

The Symbolic Capital of Capital Punishment:  
A Scholarly Reflection  
Jennifer Grimes, Indiana State University

## INTRODUCTON

Most scholars of crime, justice, philosophy, and the other social sciences are well aware of the irony of the United States' commitment to maintaining the death penalty as the "ultimate" punishment handed down by our criminal justice system. Regardless, public opinion data reveals that as of 2008, 64% of those surveyed continue to support the use of capital punishment in the United States (Gallup, 2008.) It is not news to those who study the death penalty, or social activists condemning the practice of state-sanctioned executions, that research on the death penalty does not reveal that this sanction deters crime (Radelet and Lacock, 2009) and that current research examining the claims that executions—or the threat of execution—have a deterrent effect have found these earlier studies to be flawed or inconclusive (Berk, 2005; Donahue and Wolfers, 2005; Fagan, 2006; Weisberg, 2005.) What is surprising, however, is that when presented by these facts many people continue to support the death penalty as a meaningful and legitimate punishment that plays an important role in the delivery of justice in the United States. This essay explores the justifications given by criminology and criminal justice students following a discussion and presentation of evidence that the death penalty may not fulfill all of the

deterrent and/or crime control goals that supporters often mistakenly credit as their reason(s) for supporting this sanction. The purpose of this exploration was not to identify flaws in the logic and argument of students who support the death penalty, but rather, to deconstruct the meaning of the death penalty for those people who are committed to maintaining the use of capital punishment in the United States.

## THEORETICAL AND PHILOSOPHICAL FOUNDATION

Criminal justice students in a traditional corrections or punishment class may be provided with a brief overview of the historical and philosophical foundation of the application of the death penalty; this overview typically begins with a discussion of the earliest written histories of philosophical thought on capital punishment and the influential thinkers who have espoused their support of the death penalty. Plato, for example, supported the death penalty for all cases of murder. Centuries later, philosophers Immanuel Kant and G.W.F. Hegel discussed the justification—if not necessity—of administering the death penalty. An enduring moral justification of the death penalty can be summarized in the writing of St. Thomas Aquinas, who argued:

Every part is directed to the whole, as imperfect to perfect, wherefore every part exists naturally for the sake of the whole. For this reason

we see that if the health of the whole human body demands the excision of a member, because it became putrid or infectious to the other members, it would be both praiseworthy and healthful to have it cut away. Now every individual person is related to the entire society as a part to the whole. Therefore if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and healthful that he be killed in order to safeguard the common good... (Summa Theologiae, II, II, q. 64, art. 2).

The moral implications of executing the innocent have been discounted as early as the 1800s, when John Stuart Mill contended that the English judicial system was so vigilant in its administration of justice that wrongful executions do not happen (Mill, 1868). The best known early opponents of the death penalty are Enlightenment thinkers Cesare Beccaria and Jeremy Bentham. Beccaria (1775) argued that the death penalty was excessive and served no purpose, while Bentham (1789) negated the deterrent effect of capital punishment on people who are capable of murder themselves. Modern philosophers and social activists continue the critique of the death penalty, but the moral and philosophical implications of the use of state sanctioned executions typically ends here. The legal justification of the death penalty—as presented in a thorough review of U.S. Supreme Court decisions—is given more emphasis and prominence in most criminal justice courses and textbooks than the moral aspects of this punishment.

The theoretical explanations—or perhaps justifications—for maintaining the death penalty usually include three main themes: (1) incapacitation; (2)

deterrence; and (3) retribution. Incapacitation refers to the containment of the offender so that he or she may not recidivate and/or pose harm to public safety while under correctional supervision. In the case of capital punishment, the execution of the offender is considered the appropriate means of ensuring incapacitation. Deterrence includes the direct and indirect benefits of punishing offenders: specific or direct deterrence refers to the inability of the offender to commit any further crimes due to the extent of this particular form of punishment, while general or indirect deterrence presumably serves to deter the general public from committing the offense(s) which resulted in the death sentence for the death penalty. Finally, retribution encompasses both the theoretical and philosophical tenets of how and why we punish. Retribution refers to the requital or payback for an action committed by an offender. The terms "justice" and "revenge" have become permanently intertwined in philosophical discussions of punishment, especially when the discussion focuses specifically on the death penalty.

## THE CLASS DISCUSSION

For the past eighteen months, criminology and criminal justice majors participating in a capstone course as part of their culminating experience explored several controversial topics commonly associated with crime and justice. Of the many topics covered in this course, no subject evoked as

much as anger, frustration, emotion, outrage, and steadfast opinions as that of the death penalty. Although the intent and structure of the class is to encourage and promote critical and rational thinking on a variety of criminal justice topics, it has proven difficult to get students to approach the subject of capital punishment with an open mind or open to opposing viewpoints, and even for those who do, it is admittedly difficult for them to release their biases and preconceptions regarding the appropriateness of taking a human life as a form of state-sanctioned punishment. Students consistently demonstrate very strong opinions and positions on this topic, with the majority of them supporting the use of the death penalty. What they could not explain over the course of class discussions, however, is why they hold on to these preconceptions about the appropriateness of the use of the death penalty regardless of all of the evidence and information that demonstrates the problems and injustices of this sanction.

The dismissal of the abundant evidence regarding the practical and philosophical flaws associated with capital punishment piqued this scholar's interest. This inquiry does not reflect an agenda to change students' minds about the use of the death penalty in the United States. Instead, the focus rests more with the symbolic capital that this sanction affords so many. Specifically, what does this punishment mean to them? What is the symbolic capital of maintaining a punishment that most of the "civilized" world has condemned and which places the United States at the forefront of

hypocrisy and criticism in our supposed role as a leader in the effort to fight human rights violations? The meaning of the death penalty to the students in these classes, and the symbolic capital which it represents, constitutes the focus of this inquiry. Students' comments in discussion board forums, in-class essays, and course portfolios on the death penalty were analyzed to uncover the emerging and consistent themes which permeate the discussions of the majority of criminology and criminal justice students in this course who believe in maintaining the death penalty in the United States.

What follows below is only a cursory review of the predominant themes that emerged during students' discussions of the death penalty. The key themes included in this reflection encompass the following: (1) the humanity of the actual methods of executing capital defendants; (2) the applicability—or lack thereof—of rehabilitation for people convicted of murder; (3) the fear that capital offenders will escape or that the lack of a death sentence will result in an eventual release back into society; (4) a dismissal of the argument that we are executing innocent people; (5) the fear that if we abolish the death penalty now we will never be able to get it back again; (6) the symbolic nature of the death penalty as the “ultimate punishment” our nation can bestow upon a citizen; and (7) the emphasis upon the necessity of the retributive goals of capital punishment.

## THE HUMANITY OF AMERICAN EXECUTIONS

"We have made our lethal injections to where it is like we are putting down a dog, and that to me is almost too nice for some of the things that these people do to get put on death row."

"The death penalty in the United States is more humane than in other nations that have it, so it is not fair to compare or equate us with nations that don't offer their defendants all of the appeals that we do. The death penalty in the U.S. is more humane, and therefore, justifiable. We do not immediately behead a defendant found guilty so we are not in the same category as countries that practice this type of instant and public execution."

Consistent with U.S. Supreme Court Justice Scalia's frequent comments regarding capital punishment's rightful place in the American criminal justice system, many students argued the appropriateness and, in some cases, humanity of the way in which the United States administers the death penalty. The deeper philosophical considerations as to whether a nation should have the right to execute one of its citizens—and to the hypocrisy of executing one of our own for the purpose of demonstrating our moral solidarity against the crime of murder—did not evoke as much consideration as the emphasis upon the perceived humanity of how we administer the actual method of execution. The "cruel and unusual" challenges to the administration of the death penalty, even in cases in which the execution was admittedly flawed and the condemned appeared to suffer beyond the expectations of criminal justice officials, did not have an impact upon students. The majority clung to the notion that the victims of these capital

offenders suffered more and they suffered without justification; and state-sanctioned suffering is, therefore, justifiable. Students also pointed out that our nation has taken steps to “humanize” executions: we do not conduct public executions, and we do attempt to minimize offender suffering during the execution as we do not kill the offender in the same manner in which he or she killed the victim(s). Still, many argued that a more appropriate method of execution would entail ending the defendant’s life in the exact same manner that the victim was killed.

#### CORRECTIONAL INSTITUTIONS AND THE REHABILITATIVE IDEAL

“Unfortunately, as far as rehab is concerned, these people are not worth the time.”

“I do believe it is necessary for certain types of heinous crimes and depraved criminals that are not capable of being rehabilitated.”

A frequent theme in the discussion of the appropriateness of the execution of capital defendants rested with the argument that if our correctional system is committed to providing some type of rehabilitation, then this results in the prison not being an appropriate placement for those convicted of capital crimes. In other words, because they are not worthy or capable of rehabilitation, they are not worthy of living—even in a closely supervised, sterile, correctional setting. This view can be summarized in the explanation that rehabilitation and redemption are not a possibility for people convicted of capital crimes, and therefore there is no moral or ethical



purpose for keeping them alive. This position was strongly connected to the fear mentioned below that these offenders may ultimately escape their prison environment. If they cannot be rehabilitated, and we cannot ensure with certainty that they will never be released or escape, then people who have committed the most heinous of crimes are not worthy of any additional legal protections or criminal justice resources.

### INCAPACITATION AND THE FEAR OF ESCAPE

"By executing serial killers and depraved criminals that are incapable of being rehabilitated, the concept of them escaping is avoided...should they ever be given a life sentence and then find an opportunity to escape."

"Locking these criminals up for life only gives us the fear that they could escape and kill again. Look at Ted Bundy or the "Texas 7" that escaped, once out they only went on to kill more innocent people. It's just not worth it. There is no such thing as "lock them up and throw away the key," some of these monsters find the key!"

Surprisingly, even criminal justice students who have studied correctional institutions in previous classes and are familiar with the extensive security measures of the modern American prison still cling to the belief that the possibility of escape is very real. Many students suggested that capital offenders are very cold and cunning individuals who will find a way to get out of prison and commit additional crimes, perhaps even more horrific than those that resulted in their capital commitment. Students also voiced the erroneous fear that a life sentence could result in the early release of an offender based upon good behavior. In other words, they did

not believe that life in prison without the possibility of parole truly means life in prison. For those offenders convicted of the most serious crimes, students argued that execution is the only means to ensure public safety and to prevent them from causing further harm.

### THE EXECUTION OF THE INNOCENT

"Not all cases involve DNA evidence and not all cases can be proven scientifically. So for all those cases that do not have the absolutely certainty, I believe the time spent on death row is sufficient and necessary to weed out the innocent to the guilty."

"You have to remember though our nation is set up so that a jury decides the fate of the person. So our system is not flawed."

Another recurring theme over the course of class discussions on the death penalty included skepticism regarding the argument that innocent people are executed, or that it happens as much as opponents of the death penalty would have us believe. Students espoused two conflicting ideals regarding executions: (1) the death penalty should be applied more quickly, with fewer appeals; and (2) defendants can spend the lengthy time they have on death row awaiting their executions to prove their innocence. Many cited DNA and other technological advances that should reveal if we have convicted an innocent person. Many students also argued, vehemently, that if a person received a fair trial and was convicted by a jury of his or her

peers, then that person is not really "innocent." In other words, if the evidence suggests that a person is guilty of a capital offense, then a jury is justified in sentencing an offender to death. There is nothing unjust about this because we are not executing someone who is innocent in the eyes of the law. There was no resolution to the conflicting ideals of accelerating executions with the argument that those convicted of capital crimes can prove their innocence during the lengthy time they spend on death row awaiting execution.

#### WORLD CONDEMNATION AND THE FEAR OF REMOVING THE DEATH PENALTY

"Given the current climate and world view/attitude towards the death penalty, if we remove it the chances are that we will never be able to get it again."

Even students who admitted that DNA and other technologies now available to us are not infallible, or are not available to establish innocence in all cases, were reluctant to have the death penalty stricken from the American criminal justice system. The argument following the discussion of how many other nations point to us as an example of hypocrisy for maintaining state sanctioned executions, yet purporting to act as leaders in human rights efforts, only fueled the fear that if we were to remove capital punishment from punishment discourse in the United States we may never get it back again. Students cited the pressure that other countries have

placed upon the U.S., and the embarrassment that some of our political leaders face when they visit other nations, as a possible impetus to the death penalty being abolished here. Due to this worldwide condemnation and pressure, students argued, when we advance even further in our technological capabilities to establish guilt or innocence, the death penalty will not be available again as a criminal sanction for those who deserve it because it will be very difficult to "get it back on the books." Therefore, the majority of students supported keeping the death penalty and simply hoping that we improve our efforts of identifying the wrongfully accused or wrongfully convicted sooner rather than later.

#### THE ULTIMATE PUNISHMENT: RETRIBUTION AS JUSTICE

"I believe that many people in our country support the death penalty for two reasons. One is the death penalty is the ultimate punishment. We can take away material possessions and freedoms that people can learn to live without, but once life has been taken away it's not given back. There is no second chance, time for redemption, or do-over. The second reason, I believe, is that many of us still hold the notion of 'an eye for an eye.'"

"Keeping the death penalty in tact shows me that this nation cares about its law abiding-non criminal members of society."

"The death penalty is reserved for those that are considered heinous crimes. It is for those crimes where prison time is not a justification. It says that we are a nation that seeks justice for crimes committed."

"If someone has decided that it is okay for them to take the life of another, why should they have the freedom to live the life they deprived someone else from?"

"If the issue of "cruel and unusual" lies in proportionality of crime and punishment then the death penalty is an adequate punishment for the taking of another's life."

The death penalty was cited repeatedly as the "ultimate punishment" or the "ultimate sanction" that our criminal justice system can hand down to those convicted of the most horrific crimes. The failure to sentence an offender to death in a state that has the death penalty available was considered by most students as an extreme injustice to the victims and their families. The logic behind this argument holds that if we have a punishment that is considered the most severe or punitive measure available, and we fail to sentence those who have committed the worst crimes to the most severe punishment possible, then we are diminishing the value of the victim's life or elevating the value of the offender's. To establish the value and sanctity of human life, it was argued, we must execute people who do not share this view or who take it upon themselves to take the lives of innocent people. The fact that those who have been executed for their crimes are being deprived of their lives in the same theoretical manner as those whom they killed was repeatedly dismissed because, according to students, there are no similarities between the legal status of a victim and an offender. Citing the classical school of criminology's emphasis upon rational choice and free will, students argued that offenders who choose to kill others are simultaneously choosing to surrender their right to life.

It is interesting to note that the issue of deterrence, or lack thereof, did not play a large role in students' support for the death penalty or their discussions of retribution. In fact, most students who supported the death penalty admitted that the death penalty does not really serve as a deterrent to crime or, if it does, this is difficult to prove. Support for state-sanctioned execution had more to do with the perceived appropriateness of this punishment for a person who commits murder than for the belief that it actually serves to deter future crimes. The support for the death penalty rested predominantly with delivering "justice" to victims and their families, not trying to prevent future murders. Quite simply, students argued that the death penalty is a just and moral punishment for taking another person's life. The criminal justice system, it was argued, has been empowered by the people to hold people accountable just as much as it was created to ensure public safety. Retribution, therefore, plays a large part in the support of capital punishment regardless of whether it results in deterrent effects or not.

## DISCUSSION

There were several common misconceptions regarding the death penalty that had to be clarified during the course of these class discussions. These misconceptions included pointing out to students that: (1) executions are a financial burden for the criminal justice system because it costs more

to execute an offender than to incapacitate him/her for the rest of the offender's life; (2) DNA evidence is not available in every capital case and people are convicted of capital crimes without the benefit of this type of technology to establish their innocence; and (3) victims' families do not always support the death penalty, yet offenders are often sentenced to death despite the fact that this is in direct opposition to the victims' families' wishes or religious beliefs. The resolution of these misconceptions allowed us to delve into the deeper theoretical and philosophical implications of what the death penalty means, what purpose it serves, and why so many people continue to be so committed to maintaining the death penalty in the U.S. as opposed to focusing upon the traditional debates that dominate class discussions on capital punishment.

The recurring themes or arguments that evolved during discussions of the moral and ethical implications of the death penalty resulted in the following conclusions:

- (1) Students believe very strongly in the humanity of the manner in which we execute offenders;
- (2) The prison setting, and life in prison without the possibility of parole, serves no purpose for the defendant or the criminal justice system since rehabilitation of capital offenders is not viewed as a viable possibility;
- (3) There exists a real fear that these violent offenders will somehow reenter society if they are not executed. That is, whether through escape or release by the criminal justice system, people are extremely fearful of those who have committed the most heinous of crimes returning to the community;

(4) The fear that we execute innocent people is largely dismissed, either because of an over-reliance on technological and/or scientific advances to establish innocence or due to the empowerment of the criminal justice system to determine true guilt or innocence;

(5) There exists a strong resistance to or defiance of the growing world order that state sanctioned executions are immoral and unethical; a stubbornness and arrogance has emerged that the United States is not to change its views on crimes and punishments to satisfy the beliefs of other nations, especially if future political leaders will be unable to bring this sanction back once we do abolish it;

(6) The death penalty represents the "ultimate punishment" our nation can bestow upon a citizen for not conforming to the ideals we all agree upon; and

(7) Capital punishment, quite simply, represents the retributive ideals within which the United States is so deeply embedded. No other punishment will satisfy our commitment to the retributive notion of an "eye for an eye" than the loss of life for taking a life.

The first step in understanding why the public is so committed to capital punishment as a criminal sanction is to understand why criminal justice students, who are better educated on the issues surrounding the application of the death penalty, continue to support this punishment. Upon reflection, then, what does it appear that capital punishment means to students? What is the symbolic capital of maintaining a punishment that is so clearly flawed, controversial, and ineffective? Unfortunately, this preliminary review of students' comments in class discussions concerning capital punishment provides more questions than answers to these questions. For example, almost complete faith is placed in the criminal



justice system's role in establishing guilt or innocence, yet doubt exists as to the system's ability to keep offenders incapacitated and to ensure public safety once guilt has been determined. Reportedly, there is no perceived value in keeping an offender alive in correctional institutions which, at least in theory, retain a commitment to rehabilitation and thus our humane method of disposing of them is cited as another justification for state sanctioned executions. We also consider ourselves either superior to or entirely separate from the rest of the world in terms of how we define justice and how we handle those who violate our laws. Finally, justice and retribution, which are synonymous in American discourse on crime and punishment, seemingly cannot be achieved in the current social and political climate without executing offenders when the possibility of a death sentence exists. The absence of a death sentence—and not the administration of it—is cause for offense and disdain to those who have been socialized to view capital punishment as the only logical outcome for those offenders who have committed the most horrific crimes.

## RECOMMENDATIONS

One observation on the misconceptions or omissions regarding the key variables that contribute to punishment philosophy and application is the need to teach social justice to criminal justice students; this discussion must encompass the full historical, political, economic, and social factors that

contribute to how we construct punishment in the United States. Again, this is not for the intention of persuading students' opinions regarding the application of the death penalty, but rather, to ensure that the discussions include key elements such as the influence of poverty, race, gender, and inequality from the beginning of the discussion and not as an afterthought or antithesis once students have presented an opinion supporting the death penalty. These additional, yet crucial, variables do not weigh heavily into the discussion when they are left as an afterthought or as an additional element to consider after students' emotions have already overtaken their responses. Practical and insightful recommendations on teaching social justice to criminal justice students have comprised the focus of several panel sessions at the annual meeting of the American Society of Criminology. Two notable presentations on approaches to teaching social justice in criminal justice classes were offered by Della Giustana (2006) and Twersky Glasner (2007).

In addition, emphasis in class discussions needs to be placed upon the moral philosophy behind the use of the death penalty and the social implications of preserving this sanction. This discussion must include an exploration of the deontological views of capital punishment, the proportionality of this sanction as explained from a utilitarian perspective, the social and political functions of punishment, and the legal and philosophical arguments regarding the constitutionality of the death penalty

along with a deeper exploration of what constitutes cruel and unusual punishment under current legal definitions. The discussion must also include an exploration of how legal representation, discrimination, public opinion, and the costly and lengthy appeals process all contribute to the social and political climate surrounding capital punishment. Finally, no discussion on the death penalty is complete without an acknowledgement of wrongful executions and the inability to rectify this error the way we attempt to correct other errors regarding individual loss of property, income, freedom, or liberty.

## CONCLUSION

In conclusion, this preliminary review reveals more about what we do not know regarding how students construct their views on the death penalty than what we do know or understand. The contradictory nature of many of the students' arguments does not, at this time, provide us with a clear understanding of the symbolic capital the death penalty offers criminal justice students other than its continued representation of the current American criminal justice system's embeddedness in the "get tough" philosophy of crime and crime control. Future research may benefit from exploring how student opinions on crime and punishment develop and when

these opinions develop. If we are to deconstruct the fallacies associated with students'—and the public's—views on capital punishment and to have more comprehensive, informed, and philosophical discussions on the topic, the first step will entail constructing how those views became embedded in individual cultural expectations of justice. As educators, the second step will entail offering a complete exploration of the moral and philosophical issues surrounding the death penalty. Upon reflection, it is this scholar's opinion that this cannot be accomplished in a one- or two-class discussion as was attempted in the course under discussion due to the complexity of the philosophical issues surrounding this sanction. In order to identify the symbolic capital of capital punishment, a much more lengthy and comprehensive discussion surrounding the multitude of factors related to the death penalty must ensue.

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