

Law essays - capital punishment



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Does capital punishment have a deterrent effect on crime? Analyse this question with reference to either the UK or USA.

Introduction

Nowadays, in most of the Western world, capital punishment is considered an unacceptable, barbaric sentence that cannot be morally or philosophically justified. In the UK, it has been abolished since 1969, while Protocol six of the European Convention on Human Rights obliged the forty six member states of the Council of Europe to scribe off the death sentence from their penal codes. However, a number of US states retain the sentence with few politicians and theorists claiming that it has a strong deterrent effect. The purpose of this essay is to critically reflect upon this argument.

Is capital punishment a worthwhile deterrent?

The punishment theory of deterrence – which belongs to the utilitarian philosophy – is composed of two elements. The first is called specific/individual deterrence and is directed towards convicted offenders. In broad terms it aims to discourage them for their transgressions and thereby convincing them that crime does not pay. The second is called general deterrence and is directed towards potential offenders. It seeks to persuade them by the threat of anticipated punishment from engaging in unlawful conduct by illustrating the unsavoury consequences of offending.

Therefore, by definition, capital punishment cannot fulfil the first element of deterrence since after its passing, the convicted offender dies. As for the second element of passing a lesson to the rest of the society, the views are

mixed; although there is evidence to suggest that the impact of capital sentence is not as great as it would justify it. For example, according to Katz *et al* , the so far studies on capital punishment produce erratic and contradictory results, while most of them find that there is no deterrent effect. In fact, Shepherd's 2004 study showed that executions are as likely to increase homicides in states following execution as there are states where there seems to be a reduction.

In addition, a number of research experts have heavily criticised the so far positive studies on capital punishment for being methodologically unviable. For instance, Maltz recent evaluation showed that most of US studies ignored large amounts of missing data, relying only on two sources: the Bureau of Justice Statistics of the US Department of Justice and the Federal Bureau of Investigation.

Even more importantly, studies that directly examine the reactions of individuals to punishment threats constitutently show the limits of the assumptions of rationality that underlie deterrence. In fact, according to the Annual Statistical Report of the Pennsylvania Department of Corrections, most offenders who are convicted to a capital sentence have cognitive impairments. This makes it even more unlikely that they are actually aware of executions.

On the other hand, states without capital punishment such as New York enjoy declining homicide rates. The Uniform Crime Reports showed that over the last decade there was a 65. 5% decrease in homicide rates. Similarly, Dugan *et al* showed that since the early 1970s intimate or domestic

homicides have been declining at a steady pace regardless of fluctuations in the number of executions. Finally, according to the forthcoming study by Professor Berk, nearly all of the presumed deterrent effects of capital punishment are confined in one state – Texas – and only for a handful of years when there were more than 5 executions. Overall, the study proved that eliminating Texas eliminates any hint of deterrence from the relationship between execution and crime.

Moving beyond the statistics

However, it is not just the negative statistics that make capital punishment increasingly unfamiliar. Carter showed that offenders who are convicted to capital punishment usually come from poor backgrounds introducing an element of class discrimination in the sentencing system. Similarly, Keil and Vito's study reported that blacks who kill whites seem to have the greater odds of receiving the death penalty than whites who kill blacks". To conclude, the last two year research data show that capital punishment has hardly any deterrence effect, while a number of other side issues such as discrimination and selectivity reinforce the argument against its use.

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