois investigators used to extract confessions, he did not feel comfortable putting people to death. Governor Ryan compiled a group of experts from different viewpoints and experiences to analyze the system. And until this analysis was complete, he refused to oversee any executions in Illinois. The outcome of the commission was that Governor Ryan commuted all death sentences to life imprisonment in the state of Illinois. This kind of action is truly only available to elected officials and their appointees. Indeed, the courts, the legislature and the president have historically all grappled with the complex questions related to capital punishment.

The Supreme Court is continuously forced to struggle with the legal issues surrounding capital punishment. The court's stance has fluctuated depending on public opinion as well as different individual justices' tendencies. Constitutionally, capital punishment is acceptable as long as it corresponds with public standards of decency. Recently, this has been seriously questioned as it has become clear that in order to maintain capital punishment as a part of the American judicial system, innocent people will be executed. One federal judge in particular, Mark Wolf of Massachusetts, has openly stated that the death penalty may soon be unconstitutional, depending on the public's opinion of what is the number of wrongful executions that offends the constitution. His words bluntly address the fallibility of capital punishment: "In the past decade, substantial evidence has emerged to demonstrate that innocent individuals are sentenced to death, and *undoubtedly* executed, much more often than previously understood."<sup>71</sup> The brief period during the 1970's was the only time in American history where the death penalty was truly halted, and this was due to the Supreme Court decision in *Furman v. Georgia* in 1972.<sup>72</sup> The Court ruled that the way in which capital punishment was being carried out was arbitrary and discriminatory, and therefore unconstitutional. However, states that advocated the death penalty worked quickly to rewrite death penalty statutes which claimed to resolve the concerns of the Court in

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<sup>71</sup> Liptak, Adam. "U.S. Judge Sees Growing Signs that Innocents are Executed." *New York Times*. 8/12/2003.

<sup>72</sup> *Furman v. Georgia*. 408 U.S. 238.

*Furman v. Georgia*.<sup>73</sup> Hence, in 1976 *Gregg v. Georgia* led the way for states' rights to execute prisoners. These two decisions alone are quite representative of the battle over states' rights versus the Court's interpretation of the Constitution. This tension has been a strain for those on both sides of the death penalty debate. As Attorney General John Ashcroft is fighting to impose federal death sentences in states that have abolished it, abolitionists are working to convince the Supreme Court and Congress that they have an obligation to eradicate capital punishment in all states.

Abolitionists have enjoyed a limited yet significant victory in the recent Supreme Court decision regarding the execution of the mentally ill in *Atkins v. Virginia*. Deeming sentencing mentally impaired individuals to death cruel and unusual punishment, the majority of the Court said,

Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct."<sup>74</sup>

By recognizing the injustice inherent to putting a mentally ill individual to death, the Court has made a giant step toward realizing that the death penalty is inappropriate in all cases. However, because of the vagueness of the definition of mental illness or insanity, this decision is liable to be ignored or loosely interpreted to satisfy death penalty proponents. Though *Atkins v. Virginia* is

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<sup>73</sup> Jasper, Margaret. *The Law of Capital Punishment*. Oceana Publications, Inc.: Dobbs Ferry, NY 1998. p. 1.

<sup>74</sup> Stevens, John Paul. *Atkins v. Virginia*. Available from <http://supct.law.cornell.edu/supct/html/00-8452.ZO.html>. Accessed 2/29/04.

symbolically momentous, there must be a more absolute mandate prohibiting the death penalty in order to actually halt executions in the United States.

The highest court in the United States has produced several of the most outspoken and fervent adversaries of the death penalty, and this should be acknowledged as extremely significant. Specifically Justices Brennan, Marshall, and Blackmun have crusaded against the majority in most cases refusing to accept the legitimacy of state sanctioned killing. Justice Blackmun made clear his stance on the institution as quoted by Michael Mello's anthology of specific Justices' relationships to the death penalty:

I yield to no one in the depth of my distaste, antipathy, and indeed, abhorrence, for the death penalty, with all its aspects of physical distress and fear of moral judgment exercised by finite minds. That distaste is buttressed by a belief that capital punishment serves no useful purpose that can be demonstrated.<sup>75</sup>

While capital punishment will inevitably invoke passionate moral opinions, these justices give the most revered legal authority to the position that the death penalty violates the Eighth and Fourteenth Amendments of the Constitution. Marshall and Brennan worked side by side both voting against "virtually every particular case"<sup>76</sup> regarding execution. They were rarely in the majority, but they undoubtedly provided hope as well as an influential perspective to those examining capital punishment in a Constitutional light.

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<sup>75</sup> Mello, Michael. *Against the Death Penalty: The Relentless Dissents of Justices Brennan and Marshall*. Northeastern University Press: Boston 1996. p. 3.

<sup>76</sup> Ibid p. 4

Despite their unwavering support of abolition, Brennan, Marshall, and Blackmun have all retired leaving capital punishment in place. Thus, if the Supreme Court is going to have a hand in abolition, there must be a continual shift toward abolitionist justices, or, what appears to be more likely, individual states, (such as Illinois), must indicate to the justices that death penalties do not conform to the public's notion of decency.

Illinois is not the only state that has questioned its state's implementation of the death penalty. In fact, 12 states have chosen to eliminate capital punishment from its system of justice, and six more states that have retained it have not actually had an execution since *Furman* in 1976.<sup>77</sup> This increasing number indicates that smaller governmental bodies are realizing that the flaws inherent to the death penalty outweigh the benefits to administer it. However, as long as the federal government maintains the right to prosecute for capital punishment, executions will continue to take place in the United States.

The federal legislature has the ability to enact bills and lead public opinion when it comes to capital punishment. Having access to the best resources and most thorough analyses, the legislature has an obligation to lead rather than follow public opinion when it comes to the death penalty. However, because of the political liability that most politicians fear regarding standards of punishment for heinous crimes, it is unlikely that Congress will take initiative unless the public explicitly asks for it. The potential dangers

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<sup>77</sup> Death Penalty Information Center. "States without the Death Penalty." Available from <http://www.deathpenaltyinfo.org/article.php?did=121&scid=11#without>. Accessed 3/22/04.

of supporting anti-death penalty legislation have not totally removed capital punishment from Congress's consideration. In 2003 alone bills were presented in both the House and the Senate proposing to either abolish the death penalty for all federal crimes (H.R. 2574), or to "place a moratorium on executions by the Federal Government and urge the States to do the same, while a National Commission on the Death Penalty reviews the fairness of the imposition of the death penalty" (S.132). Both bills have been referred to various committees and will remain there until the committees reach an agreement as to how to edit the bill to their satisfaction.

Though the bills to actually halt executions have not been received well by Congress, changes in the way capital cases are completed have been enacted in attempt to make the process consistently fair for all defendants. The Advancing Justice Through DNA Technology Act of 2003 (H.R. 3214) was passed with a tremendous display of bipartisan support with a vote of 357-67.<sup>78</sup> The bill "includes a comprehensive package of programs that provides over \$1 billion over the next five years to assist Federal and State authorities in solving crimes and protecting the innocent."<sup>79</sup> A large portion of this sum goes toward DNA testing for defendants and convicts who maintain their innocence. This action makes it clear that there is a serious and genuine concern about ensuring that innocent people are not convicted and executed, and that the legislature is willing to fund

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<sup>78</sup> Death Penalty Information Center. "House Overwhelmingly Passes DNA Bill That Includes The Innocence Protection Act." *Federal Legislation*. Available from <http://deathpenaltyinfo.org/article.php?did=236&scid=40>. Accessed 3/22/04.

<sup>79</sup> Ibid

this concern. However, significant DNA evidence is not always available, and fallibility will not be eradicated easily.

While the Supreme Court, the Legislature, the president and his appointees may have the final say in whether the death penalty carries out justice in an appropriately consistent and fair method, the opinion of their constituents will be the ultimate factor that causes real action. Thus it is fitting that when the *Furman v. Georgia* decision outlawed executions, public approval of capital punishment in the United States was at an all-time low at 42%.<sup>80</sup> In fact, the decision was a reflection of a reality that this public opinion had generated: between 1967 and 1976 an informal yet unprecedented moratorium on executions was carried out in the United States.<sup>81</sup> Considering the dynamics of the Supreme Court and the Legislature, an investigation of the role that ideology plays is necessary. Dominant ideology in the United States is immeasurably influential and the retention of the death penalty depends on current ideologies being upheld and passed along to future generations.

Ideology, though often subtle and out of sight, runs through American culture at every level of its operation. The institutions that perpetuate ideology, termed by Louis Althusser as repressive and ideological state apparatuses, include schools, law enforcement, and the government.<sup>82</sup> These institutions alone are inescapably central to the lives of all Americans at some point, and most Americans perceive these

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<sup>80</sup> Galliher p. 6

<sup>81</sup> Ibid

<sup>82</sup> Althusser, Louis. *Lenin and Philosophy and Other Essays*. Monthly Review Press: New York, 1971. p. 96.

establishments as essential to a well-adjusted lifestyle. This discussion of ideology is not meant to disregard the positive crucial role that American schools, law enforcement and the government play in the United States' general welfare, but rather to point out the dangers of failing to critically analyze the effects of these institutions and the unfettered influence they are often awarded by the general public.

The United States government is a massive pedagogical power. It has achieved a status of authority that must be obeyed to a certain level in order to succeed, and this influence is noteworthy in the discussion of public opinion of capital punishment.

Not only does the government explicitly implement laws and policies that regulate the use of the death penalty but also there is an implicit assumption that the government can use violence where it is unacceptable for civilians, and that government inflicted violence is justifiable. Thus, a paradoxical relationship has formed between government and the morality of violence: the government has claimed the authority to kill individuals it deems deserving while simultaneously prohibiting that anyone else has the same power. In fact, if anyone else attempts to infringe upon the government's monopoly on violence, they are threatened with death themselves. The fact that the public generally consents to the use of government violence is a huge problem for death penalty abolitionists. Because government has decided that violence is the only way to keep the "peace" we have condemned our society to the validation of killing. Somehow, loss of life is more tolerable when it is at the hands of a governmental institution.

An imperative aspect of capital punishment's retention in the United States is the way in which executions have become sanitized to the point where the imagery related to them is more similar to putting a beloved pet to sleep rather than killing a vicious criminal. Because executions are such an abstraction for the vast majority of Americans, it is far easier to condone them. Philosopher, Albert Camus, sets up a helpful binary model that forces one to either entirely refuse to be a part of killing directly or indirectly, or to accept one's role in the deaths he or she contributes to directly or indirectly.<sup>83</sup> Death penalty proponents argue that killing is an inevitable ill to which society must react. Camus's point, however is that as a society, we must make killing illegitimate in all of its ugly forms. Currently, the amount of state-sanctioned violence, both domestically and in the form of foreign policy, is astounding. And this violence is far removed from the everyday lives of most Americans. Though far from our consciousness, as American citizens, we all have a hand in executions, and must be willing to accept the consequences of these executions if we support it as a public policy: if we do not want to kill someone ourselves, then we cannot allow another individual or a machine do it for us. However, almost all Americans do not know when or how these executions are happening, let alone take part in them. Like most modern violence, especially that carried out by the government, executions are carried out as cleanly as possible. Just as with bombs we now have the capabilities to kill thousands of people thousands of miles away at the touch of a button, we can also kill a single human with the flip of a

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<sup>83</sup> Camus, Albert. *Neither Victims Nor Executioners*. New Society Publishers: British Columbia, 1986.

switch without internalizing the consequences. Unlike the bombs that kill thousands in bloody chaos, capital punishment executioners and witnesses do not see a drop of blood nor a flinch of anguish on the executed's face. The perceived painlessness of lethal injections is not only doubtful,<sup>84</sup> but it is also trivial compared to the gravity of the implications of taking a life and legitimizing murder. Camus describes this phenomenon as a "freak of the times." He says, "We make love by telephone, we work not on matter but on machines, and we kill and are killed by proxy. We gain in cleanliness, but lose in understanding."<sup>85</sup>

This concept may help to explain another trend in Americans' attitudes toward the death penalty in that when asked to come closer to the responsibility of killing a convicted criminal, juries often have difficulty actually recommending a death sentence.<sup>86</sup> Capital trials often develop into a character sketch of the defendant, most of whom have endured extensive hardships and abuse throughout their lives. Once juries have seen the complexity of the personality in question, it is much more difficult to desire the unforgiving revenge that the death penalty requires. It is also important to realize that all jurors selected for capital cases must first assert willingness to hand out a death sentence. In short, medical technology along with manipulative methods employed to actually carry out executions, (i.e. holding them privately in the middle of the night), have aided in the widespread acceptance of, or at

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<sup>84</sup> Liptak, Adam. "Critics Say Execution Drug May Hide Suffering." *The New York Times*. 10/07/03.

<sup>85</sup> Camus, 31.

<sup>86</sup> Kotlowitz, Alex. "In the Face of Death." *New York Times Magazine*. 7/6/2003.

least complacency toward the death penalty among a public that might be totally opposed to the concept under more revealing circumstances. This has become increasingly significant since the Supreme Court ruled in *Ring v. Arizona* that death sentences must come from juries rather than from judges.<sup>87</sup>

Law enforcement is what Althusser would term a repressive state apparatus: it is an institution that carries out the will of the state through repressive actions and often employs violence to achieve this repression. The United States has seen law enforcement's dark side in instances of the Rodney King beatings and the Illinois investigation of torturous methods of extracting confessions, but the police are still an integral aspect to feeling safe for many Americans. The case of the Illinois police department is directly linked to the death penalty because many of the victims of Commander Jon Burge and his department's brutality were sentenced to death. Though all of the inmates that were interrogated under Burge are no longer on death row, Burge's authority allowed him to carry out injustices unchecked for far too long. This was possible because of the freedom given to the police in return for protection because of the current ideology.

Perhaps most effectively transmitted to children, ideology flows rampantly throughout the education system and its schools. Notions of justice and punishment outside of the familial setting are formed in early education where children are a part

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<sup>87</sup> Death Penalty Information Center. "Supreme Court Declares Juries, Not Judges Must Decide Critical Sentencing Issues." *U.S. Supreme Court: Ring v. Arizona*. Available from <http://deathpenaltyinfo.org/article.php?scid=38&did=247>. Accessed 3/21/04.

of a community made up of their peers for the first time. This community is most commonly closer to a dictatorship than a democracy, and its members are taught to obey without questioning the origin or validity of the rules by which they are expected to observe. Punishments are not to be scrutinized: they are used primarily as a deterrent and secondly as a means for introspection on the part of the behavioral transgression's perpetrator.

The Eurocentric and war-focused accounts of history that are available through public schools also reinforce government's benevolence and the legitimacy of violence.

European settlers may have committed genocide on Native Americans, but they were savage and needed civilizing. The British were oppressive and detrimental to Americans, so waging war for our independence was a good thing. Slavery was evil so we slaughtered one another for four years. Protests can get out of control so police should carry nightsticks. Murder is inevitable so we execute murderers. Children are taught to accept these historical descriptions as fact and internalize their implications.

Thus, ideology transmitted through the government, the police, and schools needs to be constantly acknowledged and evaluated by the members of society, all of whom have an invested interest in keeping these institutions under control. The final chapter will offer suggestions as to how to overcome the obstacles that ideological state apparatuses and inactive governing bodies have implemented in achieving the abolition of capital punishment in the United States.

## Chapter 4

### What Must Change

The previous chapters have proved that capital punishment in the United States is flawed. The institution flies in the face of our edicts of racial and economic equality in general but that are especially important in the eyes of the law. It does not deter criminals from committing crimes and it is geographically arbitrary. The death penalty sentences innocent people to be executed. The death penalty should be abolished in all cases. Thousands of people are fighting to reach this objective through various grassroots movements and NGOs yet, ultimately, none have been successful. The United States' powerful ideological domination is a huge barrier to abolition and its ideology is present throughout society from children to teachers to elected officials. Thus, two primary things must happen before the death penalty is eradicated from the United States system of justice: different leadership needs to be in place and the public must withdraw its support for capital punishment.

The political pressure politicians feel to deliver prompt and definitive justice to a fearful public is real. However, a well-informed and attentive electorate will appreciate honesty and accountability regarding the perils inherent to death penalties. Officials can oppose the death penalty if they lay out the facts of the issues surrounding it. The tragedy and terror imbedded in the discussion of the horrendous crimes that currently warrant the death penalty require a high level of compassion and seriousness, but these emotions cannot overwhelm the decisions that leaders make. The pain of the victims' loved ones should always be recognized but they should not force an entire nation to act

with hasty violence. The well being and safety of society as a whole is contingent on the fact that the system of justice in which the population must place such faith is fair and consistent. The death penalty has not been fair and consistent. Further, the assumption that all victims' families support the death penalty, and that the healing process is accelerated by an execution is false, as Murder Victims' Families for Reconciliation's commitment to end capital punishment has proved. Pinning the death penalty's morality to the comfort and interests of victims' families is additionally flawed in that the vast majority of murder cases do not result in a death sentence. Is it less painful for the families whose member is murdered with the incorrect number of mitigating factors?

Clearly, other services throughout a community must be provided to all families that have been the victims of crime. The leaders of our communities can avoid the criticism of being soft on crime or oblivious to the anguish victims' families feel by promoting and funding community networks designed to prevent crime and to provide support for victims' families. When a murder occurs, the structure of society has already failed the victims at some level. Instead of reacting to violent crime with more violence, more emphasis should be placed on prevention and protection. Prevention could be implemented in all spheres of society. For example, promoting peace studies in early education rather than focusing on wars and other violent conflict could steer young people toward a less violent existence. Teach the success of the peaceful revolution of the Philippines, Gandhi and Dorothy Day thus emphasizing the effectiveness and desirability of bloodless social change.

Another method of preventing murders that is closer to the actual act would be to make stricter gun control laws. In 1999 alone guns were responsible for the deaths of over 10,000 people in the United States.<sup>88</sup> Surely cracking down on gun use would be a more efficient way to lower the number of murders in the United States than executing a minimal fraction of what are considered the most awful murderers. The moral statement that executions make appear to be solely symbolic while making practical changes in policies that would definitely reduce crime rates takes real action to display our disdain for murders. Countries in which gun ownership is minimal or nonexistent have astoundingly lower murder rates than the United States. In New Zealand in 1996 guns killed only two people and in Great Britain 30 lives were lost through gun violence.<sup>89</sup> Compared with the United States' whopping 10,000 count of gun related murders, these countries have shown their reverence for life through gun control. While gun control may carry its own political stigma, it is undeniably a way to reduce crime. If the public is serious about its intolerance for violent crime, as its support for the death penalty suggests, reducing the number of guns is a realistic solution to demonstrate this intolerance.

Dealing with murders after they happen can also be an aspect of prevention. Promoting nonviolent reactions to violence are the only way that it will ever stop. Memorializing murders is one way to display society's severe repugnance of a crime.

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<sup>88</sup> Goods for Guns, Inc. "National Gun Statistics." Available from <http://goodsforguns.org/nationalfacts/>. Accessed 3/29/04.

<sup>89</sup> Ibid.

Providing victims' families with an outlet to express their anger and grief in a public setting would offer an alternative to the imperfections of relying on the death of the murderer for closure. This also emphasizes that the loss of the victim is felt and grieved by the community. As Scott Turow states in *Ultimate Punishment*, "While the magnitude of loss is by far the greatest for the bereaved, the community as a whole has been deprived of the victim's potential."<sup>90</sup> The memorial in Washington, DC recognizes the tragic loss of over 50,000 American lives in Vietnam. It not only grieves the loss of lives left unfinished, but it also serves as a reminder to future generations to act with serious prudence in its military expeditions. Rejecting violence in all of its forms as a community sends the strongest possible message of revulsion for the crime that has been committed and that, unfortunately, cannot be reversed. There is an endless amount of approaches to prevent crime at all levels of the United States, but the point is that the leaders of this country have an obligation to explore more effective ways of dealing with brutal murders than an unreliable and inconsistent death penalty.

If done well, erecting some form of a memorial or providing more comprehensive treatment for murder victims' families could be expensive. In the current state of severe budget deficits and high military spending, there is not extra cash floating around for these expenditures. However, the process of executing a convicted murderer is more expensive than any other sentence. In fact, "Capital trials are longer and more expensive

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<sup>90</sup> Turow, p. 55

at every step than other murder trials.”<sup>91</sup> There are few guilty pleas, more expert witnesses are necessary, and both prosecutors and state appointed defense lawyers put in more hours in a typical homicide case.<sup>92</sup> Many proponents of the death penalty object to taxpayers’ dollars funding a murderer’s life imprisonment fees, however, it has been proved numerous times that executions are much more expensive than life in prison. In Texas, cuts are being made in prisons and police enforcement while it spends an average of \$23 million on one capital case.<sup>93</sup> With approximately 300 people on death row, Texas could save a great deal of money by stopping the death penalty. The money saved by ending executions could be used in more cost-effective ways, perhaps including building memorials or improving support for victims’ families.

The leadership necessary to make the reforms suggested previously will obviously take time to materialize. Changes in leadership will probably happen on a relatively small scale before it will change on a federal level. We have seen this already begin to happen with individual leaders such as Governor Ryan. The current National Urban League President and former President of the U.S. Conference of Mayors, Mark Morial has expressed his aversion to the death penalty and has urged current mayors to speak out against it. He said:

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<sup>91</sup> Dieter, Richard. “Millions Misspent: What Politicians Dont Say About the High Costs of the Death Penalty.” *Death Penalty Information Center*. Available from <http://deathpenaltyinfo.org/article.php?scid=45&did=385>. Accessed 3/29/04.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

There are growing calls for moratoria on executions, a growing reluctance among juries to levy the death penalty, efforts to insure that defendants in capital cases, who are most often poor, are represented by good attorneys, and even legislative attempts at the state and federal levels to fix the flaws in various parts of the steps of death-penalty cases.

These efforts are worthwhile--in our view, both for their practicality and for their underscoring the moral arguments against the death penalty: It is a practice that cannot be fixed by the application of "practical" measures. It is inherently cruel and inhuman punishment, in no small measure because it is layered through and through with America's legacy of class and racial oppression.<sup>94</sup>

Mayors, state assembly men and women, judges, congressional representatives, and executive leaders must take initiative and eradicate a system of "justice" that eliminates the members of society that are valued the least in acts of capricious and inaccurate violence carried out by the state. If an informed and comprehensive case is made, the political liability will eventually shift to those who support capital punishment.

The second thing that must happen in order for the United States to abolish the death penalty is directly related to having new leadership: the public must withdraw its support from capital punishment. In doing so, the population would reflect its opposition to the death penalty in its leaders and the two changes become mutually reinforcing.

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<sup>94</sup> Morial, Mark. "NEW VOICES: Urban League President Says Death Penalty is "Cruel and Inhuman."" *Death Penalty Information Center*. Available from <http://deathpenaltyinfo.org/article.php?did=908&scid=64>. Accessed 3/29/04.

There are many possible approaches to changing the public's attitude, but I will focus primarily on ways to permeate the ideological barriers outlined in the previous chapter.

Schools are one of the most prolific purveyors of the violent ideology that the United States perpetuates. While ideally leaders will eventually change the war-centered curriculum that most children encounter, there are other ways to neutralize these messages. Family is present far more often than a history book, and by teaching children peaceful values outside of the classroom they will be more likely to challenge the legitimacy of war and violence in general as an effective conflict resolution tool. Parents also have the ability and responsibility to demand that schools incorporate more peace studies and less violence studies. Similarly to the way that leaders can have success on a small scale, one or two persistent parents have the ability to change an entire school and effect hundreds of children. Granted, it is not easy to change textbooks or entire schools' attitudes, but parents can encourage guest speakers or be guest speakers themselves to address the students with an alternative perspective on history and current affairs. It is difficult to object to children learning nonviolent methods of dealing with conflict, and at the very least, it is possible to make children think about the way they deal with problems. The death penalty teaches children that violent revenge is acceptable. Given the other lessons that are central to early education, it is not surprising that most of the population supports the death penalty.

One problem with the idea that parents should try to reform schools is precisely because the ideology is ingrained in many of the parents already. How, then will adults change their attitudes toward the death penalty? Media and popular culture have the

ability to reach millions of people and they wield a great deal of influence. The fact that violence dominates the most popular films and television programs is significant to the way in which we glorify violence, and do not internalize its devastating consequences. It is striking that there is basically an unlimited literature on how violent films affect children and that they should not be allowed in schools, and very little on the effects it has on adults and society as a whole. One website is entirely committed to showing how adults should not allow children to watch the violent films that they do.

When parents or teachers bring violent films into the home or the classroom they encourage the viewing of brutality for entertainment and implicitly endorse the acceptance and celebration of savagery. Significantly, adults who propose the viewing of graphically brutal films also lose the opportunity to show by example that in all but the most extreme cases the use of violence, even viewing it for pleasure, is intolerable. This loss of moral stature by trusted adults is detrimental to the children they seek to raise or teach.<sup>95</sup>

It is not even mentioned that perhaps adults should not watch these films, or that they could possibly have a negative effect on adults. Consumers have made it clear their desire to see bloodshed, explosions, and destruction in their entertainment, and it is only really questioned when it might be viewed by children. Currently, six of the top ten movies in theaters right now (3/29/04) are given ratings including violence. The number two movie in the United States is called *Dawn of the Dead* and is rated R for “pervasive strong horror violence and gore, language and sexuality.”<sup>96</sup> This analysis of violence is not suggesting that violence should not be allowed in films or on television, but rather to

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<sup>95</sup> Frieden, James and Deborah Elliot. *About Gratuitous Violence in Movies*. Available from <http://www.teachwithmovies.org/violence-statement.html>. Accessed 3/29/04.

<sup>96</sup> *Box Office Charts*. Available from <http://movies.yahoo.com/boxoffice/latest/rank.html>. Accessed 3/29/04.

suggest that as a culture, we evaluate the possible consequences of the forms of entertainment that dominate the box office. The thought of a cruel criminal being executed by lethal injection is less appalling when people are bombarded with far more violent images on a television screen.

While films can have detrimental results on a culture's perception of violence, they can also be powerful tools in reaching a state where violence is criticized and its perceived necessity is questioned. On the subject of capital punishment several films have directly addressed the issue with a critical eye. *Dead Man Walking* (Tim Robbins 1995) is a nonfiction account of Sister Helen Prejean's experience dealing with a death row inmate and eventually witnessing his execution. *Dead Man Walking* is thought provoking because it takes a case where the murderer is clearly guilty yet it still invokes a level of compassion for him. It does not ignore the pain of the victims' families, and it recognizes both sides of the death penalty debate. The film clearly has an agenda as it is based on the book written by Sister Prejean who fiercely opposes the death penalty, however, it delivers its message in an unobtrusive way, and somehow avoids appearing too heavy handed. *Dead Man Walking* also has the advantage of being a Hollywood production with a star-studded cast, thus reaching thousands of Americans. The film received the highest respect from the industry being nominated for four Academy Awards and with Susan Sarandon winning the Oscar for the best leading female role.

Other films that have attracted fewer viewers in the United States, but that still relay important messages regarding the implementation of capital punishment include *Dancer in the Dark* (Lars Von Trier 2000) and *A Short Film about Killing* (Krzysztof

Kieslowski 1987). While these films have received international acclaim, they are not mainstream enough to have a large effect on many Americans. The fact that there are artistic expressions that are examining the death penalty is a positive step for the abolitionist movement, and the more people that see the complexities of executing prisoners, the more likely it is that the American public will reject the practice.

The death penalty is inconsistent, it is fallible, it does not deter criminals from murders, our international allies oppose it, and it diverts much needed financial resources from other social programs. Capital punishment is outdated in the United States' current system—it has countless other more effective ways of protecting its citizenry. The many grassroots movements and non-government organizations that are working hard to abolish the death penalty have not been successful yet as the majority of Americans, especially its elected leaders continue to support capital punishment. Changes must be made at a more fundamental level to change the perception that the death penalty benefits society. The costs of executions exceed the \$23 million per case in cultural loss, while we gain very little from them. We must reevaluate the values that cause the death penalty to maintain high levels of support, and eventually reject the practice in its entirety and shift our resources and focus to prevention and healing.