

## REVIVING THE DEATH PENALTY

"An eye for an eye, a tooth for a tooth" is one of the oldest and most famous sayings in the world. It comes from the Mosaic Law in the Bible and it is an edict that has ruled millions for thousands of years. Today the issue of capital punishment has our nation split down the middle. The two sides have drawn lines in the sand and are emphatically holding their ground. The need for capital punishment is greater today than it has been at anytime in the past for several reasons. The crime rate is soaring out of control. Murders are tearing our people, our cities, and country apart. Many people have the same belief as Thomas Draper, an author on the book called Capital Punishment, that no society can abolish crime, so their only hope is to do everything they can to control it. It is time for the United States to mandate the death penalty for the crime of murder in all 50 states and to carry out the executions of those sentenced to death. Capital Punishment is the lawful infliction of the death penalty. In England, by 1500, only major felonies carried the death penalty: treason, murder, larceny, burglary, rape, and arson. The American colonies adhered with England's view on the death penalty, for there was little they could do about it. However in the 1750's reform movements spread through Europe, and in 1847 they reached the United States. In 1847, Michigan became the first state to abolish the death penalty for murder.

Beginning in 1967, executions were suspended to allow the appellate courts to decide whether the death penalty was unconstitutional. In 1972, the Supreme Court ruled in *Furman v. Georgia* that the death penalty for murder or for rape violated the prohibition against "cruel and unusual punishment" (Bedau 1). Four years later the Supreme Court reversed its decision in *Gregg v. Georgia*. They held the death penalty for murder and rape was not unconstitutional. The next year executions resumed, and by 1991, some 2,350 persons were under death sentences in 36 states. About 150 prisoners including one woman, had been executed. Current capital statutes authorize a trial court to impose either a life or death sentence only after a post conviction hearing. Evidence is submitted to establish which 'aggravating' or 'mitigating' factors were present in the crime" (Bedau 1). If it is in the court's mind that "aggravating" factors prevail and hand down the death sentence, then the case is automatically reviewed by an appellate court. Also in 1977, the Supreme Court held that death sentences for rape were "grossly disproportionate and excessive." The methods for carrying out a death sentence in the United States today are hanging, electrocution, gas chamber, firing, squad, and lethal injection.

Americans feel strongly about the death penalty, but it is something they know very little about. Their attitudes are based on emotion rather than information or rational argument. People see the death penalty as something you are either for or against. This idea is supported by the fact that the wording of questions about the death penalty in public opinion polls change the percentages by the smallest amount (Ellsworth).

Hugo A. Bedau, author of *Facing the Death Penalty*, states that 70% of Americans favor the death penalty for murder. The people who favor the death penalty, favor it because they have a goal in mind, the reduction of crime. Whether it does or not will be discussed later. Thomas Draper, author of *Capital Punishment*, states that there are certain people who do not belong in our society. There are some who have committed such heinous crime that they don't deserve to live. Phoebe Ellsworth, author of *"Hardening of Attitudes"*, took a poll that stated the support declined through the 1950's to a low of 47% in 1966, but increased steadily from 1966 through 1982 and has remained stable in the range of 70-75%. Another poll

taken by Tom Kuntz, author of "Should We Kill Those Who Kill" reflects the public view on the deterrent effect of the death penalty. According to a poll of 651 registered voters in New York, 57% feel the death penalty does deter murder, 40% feel it does not, and 3% had no answer. What citizens feel and why they feel it is up for debate, one thing there is no debating, though, is that they most definitely feel.

Those in opposition to the death penalty give several reasons for the United States to abolish capital punishment. First, it is more expensive to the tax payer to execute a murder than have them serve a life sentence. "A Duke University study of 77 murder cases in North Carolina in 1991 and 1992 concluded that the average cost to try a noncapital murder case \$166,000, while the average cost to convict and execute was \$329,000" (Kuntz 3). Once the death penalty becomes a federal law and all 50 states must abide by it the cost of capital trials will drop dramatically. The high cost is due to long litigation procedures and retrials that stem from the uncertainty of the law. Second, "The death penalty has been shown to have been administered with racial bias" (Bedau,179). On the other hand, "Evidence of racial discrimination proves it to be no worse than the discrimination in convictions on lesser crimes" (Bedau, 180). So the problem is not the death penalty, but rather an unfortunate trend in all legal cases. Third, even murders have a right to life. Does a murder have more right to life than the person or persons he killed. They are no longer with us, should he/she be allowed to continue his/her life. "If a murder is not executed he will eventually die anyway. The death penalty only hastens the inevitable. Death of old age and disease are quite often more painful the execution" (Draper,130). Opponents will also say that the death penalty cheapens human life. "On the contrary to what some might argue, capital punishment does not cheapen human life, rather by making the penalty so high it strengthens the value of human life" (Draper,139). Some people feel it is wrong for the state to kill at anytime, but they do not oppose war. "If a foreign enemy did 1/10 of what our own criminal did to us they would be appalled. Let them consider this a war on crime" (Draper,121). They do not deem it right for the government to execute it's own citizens, but by doing so the government is saving many innocent lives. Fourth, Americans who follow the teaching of Jesus Christ believe it is morally wrong to take the life of anyone at anytime. Some people invoke religious reasons why they will not support capital punishment. "Jesus forebode murder as a form of retaliation, not as a form of punishment. Jesus also said to forgive your enemies, but what if the wrong was not done onto you" (Draper, 119). One of the 10 Commandment states, "Thou shalt not kill". Is it not also written in the Old Testament "An eye for an eye, a tooth for a tooth." Fifth, opponents cite lines from the Constitution take out of context. "No person is to be deprived of . . . life . . . without due process of law," according to the Constitution. If due process of law is given, then according to the very same document, life can be deprived. Next is the Eight Amendment which forebodes "cruel and unusual punishment," by the government. The Eight Amend meant was made part of the Constitution in 1791. It was aimed at preventing methods of execution which tried to inflict maximum suffering such as: burning, drawing and quartering, and impalement. Today's method of execution are painless, depending upon which method is chosen. Lastly is the deterrent affect. Anti-death penalty supports claim that capital punishment has no deterrent affect on future murders. "The flaw people make when speaking of deterrence is looking at states with capital punishment statues rather than states where execution are carried out" (Draper 115). If the statistics are looked at from that angle a different result follows. "A study by econometrician Isaac Ehrlich contended for each execution carried out, between seven and eight murders were prevented" (Draper,115). Each one of the other sides seemingly solid arguments has an Achilles heal, and when it is exposed the argument loses much of its validity.

The argument in favor of capital punishment are based less on emotion and more on rational thought and fact. Draper states in the late 1960's and early 1970's when there was a reluctance by judges to use the death penalty, the homicide rate doubled from 4.7 to 9.4 murders per 100,000 persons. According to human

nature, The question is not do threats deter, but how much more does one threat deter compared to another. Society believes that punishment is a deterrent. Draper concludes if it can be said that any punishment at all is a deterrent, then it would seem to me that the most severe punishment would be the best deterrent. This is what author Walter Berns had to say, take a moment to reflect on this hypothetical situation. If life imprisonment was the sentence for murders committed on Monday, Wednesday, and Friday, and death was the sentence for murders committed on Tuesday, Thursday, and Saturday, we would quickly see the deterrent affect of the death penalty. To look at the legal side of the debate, "The law has two purposes: to forestall criminal behavior, and to punish it. All sentencing is based on the principal that punishment should be proportionate to the seriousness of the crime" (Draper 111). What good is punishment if it does ratify the harm and injustice caused by crime. Quotes by convicted killers before they were put to death make it curious to know what made them speak out against killing right before they lost their own life". On the side of capital punishment are many great thinkers in our history, Rousseau, Kent, Lincoln, Jefferson, Washington, Locke, and Hobbes' (Draper 113). French philosopher Montesquieu went as far as to say "The death penalty shall be prescribed as the medicine for a social malady". "Data shows that some murderers have killed again after a conviction and prison sentence for murder. This indicates a risk it will happen again" (Bedau, 179). So the problem lies in the risk of either executing the innocent or a recidivist murderer.

Nobody knows how long the debate over capital punishment will continue. Long after a law is passed, either for or against the death penalty, the argument will still go on. In my mind, anti-death penalty supporters are trying to avoid a very serious problem, the problem of brutal crimes in America.