

# Capital punishment research papers examples

[Law](#), [Capital Punishment](#)



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## Introduction

I remain fascinated with the idea of when the first recorded law of capital punishment exists in history and why some Western countries still impose this legal answer to the evil people do unto one another in the 21st century. This academic investigation provides an excellent opportunity for pursuing and answering my inquiry of the first recorded historical documentation of capital punishment as a legal finding for a person found guilty of a crime and exploring the arguments why, in particular the United States – a great Western democracy continues imposing this form of punishment in some of the 50 states.

## Source

Randa-King authors and edits, " Society's Final Solution: A History and Discussion of the Death Penalty". As I explored the different contributions to the book from numerous authors with their own points of view, it is Randa-King's research gives me the answer on the subject providing a list of codified capital punishment laws. These laws go back in history to the 8th

Century B. C. E., under King Hammurabi of Babylon, 14th century B. C. E the Hittites, and the Athenians in 7th century (1997)

I found throughout Western Civilization's written history from the earliest of the Greeks, Romans, and thereon, capital punishment laws existed. These came about because of whims of rulers, the pathos of religion and with the Age of Enlightenment taking a more humane approach to punishment logos applied resulting in reforms in some areas, with the eventual abolishment of capital punishment, and in others like the United States, and it still exists (Randa-King 1997).

I came to the understanding that history proves a pendulum of ideas about human rights, and harsh and cruel punishments continue ethical, judicial, and societal debate about capital punishment in the 21st century. It is a topic that finds increasing numbers against it, while others' philosophies hold it a religious, moral, and "final solution" to the human crime of murder and treason, particularly so, in the United States.

I chose Rosenblum's book "Beyond the Prison Gates: Punishment and Welfare in Germany, 1850-1933" because as researched through the literature this offers a reasonableness about capital punishment and the approach to from the context of reforms taking place during the time period it covers about psychiatric care. Germany after WWI, found increased violent crime in its borders particularly among displaced soldiers. Instead of putting the guilty to death, the German rulers brought judges, social experts, as well as welfare volunteers to a great conference for the specific purpose of deciding the most pragmatic and humane treatment for prisoners.

This book made sense of the best way for modern people approaching the

issue of capital punishment and I found the German approach fit an ideology of stopping violence with violence as no solution to law and order. Ravaged by WWI, the logic of taking this non-violent approach punishing guilty people with time in prison, or in mental hospitals treating his/her illness an ethical way of using the law

Choosing inclusion of Anastaplo's "Reflections on Life, Death, and the Constitution, provided insights about individual rights according to the U. S. Constitution and matters of life and death in regards to the capital punishment debate. I found myself questioning the subject in a different way than the mere curiosity impelling any thought about the right or wrong of capital punishment. In other words, this literature brought up many ideas I never considered about human rights including war (which is in itself, a form of death sentence on a grand scale) (2009).

The book is a collection of essays by great thinkers, excerpts of last words of great thinkers sentenced to death, and pulls into the discourse religion, and God, and the relationship of the dogma of the institution, and the divinity aspects of the Creator and death as punishment for crimes. I came away with an unclear emotional response to this particular literature on capital punishment (Anastaplo 2009).

My emotional response arises from an ethical moral confusion about who has the right to condemn another human to death no matter the horror of his/her actions. This sets off an intellectual approach that draws on logic as supporting the idea these kinds of people serve no purpose for the general good of society so society rids itself of such animalistic behavior that results in the harm and death of innocents they target.

Within the collection of essays the argument that nature itself (God) takes care of anomalies like a mother animal ignoring its young, not feeding it, or abandoning it because it is lame, or ill. It has a birth/death sentence written into the instinctual code of its mother. Conversely, humans above all animals have the development of moral, ethical, logical reasoning about this very thing, and that is the foundation of our humanity.

Reading the title of Frase's book, " Just Sentencing: Principles and Procedures for a Workable System" drew me immediately to explore what the 280 pages offer for insights and direction about capital punishment, and punishments in general. This author takes again, a proactive stance on the subject of just punishments incorporating what he calls a " hybrid sentencing model that integrates theory and practice" (xi).

This idea excited me, yes! Taking a pragmatic and intellectual approach on the subject of capital punishment " sounds" less emotional, less fraught with ambiguities of morality (who's morality), and possibly a genuine workable idea. The fact is the author presents a sound, ethical, and logical approach to capital punishment based on the circumstances of the crime of murder. He includes the historical record of the American judicial system's underpinnings of racially led sentencing using capital punishment continues spurring much of the controversy of the death penalty. Countering this fact and any other issues concerning use of the death penalty shows his model calls for monitoring by " an independent sentencing commission equipped to take a comprehensive, data informed, long-term perspective on sentencing policy issues" ( Frase 236).

Unfortunately, as I completed investigating this literature, I realize I am, left

with a cynicism about "who" this monitoring commission represents. My cynicism knows no bounds when it comes to committees, boards, and other overseers of justice because I believe as long as there are people with power based on money, most people on these governing bodies doing "good" are targets for "being bought off".

So there goes the excitement, here comes my logic why it sounds good, but not a fix all. What I now understand about democracy is the continual growing pains existing within its evolutionary process. Yes, because a democracy does not lay stagnant but continues evolving. In a democracy values, morals, evil and good exist equally. It is the conscience of a democratic society that allows the things that causes its flaws because conscience is subjective in the final analysis. Therefore, any understanding of the history of Western Civilization starting with the Athenians, understands how conscience is not the most dependable of gauges. I see this and I understand this.

Power by money, might, vote, judicial robes, whatever it is that gives power to humans too often is a like an addiction. Thus, I give witness to my cynicism based upon humans using hard earned, ill got, or brute force to get what they want by using this power against commissions, committees, and other bands of good and bad people. The incidences of such institutions achieving a measure of reputable decisions about law remain less than injustices. Parole boards are the best examples.

Repeat offenders play good person and woman while locked up and say what the parole board wants to hear, the next time this prisoner is locked up in some of the 50 states of the U. S. he/she is waiting on death row. I do not

know the answer but what Frase proposes definitely is not workable as the global community, the US community exists at present.

Kleiman's book "When Brute Force Fails: How to Have Less Crime and Less Punishment" drew my attention. Not as keenly, as some others but my thinking led me to investigate with the attitude of let us see what he has to offer. Kleiman's idealism deserves recognition but that is about all (2010).

His philosophical ideas about doctors treating shot up gang members in the hospital as they would a person with a deadly infectious disease, has some pragmatic undertones. However, his suggestion it is the moral duty of doctors policing these murdering culprits and physically restraining them if need be from going out and killing is so ridiculous it is funny (sorry this is my dark sense of humor – how I deal with the absurdities of life) (Kleiman 2010).

Consequently, the logic, the ethics, and the lack of emotional context to Kleiman's view of corporal punishment, violence, and who is to blame – his suggestions society, cities, and doctors – does not win me over. I learned there exists, people in the Western world who live in intellectual bubble, who have no hands on experience with the real world, and they evidently cannot see the ridiculousness of their ideas about stopping murder begetting judicial sentences of death.

My next literary encounter on the subject of capital punishment led me to Oliver's "Technologies of Life and Death: From Cloning to Capital Punishment". Again, the title fascinated my curiosity so I dived in checking out the table of contents, the introduction, in particular, the information Oliver provides about capital punishment. His is a dynamic, intelligent,

logical, ethical, and passionate argument about the ludicrous (he is against capital punishment very much so, I soon came to realize) application of society versus nature and the act of death (2013).

Oliver discusses death sentences of animals and humans as an equal philosophical argument. He discusses how technology now makes carrying out capital punishment death sentences "more humane" yet, an inhuman act. The morality of artificial insemination provides his argument about the other side of the coin in who gets to decide life (2013).

Now, I find myself back at some earlier square in this academic exploration, and as I type this, my head is shaking back and forth, and I am chewing my lip in a deeper contemplation on the subject. I do not believe I learned anything directly from Oliver's views but I believe I am once again on a more honest plane of my true feelings and keeping an objective approach as I continue this investigation.

Sarat's book "The Killing State: Capital Punishment in Law, Politics, and Culture" practically came out of the computer screen and grabbed me. I am thinking, "This sounds promising for enlightening the quagmire of my mind about this capital punishment subject." In so many ways, this literature does not disappoint. "We live in a state in which killing increasingly is used as an important part of criminal justice policy and of the symbolization of political power" (The Killing State 3). There it is! Eureka! Yes! This says the truth on the subject. There is no judgment and there is no "side". This is the plain truth of the matter. Capital punishment is an expression of the power. A great deal of Americans, want to feel powerful because it seems they believe that is some kind of "inalienable right". This personal epiphany now



substantiates why I have this driving curiosity of humans and the historical and contemporary proactive use of capital punishment.

Wanting to explore the insights of jurists on the law and application of capital punishment as the wages of breaking the law, I looked at Maccormick's book "H. L. A. Hart" for some insights. Evidently, according to Maccormick, Hart remains one of the brilliant (if flawed) minds about the pragmatic view of capital punishment. Directly, Hart's view as explained by Maccormick on capital punishment offers, "If punishment served no purpose in discouraging harmful behaviour, its own harmful character would require us forthwith to abandon it" (Maccormick 178). [Sic]

I want to shout, "Amen!" This is the simplest explanation of what Hart makes out of law and how law keeps society "social" and how laws that serve no purpose in keeping people socially acceptable leads to their death then should not be a law. I could not put the logic of this argument clearer. What this logic comes back to is this stubborn insistence among Americans in particular to wield this power over life and death in connection to punishments and the law.

. Having visited a book written by Sarat as previously shared in this journey of discovery in answering the second part of my question of why the United States continues imposing capital punishment for murder I again find myself drawn to another book by this same author. "Mercy on Trial: What It Means to Stop an Execution". Here, the author again gets to the point at hand as he explains, "Fueled by the politicization of crime and punishment and the attack on rehabilitation and redemption, the death penalty helps the state to occlude its ineptitude on the home front, and tame "the globalization of

contingency" (Mercy on Trial 143).

Sarat discusses the power of governor's where the citizenry vote for capital punishment to grant the prisoner clemency as he/she counts down the minutes to his/her execution. This power over life and death typically looks more at the wishes of the people electing this individual to the governorship quite often because of their stand on capital punishment. On the merit of mercy alone, clemency rarely takes place. Sarat having presented different judicial, philosophical, moral, and ethical beliefs (remembering morality and ethics are two different things often aligned with one the other) on capital punishment comes to a logical – pragmatic point of view.

### **He explains:**

One person's risk of discrimination is another's opportunity for leniency. One person's fear of prejudice is another's hope for sober moral deliberation. And neither law nor any set of fixed moral norms can forbid the former or ensure the later. This is the risk that embracing mercy requires we take. And where life is at stake, it is a risk worth taking. Like the jury's power in a capital case, clemency is a place where law runs out, where law authorizes what it cannot subject to rule. Moreover, in both of these situations we see a tension endemic to modern liberal democracies, committed as they are to popular sovereignty and the rule of law, when those societies confront the exercise of unfettered discretion. In these cases law acknowledges its own limits and invites the embrace of mercy's risks. (160)

Sarat's other book already discussed is over a decade older than this current one but the rationale of his thinking brings a depth to my increased understanding I continue processing in my critical thinking about capital

punishment. This is the value of this particular book and his other.

My last choice of literature for this journey of discovery is Ogletree and (again) Sarat book called " The Road to Abolition?: The Future of Capital Punishment in the United States". The authors' remind how the crime of murder has historically drawn the wrath of citizens and led to the most severe of punishments – that being capital punishment. They remind how Western nations during the 20th century took a different stance on the issue and abolished the death penalty as in Canada, and many European nations as a direct violation of human rights (2009). To my surprise these authors believe the global status of the United States an " outlier" when it comes to still allowing capital punishment seems on the verge of taking a step away from it. (Ironically, the fact is the US Supreme Court made that decision and then later rescinded) (Ogltree and Sarat 2009). Their strongest argument capturing my imagination is their explanation a growing number of Americans understand, the " fallibility of the death penalty system" (6). My ignorance of the Innocence Protection Act providing " a comprehensive package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed" (Ogletree and Sarat 6). Maybe, just maybe, there is hope. But, I do not see Americans bent on an eye for an eye – especially some of the religious right who has some kind of enigmatic power in America changing their minds anytime soon.

## Conclusion

In conclusion, I have found the answer to my question about first recorded historical documentation of capital punishment as a legal finding for a person found guilty of a crime and exploring the arguments why, in particular the

United States - a great Western democracy continues imposing this form of punishment in some of the 50 states.

Of all the literature in my journey of discovery, answering my inquiry Sarat (2013) provides the most logical, ethical, and intellectually founded point of view. I like he does not judge anyone. He is asking more questions than anything, while making it perfectly clear that a logically minded person accepts the truth of why people in America continue espousing the "good" of capital punishment.

It is the sense of power, empowerment, and I believe this focus comes from fear as much as anything else connected to the "need" for power. There is never any good in killing in my opinion. Even though, I admit in the passionate and emotional moment of a movie, a book, a real-life story of about murderous, blood thirsty evil actions of one or more people (Idi Amin, Nazis, Rwanda) I too, have thought or even said "kill them all".

Depending on how my day goes, what I am reading, or watching on television, where my thoughts wander I know I am still capable of such a reaction. What I understand about me, and what the author eloquently provides, is the difference between emotional, the sense of self individually, and as a nation, that drives the different commentaries and arguments about capital punishment. Clearly, Hammurabi was showing he had the power with his 25 codes for the death penalty, and the Athenians - where the ideas about democracy began over 2,500 years ago using capital punishment when a person breaks any of their laws demands further study of the rationale behind that call.

This academic journey through the literature I chose and present here also

brings me to another conclusion. That conclusion holds that no matter how logical, ethical, and moral an idea is, and in the case of capital punishment – is not, in a true democracy such as the United States there is enough dissention among people wanting the death penalty it is probably going to last for some time. freedoms continue allowing people the right to vote laws, as long as the Constitution supports the rights of each state when it comes to laws such as capital punishment then capital punishment is going to be a part of the landscape.

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