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The Death Penalty: Effectiveness in Deterrence of Crime and Prosecutorial Racism

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To

The Honors College

Oakland University

In partial fulfillment of the
requirement to graduate from

The Honors College

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(April 2nd, 2021)

Abstract

This thesis explores the death penalty, specifically investigating its effectiveness towards deterring crime and racial disparities from prosecutors in the United States. State statistics, prior research, and prosecutorial handling of prior cases were examined for overall effectiveness in the country. Through the researching of homicide death rates in the country where the death penalty is used, it was found that the death penalty did not act as a deterrence towards crime. Past scholarly work has also certified the claim that the death penalty does not deter crime. In regard to prosecutorial racism, prior research of conduction of death penalty cases revealed that minority defendants are more likely to receive death penalty convictions. Further on, prior research reveals that minority defendants with white victims are more likely to receive death penalty convictions as well. Additionally, historical cases were examined to highlight specific instances where racial discrimination by the prosecution was an issue in death penalty cases. This thesis aims to provide scholarly and statistical evidence to prove the claims made above regarding deterrence in crime and prosecutorial racism.

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Aims and Objectives of Research

Aims

1. To understand whether the death penalty in America has proven effective in acting as a deterrent towards crime.
2. To determine whether there are potential racial disparities encountered when convicting one with the death penalty.
3. To investigate the history of the death penalty in the United States.
4. To evaluate the extent of use of capital punishment in the United States.
5. To investigate whether the death penalty is effective in regard to improving murder rates in the country.

Objectives

1. Understanding whether the death penalty in America acts as a deterrent towards crime or not will better assist in realizing whether its use should be continued, or if the justice system should find new ways to deal with crime.
2. Discovering potential racism in regard to facing the death penalty allows the justice system to analyze the death penalty's purposefulness and whether or not defendants are sentenced to death based on their actions or their racial background.
3. By looking back in history, the past can be compared to today's society, and understanding whether the death penalty was only suitable in the past or if it is suitable today as well. If not, this understanding can lead to new ways to deal with crime in America's justice system.
4. Evaluating the death penalty's use and commonality in the country will assist in determining whether it is still in practice overall.
5. Investigating the death penalty's impact on murder rates in the U.S. will aid in identifying whether it proves to protect the lives of citizens and prevent future crime or not.

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Methodology

The first step to be taken in construction of the thesis will be analyzing current research on the death penalty in the United States of America. Numerous sources will be gathered in regard to capital punishment, and such sources will be related to the ideas depicted in the thesis in hopes of reaching a conclusion. The following step will be focusing on taking such current research and better showcasing evidence and explanations in relation to the thesis.

A majority of the additional research will be analyzing states in the country which utilize the death penalty for severe criminals, and then following up with statistical research about these states' crime rates and murder rates, in hopes of finding connections to better understand the death penalty's effectiveness in deterring crime. Finally, additional research will also consist of studying past cases in different states across the country. Research utilized will be past cases in identifying whether prosecutorial racism against defendants or victims of defendants affected death penalty convictions.

Introduction

To be aware of such an issue in our country as the death penalty is the first step in fully researching capital punishment, however not the sole focus. Through the application of new knowledge regarding capital punishment in our country, comes the latter step of analyzing its overall legitimacy. There is limited research on a wide array of prosecutorial racism, however this thesis will focus on prior court cases where racism has been utilized to achieve a winning argument. In addition to illustrating the death penalty's effectiveness through the analyzing of historical court cases, this thesis will also draw upon brief research regarding juvenile offenders and state statistics in regard to crime rates. Researching whether deterrence in crime rates

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actively follows the death penalty for states across the country will be a supplementary factor for identifying the death penalty's overall validity.

Capital punishment is not an unfamiliar concept to the justice system of the United States. Execution in America has been dated back to the 1600s, where European settlers brought the practice of capital punishment along with them. According to the Death Penalty Information Center, "The first recorded execution in the new colonies was that of Captain George Kendall in the Jamestown colony of Virginia in 1608" (Death Penalty Information Center, 2021). However, laws in relation to the death penalty differed from colony to colony. The New York Colony punished individuals to death who would deny God or strike one's elder. Such variations seen in colonial regulations in regard to execution are quite comparable to states' regulations in America. Currently, 28 states authorize capital punishment. It is additionally authorized by the U.S. military and the federal government. The diagram on the following page illustrates where exactly the death penalty is used in the U.S. (NCSL, 2020).

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Although the 28 states viewable in the diagram permit the death penalty, past Supreme Court rulings have also limited the scope of death penalty applications. In *Furman v. Georgia*, the court's decision to rule the death penalty unconstitutional for burglary was a turning point for states (Smith, 2008). States were forced to rediscuss their death penalty impositions in order to halt excess cruelty being administered in future execution cases post *Furman v. Georgia* in 1972.

Along with court rulings, Congress has also been successful in regulating death penalty administration in the U.S. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act. The title of the legislation provides an explanation for its passage. The AEDPA was passed in order to make the death penalty more "effective." According to The Supreme Court and the Politics of Death Journal, "By effective, Congress meant a death penalty that is expeditious and virtually impervious to attack in federal court" (Smith, 2008). In other words, Congress passed the legislation in hopes of facilitating a more valid, quicker administration of the death penalty. Whether the AEDPA has been facilitated successfully in prior death penalty convictions will be looked at further in the course of this thesis. This thesis will also explain what exactly lies behind the meaning of an overall effective death penalty delivery.

Clearly, the death penalty in the United States has not emerged in an unregulated nor unfamiliar manner. Although the death penalty is used by select states, the legislative and judicial branches have the power to alter states' mandates regarding capital punishment. The death penalty is a historical aspect of the United States' justice system, with much precedent behind it.

Current Research

To bring into context the background of the desired research area, this study will focus upon two specific aspects of the death penalty: its effectiveness towards deterring crime and the

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encounter of racism by defendants from the prosecution. As of today, the current research consists of many case studies that examine factors, such as race, that affect whether an individual will be prosecuted using the death penalty. Additionally, today's current research focuses on how effective the death penalty is in deterring crime and preventing individuals from committing heinous acts. There are numerous studies and published research behind such a heated topic of concern, and several significant ones will be found in the current research below. The focus of the thesis, however, will not be limited to the research below.

Beginning with the research sources, there are four main scholarly articles that capture the idea of the death penalty, as well as build on more sources to come in constructing the thesis. One study conducted in hopes of understanding racial disparities found that prosecutors discriminated against black defendants when charging them with the death penalty (Johnson, 2020). The author's argument proves society can clearly see race is a factor select prosecutors analyze when imposing the death penalty. An additional interesting study conducted by a group of researchers was able to find that prosecutors do not simply look at the race of the defendants. The study found that defendants who kill white victims are more likely to receive the death penalty (Ulmer et al., 2019). This study allows readers to see that racism plays an unfortunate role in the prosecution when convicting a defendant of the death penalty. Whether it is the race of the defendant or the victim, some prosecutors heavily analyze race in death penalty cases in the U.S.

An additional idea behind the current research of this topic is seen by researchers analyzing the effectiveness of using the death penalty to deal with crime. Findings of research relating to the death penalty tend to conclude that in reality, the death penalty truly does not act as a deterrence towards crime. When one study analyzing such a question conducted research by

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looking at state data and state executions, it was found that the application of the death penalty does not deter offenders from committing crime, specifically homicides (Mendoza-Valles, 2018). The author is proving to those who encounter his study that the death penalty is not quite as effective as people may believe it is. With conducting such research, he is able to leave readers with curiosity regarding their justice system and its successfulness. In relation to the death penalty's ability to deter crime, one research study found that the death penalty is not effective enough to deter crime rates (Martin, 2016). Both sources prove the claim that overall, the death penalty is ineffective in deterring crime rates across the country.

Gaps in current knowledge today are a true lack of understanding of why today's research has given researchers the results they see, and possible explanations as to how to avoid racial bias in the prosecuting process. This research will fill these gaps by citing specific research and arguments in order to highlight the importance of the death penalty.

Juvenile Offenders

As complex and controversial the death penalty can seem, there also lies another issue within the debate behind it. Should minors be held to the same standards as adults when it comes to committing crimes that merit the death penalty? In the U.S., offenders under 18 years of age are exempt from the death penalty (DPIC, 2021). In the case of *Roper v. Simmons*, the Supreme Court ruled that under the Eighth and Fourteenth Amendment, the execution of offenders younger than 18 was prohibited (DPIC, 2021). Scientific debates have alluded to the fact that an individual younger than 18 is unable to take responsibility for malicious crimes. Others have argued that the age to be exempt from the death penalty should be 21, yet again claiming that the adult brain does not develop until the mid-twenties (DPIC, 2021). A scientific study conducted by one researcher found that adolescents 15 years and older are just as mature as adults in regard

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to emotions (Steinberg, 2013). However, an opposing study found that adolescents are not as mature as adults to be held accountable to the same criminal standards (Cauffman, et al., 2009-10). As listed in studies such as above, science provides researchers with quite different beliefs regarding capital punishment and adolescents.

Public Opinion on the Death Penalty in the U.S.

Appellate courts in the United States have often looked towards public opinion in understanding whether the general public believes that the death penalty violates the Eight Amendment's prohibiting of cruel punishment. One scientific study analyzing the support of capital punishment in the U.S. found that overall, the general public tends to be in favor of the death penalty. However, the study also finds that this general support disappears when a defendant is given the alternative of life in prison without the possibility of parole. The study delves into the research topic one step further and recognizes that often, lawmakers misinterpret ideologies of their constituents on this policy issue (McGarrell & Sandys, 1996). Yet, overall support for the death penalty has been in a downward spiral since the mid-1990s. A poll conducted regarding support for capital punishment in the U.S. found that 60% of Americans prefer life sentence to capital punishment (DPIC, 2019). Although there is somewhat substantial support for capital punishment in America, support is found to decrease when given the alternative to convict one with a life sentence.

Murder Rates

States throughout history have rationally believed that through the institution of severe punishments such as the death penalty, rates of crime would likely deter. However, through the examination of certain diagrams drawing connections between crime rates and the death penalty as the one listed below, one can clearly make the conclusion that this rationality is non-existent in most cases. The bar chart below (DPIC, 2018) illustrates state murder rates between states that utilize capital punishment and states that do not. By simply taking a quick look at the diagram below, the assumption can be made that in reality, where the death penalty is in practice, the murder rates are quite higher.



Murder Rates in Death Penalty and Non-Death Penalty States



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To delve deeper into the specific state and their homicide rates, statistical evidence additionally provides society with more insight on this issue. Mississippi, a state that authorizes the death penalty had a 13.4% homicide mortality rate per 100,000 recently in 2018. Louisiana had a 13.3% homicide mortality rate, along with Alabama's 12.2% rate. Evidently, in 2018, the three states with the largest homicide mortality rates in the United States were all states that practice the death penalty.

On the other end of the spectrum, when looking at states that have abolished the death penalty such as Maine and Rhode Island, their homicide mortality rates tell a different story. Both states had a 0% homicide mortality rate, with Maine and Rhode Island having had the smallest homicide mortality rates in the country in 2018 (CDC, 2018). Such statistics as above provide citizens and researchers that in actuality, the death penalty does not act as a fair deterrence when it comes to homicide rates in the United States.

Murder Rates

Various studies have additionally provided evidence that corroborates with the bar chart and statistics provided in the sections above. A group of two researchers compared six recent studies published beginning from 2003 that provided statistical evidence comparing execution rates and proportions of murders in a state. Both researchers found little to no substantial evidence that the death penalty acts as a deterrent against crime, specifically murder rates (Donohue & Wolfers, 2009). The researchers go one step further and discuss that claiming the impact of the death penalty acts as a deterrent towards crime is quite biased. Their study raises an interesting point when it comes to claims regarding capital punishment and murder rates. Many studies may exaggerate a decrease in crime rates alongside practice of the death penalty for

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political or social interests. The data presented in future research must be closely analyzed when it comes to making a claim involving reduction of murder rates and death penalty institution.

The National Research Council's study conducted in 2012 concerning the death penalty and deterrence solidifies claims made from previous researchers as well. The Committee on Law and National Justice affirms that not only do executions have no effect on murder rates, but also concludes that research up to 2012 was not sufficient to make further claims on capital punishment. The committee stated in their studies that prior research has not accounted for effects of non-capital punishment on homicide rates (Nagin & Pepper, 2012). The study conducted by the National Research Council provides insight into homicide rates vs. death penalty institutions, and reveals that executions do not act as a deterrent towards murder rates, and future evidence must be improved in order to make claims in years to come concerning capital punishment in the U.S.

When studying the death penalty's deterrent effect, it is seemingly non-existent. The death penalty does not prevent criminals from killing others. The application of the death penalty does not deter offenders from committing crime, specifically homicides (Mendoza-Valles, 2018). In such situations with such strong evidence, the U.S. justice system should feel the necessity to reform current sentencing institutions. The authorization of the death penalty in 28 states currently may not be an efficient tool to deal with not only current criminals, but probable criminals to come. Criminal punishment should be utilized in an effective matter to prevent criminals from harming society. Additionally, statistics reveal that states who do authorize the death penalty are states with some of the highest homicide rates in the country. Research and evidence on homicide rates failing to decrease with death penalty application reveals the ultimate failure of it to act as a deterrence of crime.

Prosecutorial Racism

It is quite irrational to believe all death penalty cases in the U.S. are handled fairly and equally. Prosecutors are humans just as are the jurors, defendants, and judges. All humans have their own distinct ideologies and attitudes, and these opinions most definitely come into play when handling death penalty cases.

Analysis of capital punishment has found a strong correlation between counties with large black populations and death sentencing (Garrett et al., 2017). Additionally, study of the racist punitive bias hypothesis reveals that white individuals are more likely to support the death penalty. The racist punitive bias hypothesis ultimately aims to prove that racially prejudiced individuals may be more supportive of the death penalty. This support is most likely due to the belief that those who are racially prejudiced believe minorities are more likely to commit heinous crimes that merit the death penalty (Bratine et al., 2016). Such research suggests that racial bias is quite apparent in terms of understanding capital punishment. It is very likely to believe that some criminal prosecutors in the United States may be actors in the racist punitive bias theory depicted from the research above, which is why study of prosecutorial racism is essential in order to understand the overall effectivity of the death penalty.

Prosecutor Behavior

This section will examine behaviors of prosecutors when it comes to death penalty cases, specifically discrimination against minorities. Beginning with past research, by examining over 300 homicide cases, it was concluded that prosecutors were “four-and-a-half times more likely to seek the death penalty when black defendants have white victims” (Lyons et al., 2008). Additionally, when looking at five counties in South Carolina, researchers found that the race of the victim was especially important for prosecutors when deciding whether to file a notice to

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seek the death penalty (Lyons et al., 2008). Such research provides us with multiple interpretations regarding prosecutors and their behaviors. Primarily, race of the defendant is highly factored into whether a prosecutor will decide to pursue a death penalty conviction. Further on, the race of the victim also highly determines whether a prosecutor will file a notice to seek the death penalty. In actuality, the victim's race plays such a large role in prosecutorial behavior that prosecutors are forty times more likely to seek the death penalty for African American defendants when they have a white victim rather than an African American victim (Lyons et al., 2008).

The study above, however, is not the only evidence we have of prosecutorial discrimination. Other groups of minorities face racial oppression in death penalty convictions. Latinos have also come victim to the preconceived notions of the prosecution in death penalty cases. Research regarding Latino ethnicity and the imposition of the death penalty has found that Latinos face similar defendant and victim of defendant prejudice that African Americans face (Johnson, 2020). The trend of prosecutorial oppression against minorities develops itself as a common theme for death penalty cases in the United States.

This illustrates the notion for researchers and interested citizens that prosecutors have their own perceived opinions on defendants once race is acknowledged in the case, which ultimately shatters the death penalty's effectivity. Discriminatory practices should most definitely not be incorporated when it comes to death penalty convictions, yet research proves otherwise. Prosecutorial oppression renders punishments for minority criminals in our society to be unfairly merited. Evidence points to the claim that preconceived notions of the prosecution ultimately tend to guide the course of death penalty cases.

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Court Cases in the United States

This section of the thesis will be exploring past death penalty cases in which racial discrimination against minorities played a factor in the cases. The cases that will be examined are as follows: *Flowers v. Mississippi* and *Guerra v. Collins*. These cases were selected as they provide evidence for the claims made in the abstract regarding prosecutorial racism. The sources of (Oyez, 2019) and (University of Texas, 2021) were major beginning areas for the research and familiarity of the selected cases. The goal in researching such court cases is to better understand whether some death penalty sentences are instituted based on the facts or based on oppression and discrimination.

Flowers v. Mississippi

In 1996, four employees of the Tardy Furniture Store in Winona, Mississippi were killed during a robbery. Curtis Flowers was charged with murder by the state. Flowers was an African American male who was tried a total of six separate times for the murder/robbery in Winona, each trial including a heightened conviction than the prior. The major issue with the conduction of this death penalty case was prosecutorial misconduct. The prosecutor, a white male by the name of Doug Evans was found to have acted in a racially discriminatory practice when it came to the selection of jurors. Throughout each trial, the state of Mississippi was found to have purposely tried to remove black jurors at the trials in order to achieve an all-white jury (Supreme Court.gov, 2018). This racially charged motive reveals discrimination on the prosecution on behalf of the state. It is evident that the goal in achieving an all-white jury is to convict the defendant in the prosecution's mind, much easier than with a racially diverse jury. With such a circumstance, such death penalty cases cannot be deemed effective and true, as prosecutorial discrimination ruined the efficacy of the six trials.

Guerra v. Collins

Ricardo Aldape Guerra was an undocumented Mexican immigrant who was given a death sentence for the murder of a white police officer in Houston in 1982. Despite evidence that Aldape was not the shooter, he was charged with murder and sentenced to death. However, Aldape claimed that the prosecution utilized evidence that was known to be false to convict him. Additionally, witnesses were intimidated to keep them from testifying, and many of the witnesses were under the age of 18. Prosecutors of this case were found to have told witnesses to not change their statements, even after they changed their minds later on in the case. A witness by the name of George Brown stated that he was separated from Hispanic witnesses due to his European last name. When looking at the facts of the case, it is clear that it was quite a mismanaged case. Prosecutors also informed jurors of Guerra's illegal alien status in the U.S., a fact not relevant to the case (Justia, 1995).

The prosecutors' purposeful concealment of evidence, intimidation of Hispanic witnesses, and overall violation of Guerra's due process rights reveals discriminatory conduct. The actions of the prosecution can clearly be explained by the understanding of them simply needing to convict an individual who apparently murdered a white police officer. The discriminatory conduct is highly visible in the intimidation of Hispanic witnesses, where prosecutors shouted at the individuals to alter their statements, while asking questions in manipulative manners. Additionally, evidence pertinent to Guerra was purposefully concealed by the prosecution. Four jurors were informed of Guerra having illegal status in the U.S., a fact that was clearly used in malicious intentions, having no legitimacy in the case or murder. It is evident that the actions of the prosecution parallel past research where minorities have unfairly been treated in capital murder cases.

Understanding the Facts

Research heavily alludes to the fact that minority capital cases are quite complex in their handling. Many prosecutors have been identified to partake in discriminatory practices when it comes to the outcomes of their cases. Prosecutors are more likely to convict minorities with the death penalty, as well as convict minorities with white victims (Lyons et al., 2008). Of course, such utilized research and historical cases regarding prosecutorial racism does not speak for all prosecutors in the U.S. when it comes to death penalty cases. Nonetheless, timeless research reveals that minorities experience undeniable difficulties when it comes to death penalty convictions. This leaves researchers with the fact that discriminatory conduct is common in minority capital punishment cases. Such evidence should provide an obligation towards the United States justice system in relation to capital punishment for reform to avoid minority oppression from occurring in the future.

Conclusion

Overall, the purpose of conduction of this thesis was a better understanding of general productiveness of the death penalty in the U.S. Although there is a wide array of research globally on capital punishment, focusing on the United States revealed a more effective understanding of the history of executions in the country. The first central focus of the thesis was whether the death penalty proves effective in deterring crime. However, this statement was proved untrue. Ironically, statistics proved that states in the country authorizing capital punishment actually had higher deaths due to homicides than non-users of death penalty (CDC, 2020). Further on, prior scholarly research provides us with the understanding that the death penalty does not truly act as a deterrence towards crime.

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When it comes to prosecutorial racism, research and past cases allude to the fact that minorities do face oppression when it comes to death penalty cases. Prosecutors are more likely to seek the death penalty for minorities, and for minority defendants with white victims. It is completely extreme to state that all prosecutors in death penalty cases with minority defendants practice in a discriminatory manner. However, a sufficient amount of evidence does prove the claim that prosecutorial racism is in fact an issue for minority defendants in death penalty cases.

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