

## TABLE OF CONTENTS

Dedications	
Acknowledgments	
Abstract	
List of Tables and Figures.....	3
<b>GENERAL INTRODUCTION</b> .....	7
<a href="#"><u>Chapter 1 : Death Penalty : Historical Background and Judicial Position in America</u></a> .....	<a href="#"><u>7</u></a>
1.1. Introduction.....	8
1.2.The History of Death Penalty in the U.S. and all over the World.....	11
1.3. The death penalty issue in the American Constitution.....	12
1.4. Different Attitudes Relative to Death Penalty over the World.....	16
1.5.The history of Death Penalty over the Different States, in USA .....	17
1.6.The Interpretation of the Supreme Court Concerning ‘cruel and unusual punishment’ .....	19
1.7.The Supreme Court Decisions on the Issue of Death Penalty.....	21
1.8.Crimes Subject to Capital Punishment .....	24
1.9. The Legal Process.....	23
1.9.1. Direct Review .....	26
1.9.2. State Collateral Review.....	23
1.9.3. Federal Habeas corpus .....	27
1.9.4. Section 1983 .....	27
1.10.Conclusion.....	25
Chapter 2: Religious and Ethical Aspects of the Controversy About Death Penalty in the United States.....	26
2.1.Introduction.....	27
2.2. Religious Aspect of the Controversy about Death Penalty, in America.....	30
2.2.1. Death Penalty and Judaism .....	31
2.3. Capital Punishment and Christianity.....	34
2.3.1. The Roman Catholic Church.....	38
2.3.2. The Southern Baptist Convention.....	39
2.3.3. Anglican and Episcopalian.....	37
2.3.4. United Methodist Church.....	37
2.3.5. The Evangelical Lutheran Church in America .....	40
2.3.6. Mormonism.....	40
2.4. Capital punishment and Islam.....	42
2.5. Capital punishment and Buddhism.....	45
2.6. Capital punishment and Hinduism .....	46
2.7. Ethical Aspect of the Application of Capital Punishment in the USA .....	47

2.7.1. The Irreversibility Argument and Justice Errors .....	49
2.7.2. The Discrimination Argument.....	53
2.7.3. The Argument of Cruel and Unusual Punishment.....	56
2.7.4. Environment Influence.....	54
2.7.5. The retribution argument.....	57
2.7.6. The Argument of Community Protection .....	58
2.7.7. Public Opinion.....	59
2.7.8. The Deterrence Argument.....	62
2.8. Conclusion.....	62
<b>Chapter3: Political and Economic Aspects of Death Penalty, in America.....</b>	<b>63</b>
3.1. Introduction.....	64
3.2. The position of Democratic Western Countries Regarding Death Penalty.....	67
3.3. The influence of the Media on Public Opinion.....	74
3.4. Methods of Execution.....	742
3.5. The Human Rights Struggle Against Capital Punishment.....	763
3.6. People to whom Capital Punishment Must not be Applied .....	78
3.6.1.The Issue of Juvenile Offenders .....	78
3.7. The Abolition Movement .....	81
3.7.1. Introducing Degrees of Murder.....	79
3.7.2. Ending Public Executions .....	79
3.7.3. Introducing Jury Sentencing Discretion.....	82
3.7.4. Humanising Methods of Execution .....	83
3.7.5. Federal Appellate Intervention .....	83
3.8. The Difference of Attitude between the South and the North over Capital Punishment .....	86
3.9. The Economic Aspect of Death Penalty .....	88
3.10. Conclusion:.....	87
<b>GENERALCONCLUSION.....</b>	<b>88</b>
<b>APPENDICES.....</b>	<b>91</b>
<b>EXPLANATORY TERMS.....</b>	<b>101</b>
<b>BIBLIOGRAPHY.....</b>	<b>103</b>

# List of Tables and Figures

## List of Tables

Table A.1: Number of executions carried out in 2005.....	14
Table A.2: Racial background of prisoners executed in the U.S. (1976- July 2006).....	52
Table A.3: Number of countries that have abolished the death penalty for all crimes since 1900.....	85

## List of Figures

Figure B.1: The death penalty and public opinion.....	57
Figure B.2: Experimental Paradigm Showing a Deterrent Effect of the Death Penalty over the life sentence.....	60
Figure B.3: Number of Executions by Region since 1976.....	85

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# General Introduction

Among the great debates that animate the US public opinion, the question of capital punishment occupies an important place. Economic and military powerful States, America is the leader of democracy in a number of fields among them the Human Rights. The maintaining of capital punishment is an overt symbol. The internal public opinion is concerned by the question of capital punishment as well as the western Democracies considering the USA as the champion of democracy in the world.

Relative to other developed countries, the United States has moderately high levels of violent crimes. Among the punishments used to sanction its most severe criminals, there is the death penalty, or as formally called; capital punishment. Though it has been abolished in most Western countries, the death penalty is still practiced in a number of countries among which stands the United States with a high number of executions. However, the sanction is not used everywhere in the United States, some states retain the sanction, whereas, other states have abolished it for different reasons.

The purpose of this research work is to identify and develop the main problematic axes of the controversy about death penalty in the United States of America. The problematic we raise in this thesis, is as follow:

Is the controversy about the application of the capital punishment in the United States of America a historical, religious, ethical, political or economic problematic?

The methodology treatment turns around the synthesis of the different points of view relative to the controversy about the application of capital punishment in the USA, through books and the journalistic debates around this question. We will examine the following aspects of the issue: historical, religious, ethical, domestic policy, foreign policy, the Human Rights and the economic aspect.

Death penalty in the United States is a complex issue because of its gloomy past, disputed facts, and strong emotional, religious and political commitments. The puzzle of the American death penalty cannot be resolved without studying each of these elements. What makes capital punishment such a complex issue is that at each of these levels, we find contradictions that always result in two apparent groups: opponents and proponents of death penalty. Both groups present strong arguments that lead to raise a series of the main important questions that enable us to clarify the position of capital punishment in the United States today.

The dissertation is composed of 3 chapters. The first chapter is devoted to the historical background of Death Penalty in the United States and over the world and the different attitudes over the issue, as well as the judicial position of the punishment in America through the Supreme Court interpretation of the Eighth Amendment and the decisions taken on the issue. In this chapter, crimes subject to capital punishment and the legal process will also be dealt with.

The second chapter deals with the religious and ethical debates about Death Penalty in the United States. The religious debate clarifies the attitudes of the different religions over the punishment; Judaism, Christianity, Islam, Buddhism, and Hinduism. The ethical debate comprises two opposed groups, proponents and opponents, holding strong arguments to defend their position over capital punishment.

The third chapter is dedicated to the political and economic aspects of Death Penalty in the United States. Emphasis will be put on the Human Rights struggle against death penalty, the protection of a specific category of people from capital punishment, and the abolition movement.

# Chapter 1

## Death Penalty: Historical Background and Judicial Position in America

### 1.1. Introduction

In the ancient times, when someone committed a crime, it was the victim or his family who took revenge. People killed each other to take their rights by themselves without being submitted to any court of justice, but through time matters had changed and it became up to the justice to decide what crime the offender has committed, and what sentence he deserves. The question about the necessity of the application of death

penalty had been asked in Europe as well as in Greece and ancient Rome. In order to understand the evolution of capital punishment throughout time, a historical background had been detailed. It is important to clarify the judicial position in the United States over capital punishment, through the attitude of the Supreme Court toward death penalty and the interpretation of the American constitution on the issue.

## **1.2. The History of Death Penalty in the U.S. and over the World**

Throughout the centuries, death penalty had been used among other punishments like beating, slavery, exile or amputation of limbs, all over the world, but death was generally used for capital crimes. Civilisations such as the Egyptians, the Assyrians, the Babylonians, the Greeks and the Romans, as well as Islamic authorities and Christian churches, wrote penal codes including death penalty for specific crimes.<sup>1</sup>

Among the earliest Greek philosophers who looked into the question of death penalty; Protagoras, Plato and Aristotle had different points of view. Protagoras was against the principle of inflicting death on someone under the motive of revenge but rather to protect society from criminals, and prevent other people from committing other crimes. Whereas, Plato had another philosophy regarding death as a sentence; he thought that it was a way of purification from crimes, since crimes were considered as “taint”, and the homicide; a soul illness that must be cured, and only if rehabilitation is not possible, death must be used as a final solution. Aristotle believed that every citizen was responsible for his acts, and if he committed an offense, he would receive a

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<sup>1</sup>Kaye Stearman. The Debate about the Death Penalty, New York. Rosen Publishing Group. 2008, pp. 8-9.

punishment that suits the committed crime, but for the harshest crimes, death was an unavoidable sentence.

In the ancient Rome, Roman citizens were rarely sentenced to death; other sentences were used like torture, exile and imprisonment. Death was used only as a final solution. Romans used the sanction of death to protect their society, to deter other criminals, but also to take revenge for the victim or the family victim.



During the middle ages, religion became to have an important place. The influence of Christianity concerning the death penalty was great. The decisions of the kings were influenced by the church. The church was globally reserved about the application of death on people; the first reason was that only God could take the life he had given. The second reason was that a punishment like death didn't give any chance to redemption. The most frequent alternative to death penalty in the Middle Ages was the financial retribution. The offender had to pay a certain amount of money to the victim or his family, and the latter was obliged to accept the money. The aim of this alternative was to promote peace and avoid vengeance.

Under the enlightenment age, the death penalty utility swung from being under the authority of the divine laws to the social contract. In fact, the application of death penalty became no more under the influence of religion but rather to serve the society by protecting its citizens and deter the criminals. The main philosophers of the enlightenment age who approved death as a necessary sentence to the safety of society were: Denis Diderot, Julien Offray de la Mettrie, Thomas Hobbes, and John Locke.<sup>2</sup>

Denis Diderot, for example considered that as a member of society, a man was submitted to its regulations, and whoever did harm to the society lost the right to live in it. Capital punishment had to protect society. In the same way of thinking, Thomas Hobbes considered that the social contract ensured the safety and the order of the

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<sup>2</sup>[www.en Wikipedia.org](http://www.en.wikipedia.org).

society. If the criminal breaks off this contract he becomes dangerous for the society, and this latter has to condemn him to death.<sup>3</sup>

Capital punishment became to be used in the American colonies in the seventeenth century by the English colonists who applied the death penalty for the same list of capital crimes that was applied in England. Nevertheless; the list of capital crimes became clearly concise through time, crimes like robbery, burglary and theft were no

more sentenced by death. Today, death penalty is applied only for the harshest crimes like murder, according to a precise consensus.<sup>4</sup>

Stuart Banner stated:

*'The standard approach to the history of the death penalty in the United States has been a smug condescension, to the past, a refusal even to try to understand.....The people of the seventeenth and eighteenth centuries did not think as independently as we do; they were still shackled by oppressive political and religious traditions they were not yet able to throw off.'*<sup>5</sup>

However, StuartBanner added that colonial Americans didn't always apply death penalty according to tradition, and killing human beings was a matter as seriously considered in the 17<sup>th</sup> and 18<sup>th</sup> centuries as today. The fact is that the purposes for which capital punishment was used at that time were much numerous than today because of the institutional structure and religious beliefs.<sup>6</sup>

The list of death sentenced offenses under the criminal codes of 1642 and 1650 in the New Haven colony, illustrates the huge difference between the offenses for which capital punishment was applied in the early and contemporary times.

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3 ibid.

4 Stuart Banner. The Death Penalty: An American History. Harvard University Press. Cambridge. Massachusetts, London. 2003, p. 5.

5 Ibid.

6 James A. Inciardi. Criminal Justice. Second Edition. Chicago. Harcourt Brace Jovovich, Inc. 1987, 1984, p.p. 469- 470.

- If any person within this Government shall by direct, express, impious or presumptuous ways, deny the true God and his attributes, he shall be put to death.
- If any person shall commit any wilful and premeditated murder he shall be put to death.
- If any person slayeth another with a sword or dagger who hath no weapon to defend himself; he shall be put to death.

- If any man shall slay, or cause another to be slain by lying in wait privily for him or by poisoning or any other such wicked conspiracy; he shall be put to death...
- If any man or woman shall lie with any beast or brute creature by carnal copulation they shall be put to death, and the beast shall be burned.
- If any man lieth with mankind as he lieth with a woman, they shall be put to death, unless the one party were forced or be under fourteen years of age, in which case he shall be punished at the discretion of the Court of Assize.
- If any person forcibly stealeth or carrieth away any mankind; he shall be put to death.
- If any man bear false witness maliciously and on purpose to take away a man's life, he shall be put to death.
- If any man shall traitorously deny his Majesty's right and titles to his Crowns and Dominions, or shall raise armies to resist his authority, he shall be put to death.
- If any man shall treacherously conspire or publickly attempt to invade or surprise any town or towns, fort or forts, within this Government, he shall be put to death.
- If any child or children, above sixteen years of age, and of sufficient understanding, shall smite their natural father or mother, unless thereunto provoked and forced for their self-protection from death or maiming, at the complaint of said father and mother, and not otherwise, there being sufficient witnesses thereof, that child or those children so offending shall be put to death.<sup>7</sup>

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<sup>7</sup> [http://www.usconstitution.net/xconst\\_Am14.html](http://www.usconstitution.net/xconst_Am14.html)

### **1.3. The death penalty issue in the American Constitution**

The eighth Amendment of the United States Constitution which is part of the United States Bill of Rights was adopted in 1791. The last part of the Eighth Amendment prohibits 'cruel and unusual punishment'. The clause has been originally taken from the English Bill of Rights.

The full text of the Eighth Amendment is: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted".<sup>8</sup>

The use of capital punishment was very common during the colonial period, and it was considered neither cruel nor unusual. At the time of the ratification of the Eighth Amendment, death was an ordinary sentence practiced legally by all the American states. Thus, the framers of the Constitution drafted it without putting the constitutionality of the sentence into debate.<sup>9</sup>

The constitutionality of capital punishment itself is often challenged, usually on the grounds that it violates the Eighth and fourteenth Amendment, but at the same time, it is clearly referred to in the Fifth Amendment of the Bill of Rights.<sup>10</sup>

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<sup>8</sup> Wayne R. La Fave. Modern Criminal Law: Cases, Comments & Questions. Second Edition. West Publishing Co. St, Paul, Minn. 1988, p. 336.

<sup>9</sup> Robert. M. Bohm. Introduction to Criminal Justice. Second Edition. McGraw- Hill Companies. New York. 1997, p. 113.

<sup>10</sup> [http://www.usconstitution.net/xconst\\_Am14.html](http://www.usconstitution.net/xconst_Am14.html)

The Fifth Amendment states that:

*'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be*

*deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*<sup>11</sup>

#### **1.4. Different Attitudes Relative to Death Penalty over the World**

Countries in the world take different positions over the death penalty. While some countries have abolished the sentence (whether partially or totally); other countries retain it for different reasons. Most of retentionist states are African and Asian, like Ghana, Chad, China and Japan. A great part of them was Muslim. The United States is also one of the first retentionist countries, because of its high number of executions. Even if not all the American states retain the death penalty; they are in majority. In 2006, 38 of the 51 American states, the federal government, and U.S. military were still carrying executions.<sup>12</sup> On the other hand; the European countries constitute the great majority of the abolitionist countries, and the abolition movement of death penalty was born in Europe.

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<sup>11</sup> Kaye, op., cit., p. 14

<sup>12</sup> Roger Hood. *The Death Penalty: A Worldwide Perspective*. Third Edition. New York. Oxford: Oxford University Press 2002, p.p. 13-14

In December 2001, 71 states were in a position of retention regarding the death penalty issue; whereas, 34 states were retentionist but considered abolitionist because any execution had been carried for more than a decade. On the other hand, 75 countries were completely abolitionist.<sup>13</sup>

Table A.1 shows the number of executions carried out in 2005 in the four countries where there is the highest number of executions. It is clear that China takes the first

position with 1.770 executions in the year of 2005 only, and then comes Iran with 94 executions and the United States with 60 executions. We can observe that the U.S. is the fourth country in the world where there is the highest number of executions.<sup>14</sup>

**Table A.1: Number of executions carried out in 2005.**

Source: Kaye, op., cit., p. 5.

\*estimates\_ the true figures are probably much higher.

Country	Executions
China	1.770 *
Iran	94 *
Saudi Arabia	86 *
U.S.	60

<sup>13</sup> Kaye, op., cit., p. 5.

<sup>14</sup>Ibid., p. 8.

### **1.5. The history of Death Penalty in the Different States, in USA**

Even if it varies from one state to another, capital punishment has always been kept in the United States. The only period where it stopped completely was between 1972 and 1976. In 2006, 38 states, the federal government and the U.S. military kept capital punishment, and the state of Texas on its own represented one third of the executions in the U.S., that puts it in the first position in term of number of executions. Virginia comes in the second position, and then comes Oklahoma, Missouri and Florida.<sup>15</sup>

Historically, several states had been without capital punishment - the earliest being Michigan, which has not carried out a single execution of its own since it entered the Union, (one federal execution occurred in Michigan in 1938). Shortly after attaining statehood it abolished the death penalty for ordinary crimes, making it the first English-speaking government in the world to do so. Other states long without the death penalty are Wisconsin (with the distinction of being the only state to perform a single state-level execution in its history), Oregon (though only temporarily), Rhode Island (although later reintroduced, it was unused and abolished again), South Dakota (though only temporarily), Maine, Washington (though later abolished three times, one time by the Supreme Court's decision in Furman v. Georgia, it was reintroduced and remains in use), North Dakota, Minnesota, West Virginia, Iowa, Vermont and the District of Columbia. Two states - the newest, Alaska and Hawaii - abolished the death penalty prior to statehood (in Alaska, some extrajudicial killings took place after statehood). One state, Oregon, abolished the death penalty through an overwhelming majority in a 1964 public referendum,<sup>16</sup> but reinstated it in 1984 by an even higher margin.

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<sup>15</sup> Hugo Adam Bedau. "The 1964 Death Penalty Referendum in Oregon". 1980.

<http://cad.sagepub.com/cgi/content/abstract/26/4/528>. Retrieved December 23, 2009.

<sup>16</sup> Richburg, Keith B. (December 14, 2007). "N.J. Approves Abolition of Death Penalty; Corzine to Sign". The Washington Post.

In the so-called "modern era of capital punishment", two states have legislatively abolished the death penalty and two had *de facto* abolishment through their state judiciaries. In 2007, New Jersey became the first state to repeal the death penalty in the modern system of capital punishment,<sup>17</sup> and New Mexico followed in 2009 (though not retroactively, and with some advocating reinstatement).<sup>18</sup> But in states with a large death row population and regular executions, including California and Texas, the death penalty remains strongly in the landscape and is unlikely to end at any time soon.

Four states in the modern era, Nebraska in 2008, New York and Kansas in 2004, and Massachusetts in 1984, had their statutes ruled unconstitutional by state courts. The death rows of New York and Massachusetts were disestablished. Of the four states,

only Nebraska had performed executions since the constitutionality of capital punishment was affirmed by the Supreme Court in 1976, the four states having done so last in 1997, 1963, 1965, and 1947, respectively. In New York and Massachusetts, attempts to restore the death penalty were unsuccessful,<sup>19</sup> while in Kansas the supreme court declared death penalty unconstitutional. Nevertheless, a certain number of prisoners in Kansas continue to be sentenced to death. New York had previously abolished the death penalty temporarily, in 1860. Nebraska has performed three executions since 1976, all in the 1990s; its statute had been ineffective since February 8, 2008, when the method used, electrocution, was ruled unconstitutional by the Nebraska Supreme Court. The Governor, a critic of the Court's decision, had yet to give final approval to the bill, though he is highly likely to do so. The only jurisdictions with constitutional death penalty statutes that have not performed an execution since 1976 are New Hampshire, Kansas, and the United States military, although all have populated deathrows. Since 1976, South Dakota had executed "only" one man, but the

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<sup>17</sup> "New Mexico governor bans death penalty". Agence France-Presse. March 18, 2009. Archived from the original on December 23, 2009. <http://www.webcitation.org/5mEkMGy25>. Retrieved 2009-12-23. "LOS ANGELES (AFP)

<sup>18</sup> Powell, Michael (2005-04-13). "In N.Y., Lawmakers Vote Not to Reinstate Capital Punishment". The Washington Post. See also Ring, Dan (2007-11-08). "House rejects death penalty". The Republican. <http://www.masslive.com/springfield/republican/index.ssf?/base/news-2/119451180886550.xml&coll=1>. Retrieved 2009-05-01.

<sup>19</sup> "WHEN NEW YORK HAD NO DEATH PENALTY; Punishment for Murder Under Law of 1860 Curiously Limited to a Year in Prison.". The New York Times. 1912-01-21. <http://query.nytimes.com/gst/abstract.html?res=9F0CE7D8123AE633A25752C2A9679C946396D6CF>. Retrieved 2009-10-30.

but the execution was his own wish. However, in February 2010, bills to repeal the death penalty in Kansas and in South Dakota were rejected.<sup>20</sup>

### **1.6. The Interpretation of the Supreme Court Concerning 'cruel and unusual punishment'**

The notion of 'cruel and unusual punishment' is commonly bound with the use of the death penalty. Since the Eighth Amendment had been adopted, its interpretation by the Supreme Court had not remained static. But during the 120 years that followed the adoption of the Bill of Rights, the Court stuck on the same interpretation of 'cruel and unusual punishment' toward the application of the death penalty. In fact, its



interpretation was that ‘cruel and unusual punishment’ meant not the prohibition to use the sentence of death in itself, but rather to use the most barbarous punishments and tortures, that are degrading to the dignity of the person. The Eighth Amendment was drafted without considering the gravity of the crime. Therefore, the change concerned only the methods of execution.<sup>21</sup>

In *Wilkerson v. Utah*, (**Wilkerson v. Utah, 99 U.S. 130 (1878)**), for example, the justices decided that public shooting was a method in conformity with the constitution, and it was not cruel and unusual punishment under the Eighth and fourteenth Amendment. Punishments like drawing, burning alive and quartering were cruel and unusual punishment, and thus unconstitutional. In 1890, the justices decided in *re Kemmler*, 136 U.S. 436 (1890) that electrocution was a human method, in conformity with the Eighth Amendment of the constitution.<sup>22</sup>

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<sup>20</sup>Robert, op., cit., p. 133.

<sup>21</sup>Inciardi, op., cit., p. 475.

<sup>22</sup>Stuart, op., cit., pp. 232-233.

The concept of ‘cruel and unusual punishment’ could be understood in different ways. The first interpretation concerns the prohibition to use the harshest methods and tortures. The second interpretation being one of the oldest interpretations used in the eighteenth century is that ‘cruel and unusual punishment’ is concerned with proportionality, in other words; the punishment must be proportional to the committed crime. So that the most severe crimes, should be punished by the harshest punishments. The concept was in Leviticus: “eye for eye. Tooth for tooth”, as well as in the Magna Carta. It was also backed by writers of that time like Beccaria and Montesquieu. Finally, the third interpretation holds that ‘cruel and unusual punishment’ refers to illegal punishment, the fact that enables the court to impose such punishment.<sup>23</sup> Today,

the court's definition of 'cruel and unusual punishment' is concerned with two aspects of punishment; the method and the amount that should be proportional to crime.<sup>24</sup>

### **1.7. The Supreme Court Decisions on the Issue of Death Penalty**

During a long period, there was a strong ambiguity on the decisions the Supreme Court took on the question of death penalty. The Court has frequently assumed and asserted the constitutionality of capital punishment at the same time. The Court had to decide whether the use of a particular method of execution was allowed under the Eighth Amendment or not. But in 1972, the Supreme Court decided for the first time in *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1976), that the imposition of death penalty is cruel and unusual punishment in violation of the Constitution. As a result, capital punishment was suspended in the United States from 1972 through 1976.<sup>25</sup>

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23 <http://legaldictionary.thefreedictionary.com/Cruel+and+Unusual+Punishment>

24 [http://en.wikipedia.org/wiki/Image:Bill\\_of\\_Rights\\_Pg1of1\\_AC.jpg](http://en.wikipedia.org/wiki/Image:Bill_of_Rights_Pg1of1_AC.jpg)

25 Wayne R. La Fave. Modern Criminal Law: Cases, Comments & Questions. Second Edition. Minn. West Publishing Co. St. Paul. 1988, p.335.

In *Furman*, the United States Supreme Court considered a group of consolidated cases. The lead case involved an individual convicted under Georgia's death penalty statute, which featured a "unitary trial" procedure in which the jury was asked to return a verdict of guilt or innocence and, simultaneously, determine whether the defendant would be punished by death or life imprisonment.<sup>26</sup>

In a five-to-four decision, the Supreme Court struck down the imposition of death penalties in each of the consolidated cases as unconstitutional. The five justices in the majority did not produce a common opinion or rationale for their decision. They agreed only on a short statement announcing the result. The narrowest opinions, those of Byron White and Potter Stewart, expressed generalized concerns about the inconsistent

application of the death penalty on a variety of cases but did not exclude the possibility of a constitutional death penalty law. Stewart and William O. Douglas worried explicitly about racial discrimination in enforcement of the death penalty. Thurgood Marshall and William J. Brennan, Jr. expressed the opinion that the death penalty was proscribed absolutely by the Eighth Amendment as "*cruel and unusual*" punishment.<sup>27</sup>

In *Furman v. Georgia* 408U.S.238 (1972), Justice Brennan wrote: "There are, then, four principles by which we may determine whether a particular punishment is cruel and unusual":

- The "essential predicate" is that a punishment must not by its severity be degrading to human dignity", especially torture.
- "A severe punishment that is clearly and totally rejected throughout society".
- "A severe punishment that is patently unnecessary".

He added that he expected that no state would pass a law obviously violating any one of these principles, so court regarding the Eighth Amendment would involve a "cumulative" analysis of the implication of each of the four principles.<sup>28</sup>

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<sup>26</sup>"DARYL RENARD ATKINS, PETITIONER v. VIRGINIA". June 20, 2002.

<http://supct.law.cornell.edu/supct/html/00-8452.ZO.html>. Retrieved August 6, 2006

<sup>27</sup> Ibid.

<sup>28</sup> Wayne R, op., cit., p. 336.

Though many observers expected few, if any, states to readopt the death penalty after *Furman*, 37 states did in fact enact new death penalty statutes which attempted to address the concerns of White and Stewart. Some of the states responded by enacting "mandatory" death penalty statutes which prescribed a sentence of death for anyone convicted of certain forms of murder (White had hinted such a scheme would meet his constitutional concerns in his *Furman* opinion).<sup>29</sup>

Other states adopted "bifurcated" trial and sentencing procedures, with various procedural limitations on the jury's ability to pronounce a death sentence designed to limit juror discretion. The Court clarified *Furman* in Woodson v. North Carolina, 428 U.S.280 (1976) and Roberts v. Louisiana, 428 U.S.325 (1976), 431 U.S.633 (1977),

which explicitly forbade any state from punishing a specific form of murder (such as that of a police officer) with a mandatory death penalty.<sup>30</sup>

In 1976, contemporaneously with *Woodson* and *Roberts*, the Court decided *Gregg v. Georgia*, 428 U.S.153 (1976) and upheld a procedure in which the trial of capital crimes was bifurcated into guilt-innocence and sentencing phases. At the first proceeding, the jury decides the defendant's guilt; if the defendant is innocent or otherwise not convicted of first-degree murder, the death penalty will not be imposed. At the second hearing, the jury determines whether certain statutory aggravating factors exist, and whether any mitigating factors exist, and, in many jurisdictions, weigh the aggravating and mitigating factors in assessing the ultimate penalty — either death or life in prison, either with or without parole.<sup>31</sup>

The 1977 *Coker v. Georgia* decision barred the death penalty for rape, and for any offense other than murder. The current federal kidnapping statute, however, may be exempt due to the fact that the death penalty applies if the victim expires in the perpetrator's custody, not necessarily by his hand, thus stipulating a resulting death, which was the wording of the objection. In addition, the federal

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<sup>29</sup>“DARYL RENARD ATKINS, PETITIONER v. VIRGINIA”. June 20, 2002.  
<http://supct.law.cornell.edu/supct/html/00-8452.ZO.html>. Retrieved August 6, 2006.

<sup>30</sup> Ibid

<sup>31</sup> Ibid.

government retains the death penalty for such non-murder offenses as treason, espionage and crimes under military jurisdiction; there has been no challenge to these statutes as of 2007.<sup>32</sup>

The United States Supreme Court, though, has placed two major restrictions on the use of the death penalty. First, the Supreme Court case of *Atkins v. Virginia*, decided June 20, 2002, held that executions of mentally retarded criminals are "cruel and unusual punishments" prohibited by the Eighth Amendment. Generally, a person with an IQ below 70 is considered to be mentally retarded. Prior to this decision, between 1984 and 2002 forty-four mentally retarded inmates were executed. Second, in 2005 the Supreme Court's decision in *Roper v. Simmons*, 543 U.S.551 (2005), abolished

executions for persons under the age of 18 (the age is determined at the time of crime, not the trial date).<sup>33</sup>

New Mexico repealed its death penalty statute on March 17, 2009, becoming the second state (after New Jersey) to abolish the death penalty since executions resumed in 1976. The law, signed by Governor Bill Richardson, took effect on July 1, 2009 and replaced the death penalty with a life sentence without the possibility of parole. The law, though, is not retroactive – inmates currently on New Mexico's Death Row and persons convicted of capital offenses committed before this date may still be sentenced to death under New Mexico's pre-existing death penalty statute.<sup>34</sup>

Possibly in part due to expedited federal habeas corpus procedures embodied in the Antiterrorism and Effective Death Penalty Act of 1996, the pace of executions has picked up. Since the death penalty was reauthorized in 1976 1,210 people have been executed, almost exclusively by the states, with most occurring after 1990. Texas has accounted for over a third of modern executions (and over four times as many as Virginia, the state with the second-highest number); California has the greatest number of prisoners on death row, but has held relatively few executions.<sup>35</sup>

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<sup>32</sup> Ibid

<sup>33</sup> <http://www.deathpenaltyinfo.org/list-defendants-mental-retardation-executed-united-states>

<sup>34</sup> Ibid

<sup>35</sup> Ibid

### **1.8. Crimes Subject to Capital Punishment**

All American jurisdictions that use Death Penalty consider the highest degree of murder as a capital crime, under the condition of aggravating circumstances for most jurisdictions. But for the other crimes, it differs from one jurisdiction to another.<sup>36</sup>

Offenses other than murder for which death penalty is applied are: treason at the federal level, the use of a weapon of mass destruction causing death, terrorism, some violations of the Geneva Conventions causing death, aggravated rape (Louisiana, Florida, and Oklahoma), extortionate kidnapping (Oklahoma), aggravated Kidnapping

(Georgia, Idaho, Kentucky and South Carolina), aircraft hijacking(Alabama), drug trafficking causing death (Connecticut and Florida),<sup>37</sup> train wrecking causing death, and perjury causing death ([California](#)).<sup>38</sup>

In war time offenses like desertion, mutiny, spying, and misconduct before the enemy, are considered as capital crimes, for which capital punishment is permitted by the Uniform Code of Military Justice.<sup>39</sup>

The best example to illustrate the different attitudes of the American jurisdictions toward capital punishment is the case of Lindsey Thompson who has kidnapped and beaten Gloria Ann Wilbur in Georgia, raped her in Tennessee, and murdered her in Kentucky. On November 2008, Thomson is sentenced to death in Georgia for the crime of “Kidnapping with Bodily Injury”, but in Kentucky he is not condemned to capital punishment for the murder he committed.<sup>40</sup>

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<sup>36</sup>Death Penalty for Offenses Other Than Murder <http://www.deathpenaltyinfo.org/article.php?&did=2347>, Death Penalty Information Center, 2008, accessed January 28, 2008

<sup>37</sup>The 2009 Florida Statutes § 782.04(1)(a)(3), available at <http://www.leg.state.fl.us/Statutes/index.cfm>

<sup>38</sup> Death Penalty for Offenses Other Than Murder <http://www.deathpenaltyinfo.org/article.php?&did=2347>, Death Penalty Information Center, 2008, accessed January 28, 2008

<sup>39</sup> "Child rapists can't be executed, Supreme Court rules", [http://www.cnn.com/2008/CRIME/06/25/scotus.child.rape/index.html?eref=rss\\_topstories](http://www.cnn.com/2008/CRIME/06/25/scotus.child.rape/index.html?eref=rss_topstories), Bill Mears, CNN, June 25, 2008

<sup>40</sup> <http://www.lawskills.com/case/ga/id/1652/> and <http://www.dcor.state.ga.us/GDC/OffenderQuery/jsp/OffQryRedirector.jsp> Click

## **1.9. The Legal Process**

The legal process of capital punishment in the United States comprises four important stages that come immediately after the defendant is sentenced: Direct Review, State Collateral Review, Federal Habeas Corpus, and Section 1983. It is explained in details in what follows.<sup>41</sup>

### 1.9.1. Direct Review

Soon after the defendant is sentenced, his case enters upon a direct review. The direct review is a legal appeal. An appellate court examines the record of evidence presented in the trial court and the law that the lower court applied. It decides whether the decision was legally sound or not. There are three possibilities resulting from a direct review of a death sentencing hearing. If no legal error is found by the appellate court in the capital sentencing hearing, the judgment is maintained. If legal errors are found by the appellate court, the judgment is inverted or invalidated, and a new capital sentencing hearing is conducted. Finally, if the appellate court finds that no reasonable juror could find the defendant eligible for the death penalty, the defendant is acquitted, or judged not guilty.<sup>42</sup>

### 1.9.2. State Collateral Review

This step procures additional ways to attack the judgment pronounced on direct review, although the affirmed death sentence at this level is considered as final. These supplemental methods are considered collateral review, in other words, a way of approach for overturning judgments that have become otherwise final, except for federal death penalty cases that move directly from direct review to federal habeas corpus. Although all states have some type of collateral review, the process varies widely from a state to another. Collateral review enables the prisoner to challenge his sentence on fields that could not have been raised rationally at trial or on direct review.

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<sup>41</sup> Berry, Irene; O'Hare, Sheila and Silva, Jesse (2006). Legal Executions in California: A Comprehensive Registry, 1851-2005. McFarland & Company, Inc., Publishers, p. 10.

<sup>42</sup> Ibid., p. 61.

<sup>43</sup> Eric M. Freedman, "Giarratano is a Scarecrow: The Right to Counsel in State Postconviction Proceedings, Legalize Drugs" 91 Cornell L. Rev. 1079, 1097 (2006).

Claims such as ineffective assistance of counsel, are dealt with at state collateral review, which require the court to consider new evidence outside the original trial record, something courts may not do in an ordinary appeal. State Collateral Review, even if it is an important step that helps define the scope of subsequent review through Federal Habeas Corpus, only around 6% of death sentences are overturned on State Collateral Review.<sup>44</sup>

### **1.9.3. Federal Habeas corpus**

The next step for the prisoner after State Collateral Review is Federal Habeas Corpus. Federal habeas corpus is a kind of collateral review. State prisoners can attack a death sentence in federal court only through federal habeas corpus. It works under the Antiterrorism and Effective Death Penalty Act of 1996. The work of Federal Habeas Corpus is to verify that correct work had been done by state courts, during the two previous steps (Direct Review and State Collateral Review), concerning the Federal Constitutional Rights of the prisoner. At this stage, prisoners can also claim their innocence in case of bringing out a new strong prof.<sup>45</sup> 21% of death penalty cases are reversed through federal habeas corpus according to Eric Freedman.<sup>46</sup>

### **1.9.4. Section 1983**

Under the Antiterrorism and Effective Death Penalty Act, a state prisoner is ordinarily only allowed one suit for habeas corpus in federal court. If the federal courts refuse to issue a writ of habeas corpus, an execution date may be set. In recent times, however, prisoners have postponed execution through a final round of federal litigation using the Civil Rights Act of 1871 — codified at 42 U.S.C. § 1983 — which allows people to bring lawsuits against state actors to protect their federal constitutional and statutory rights.

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<sup>44</sup> LaFave, Israel, & King, 6 Crim. Proc. § 28.11(a) (2d ed. 2007).

<sup>45</sup> Eric, op., cit.

<sup>46</sup> House v. Bell, 126 S. Ct. 2064 (2006).

Until recently, the Supreme Court used to consider Habeas Corpus as the only way the prisoner has to contest his sentence to death, the fact that restrained considerably the use of Section 1983.<sup>47</sup> The Hill V. McDonough case in 2006, demonstrates the usual practice of Section 1983 as a way, to challenge the state's method of execution as violating the Eighth Amendment because considered as cruel and unusual punishment. At this stage, the prisoner cannot challenge the fact of being sentenced to death, but



rather the method of execution applied to him. Yet, as Clarence Hill's own case shows, lower federal courts have often refused to hear suits challenging methods of execution on the ground that the prisoner brought the claim too late and only for the purposes of delay. Moreover, the Court's decision in Baze v. Rees, upholding a lethal-injection method used by many states, has extremely restricted the chance for relief through Section 1983.<sup>48</sup>

### **1.10. Conclusion**

Even if death penalty had seen a great evolution throughout time in the United States, there is still a huge progress to do in the American Judicial System to clarify the question. May be one of the main obstacles to remove the ambiguity on the issue of capital punishment in America, is that each state has its own judicial system. A decision issued from the U.S Supreme Court , considering death penalty as a violation of the American constitution, would be the quiet answer to the pending question.

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<sup>47</sup>"[Habeas Corpus Studies](http://query.nytimes.com/gst/fullpage.html?res=9C05E0DB1039F932A35757C0A960958260)". *The New York Times*. April 1, 1996. <http://query.nytimes.com/gst/fullpage.html?res=9C05E0DB1039F932A35757C0A960958260>. Retrieved April 28, 2010.

<sup>48</sup> Heck v. Humphrey, 512 U.S 477 (1994).

# **Chapter 2**

## **Religious and Ethical Aspectsof the Controversy about Death Penalty in the United States of America**

### **2.1.Introduction**

In this chapter,an effort had been made to put the light on the debate of capital punishment from a religious eye on the one hand, and from an ethical eye on the other hand. The American society is multi-racial, therefore; the position of the different religions that exist over capital punishment has been analysed, as well as the different arguments of the proponents and the opponents of the punishment for they are of great

influence on the issue. The religious and ethical debates about death penalty hold questions about good and evil, life and death, individual choice, and public good. The eligibility of death penalty has been a matter of debate for centuries and is still continuing.

## **2.2. Religious Aspect of the Controversy about Death Penalty, in America**

In the ancient times, the power of condemning offenders was given to religious leaders, who relied on the fact that God's will was followed through the execution of sinners. Otherwise, they will receive God's anger if they ever fail to punish the criminal. Sermons were routinely given before any execution from 1674 to nearly 1825, but through time religion lost its authority and impact on people, and this practice disappeared in the American society. The spiritual aspect of execution lost its resonance on people and has been replaced by the desire to vengeance.<sup>49</sup>

The survey done in 2007 by the Pew Research Centre on religious affiliation in the U.S. joins the idea of the American huge diversity in term of religions. The major part of the American population is Christian, with 78.4%, the Jewish population comes second with 1.7%, Buddhists represent 0.7%, Muslims 0.6%, and finally the Hindu population is present with 0.4%.<sup>50</sup>

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<sup>49</sup> Kaye, op., cit., p 12.

<sup>50</sup> <http://religions.pewforum.org/reports>

Groups from the different religions quote passages from the Bible or the Koran to support or to oppose the death penalty. Yet, they tend to be very selective toward the chosen quotes, and most of the time, the quotes are used out of context<sup>51</sup>. The majority of religions take an ambiguous position on the morality of the sentence of death. The different interpretations of their holy books can be interpreted both favoring and repudiating capital punishment.

Retentionists rely on the fact that what they call for, is God wish, as the Reverend Samuel Lee declared: if “we would not reject our Bibles we must not abolish the death penalty for murder,” “opposition to capital punishment for willful murder asserts that men may modify the law of God to suit themselves,” whereas abolitionists claim that the passages in the Bible that ordered for killing were intended for Noah and his family only, like in Genesis 9:6, and they cannot be taken out of context and applied for the rest of the population.<sup>52</sup> However, most of the time retentionists use passages from the Old Testament, and abolitionists use passages from the New Testament.

One example of the recent influence of religious leaders when in 2004, Catholic bishops strongly opposed the rehabilitation of death penalty by governors in Minnesota and Massachusetts. The bishops acted through press conferences, interviews, and meeting legislators, in order to influence them as well as the whole Catholic population on the issue.<sup>53</sup>

### **2.2.1. Death Penalty and Judaism**

Capital punishment is clearly prescribed in The [Hebrew Scriptures \(Old Testament\)](#). The list of crimes for which death is sentenced in The Torah (the first of the 5 books of the Bible) is very large, including religious offenses like the profaning of the Sabbath, and idol worship as well as civil offenses. However, rabbis restrained its use, and the procedures and conditions to apply the sentence of death on an offender

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<sup>51</sup> Kaye, op., cit., p 12.

<sup>52</sup> Stuart, op., cit., pp. 116-117.

<sup>53</sup> Sister Helen Prejean. The Death of Innocents: An Eyewitness Account of Wrongful Executions. Vintage Books: A Division of Random House, Inc. New York. 2005

are complex to a degree that it could hardly be applied. The Jewish tradition is considered as being based on a system of checks and balances concerning the issue of capital punishment. To be sure of the guilt of the offender, the law requires the gathering of the totality of the following conditions:

- *There must have been two witnesses to the crime, and these must conform to a prescribed list of criteria. For example, females and close relatives of the criminal*

*are precluded from being witnesses according to Biblical law, while full-time gamblers are precluded as a matter of rabbinical law.*

- *The witnesses must have verbally warned the person seconds before the act that they were liable for the death penalty*
- *The person must then have acknowledged that he or she was warned, and yet then have gone ahead and committed the sin regardless.*
- *No individual was allowed to testify against him or herself.*<sup>54</sup>

The Jewish laws were first recorded around 200CE in the Mishnah and then in the Babylonian Talmud around 600CE<sup>55</sup>. The Mishnah (Sanhedrin 1:4) imposes trial by a Sanhedrin of Twenty-three judges before putting an offender to death. The Talmud authorizes four methods of death penalty: strangling, slaying, burning and stoning.<sup>56</sup>

Rabi Yitzchok Adlerstein, director of the Jewish Studies Institute of Yeshiva of Los Angeles, chair of Jewish Law and Ethics at Loyola Law School, and director of Project Next Step at the Simon Wiesenthal Centre states on the conditions for putting an offender to death:

*For a Jew to be convicted by a Jewish court, two eyewitnesses must have seen the perpetrator about to commit the crime and warned him of the potential penalty. The murderer must verbally answer that he chooses to proceed anyway. (For a non-Jew, only one witness is required and no verbal warning)*<sup>57</sup>

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<sup>54</sup>[http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>55</sup>Ibid

<sup>56</sup>[http://www.myjewishlearning.com/life/Life\\_Events/Death\\_and\\_Mourning/About\\_Death\\_and\\_Mourning/Death\\_Penalty.shtml](http://www.myjewishlearning.com/life/Life_Events/Death_and_Mourning/About_Death_and_Mourning/Death_Penalty.shtml)

<sup>57</sup><http://www.jewishjournal.com/old/deathpenalty2.3.10.0>.

Today, even if capital punishment is clearly allowed in the Torah, the list for which death is applied seems extremely shocking and unrealistic. The Jewish court has no more the right to apply death penalty for because it became illegal. The following list is given in The Torah; it contains the crimes for which death must be applied. The version of the Bible from which it was taken had been given by King James.<sup>58</sup>

Many efforts had been done by the Jewish community leaders in the United States to make the U.S. Supreme Court include the Talmud law in taking its decisions concerning the issue of capital punishment as well as other issues. The following accomplishment is one of their main successes.

In December 1999, the United States Supreme Court accepted an amicus curiae brief concerning the capital punishment case of (Bryan v, Moore). Despite the fact that the brief had been passed after being conform to the Eighth Amendment of the Constitution. It was entirely based on Talmud law. The Jewish Journal states that:

- *A man who will argue before the U.S. Supreme Court next year that his planned execution in Florida's electric chair constitutes "cruel and unusual punishment" can point to a 2,000-year-old Jewish law when he pleads his case.*

*A friend-of-the court brief filed last week in the Supreme Court by the National Jewish Commission on Law and Public Affairs, which advocates the position of the Orthodox community, and the American Section of the International Association of Jewish Lawyers and Jurists, backs Anthony Bryan's position.*

*In citing only Jewish law and excluding any reference to previous Supreme Court decisions, the brief is believed to mark a primary issue for America's highest court.*

*The brief, written by the father-daughter team of Nathan and Alyza Lewin and reviewed by former Israeli Supreme Court Justice Menachem Elon, delves into the biblical and Talmudic texts relating to execution in Jewish law.<sup>59</sup>*

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<sup>58</sup> See Appendix 1 page 91

<sup>59</sup> "Jewish Law Cited in Death Penalty Case," *Jewish Journal*, January 7, 2000, <http://www.jewishjournal.com/old/deathpenalty.1.7.0.htm>.

As a whole, the brief specifies that the Jewish religious men wanted DeathPenalty:

- *To be as quick as possible*
- *To be as painless as possible*
- *To cause as little disfigurement as possible*
- *To preserve the dignity of the condemned*
- *To be within the framework of Biblical texts*

It is also mentioned in the brief that:

- *Capital punishment was rarely imposed because Talmudic justice comprises stringent rules regarding the admissibility and sufficiency of evidence:*
  - *A court of at least 23 judges must be satisfied that a capital crime has occurred*
  - *Two witnesses must see and testify to the crime*
  - *The witness must be subjected to detailed and searching interrogation*
- *Rarely did capital cases meet the prescribed legal standard*

In the concluding paragraph of the brief, the advocates return to the theme of Talmud humanitarianism:

*If execution by the electric chair, as administered in Florida, results in unnecessary pain and disfigurement, it would be unacceptable under the principles underlying the traditional Jewish legal system applied 2000 years ago, and should also be unacceptable under the Eighth Amendment today.<sup>60</sup>*

### **2.3. Capital Punishment and Christianity**

Religion is not only used by the religious leaders on the subject of capital punishment, but it is also often used by prosecutors willing to reinforce their arguments by quoting passages from the Bible, specifically from the Old Testament. The most used quotation of the Old Testament by prosecutors is from Deuteronomy (19:21): “*life*

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<sup>60</sup>"Conclusion," *Brief*: <http://www.jlaw.com/Briefs/capital2.html>

*for life, eye for eye, tooth for tooth, hand for hand, foot for foot.*”<sup>61</sup> Whereas the New Testament is used by opponents who wish to strengthen their arguments on abolition. The difference between the Old and the New Testament is explained in what follows.

There is much disagreement among the Christians over the question of death penalty; there is a divergence of positions over the issue in the Old Testament and the New Testament.

The Old Testament holds the rule of punishment and retribution, according to what it clearly states in Genesis 9: *Whosoever sheds the blood of man, by man shall his blood be shed; for in the image of God made man.*

Or

*It is better for one man to die than for an entire people to perish*<sup>62</sup>

It also contains the law of retribution or retaliation (jus talionis) that states:

*If you slander another, you slander yourself; if you steal from another you steal from yourself; if you strike another, you strike yourself; if you kill another, you kill yourself.*<sup>63</sup>

The law of retaliation contains that any offender must suffer in the same way he had made his victim suffer. He deserves to be punished according to the evil he has done to others. The law of retaliation (lex talionis) was set forth by Moses in the Old Testament; it clearly holds the idea of revenge. In the very ancient Book of Genesis it can be found that anyone who finds a murderer, it is in his duty to kill him.<sup>64</sup>

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<sup>61</sup> Mark Costanzo. Just Revenge: Costs & Consequences of the Death Penalty. ST Martin's Press. New York. 1997. P. 130.

<sup>62</sup>[John 10:50] cited in, Louis P. Pojman & Jeffrey Reiman. The Death Penalty: For & Against. Rowman & Littlefield Publishers, Inc. Maryland. 1998. P. 8.

<sup>63</sup> Ibid.

<sup>64</sup>Bailey, L.R. Capital Punishment: What the Bible Says. Nashville: Abington Press. 1987. Pp. 19-22.

The Old Testament imposes death not only on murderers but for a variety of crimes: contempt for parental authority, defiling sacred places or objects, kidnapping for ransom, sorcery, bestiality, worshipping false gods, profaning the Sabbath, adultery, incest, homosexuality, blasphemy, bearing false witness in court, harlotry, negligence that results in death, and false prophesy.<sup>65</sup>

Although the Old Testament seems to focus on revenge and retribution, there are some aspects of the Bible that demonstrate that crime is not always sentenced by death. This



is shown when Cain killed his brother Abel, and that God did not take his life for the murder he has committed. The existence of many refuge cities for offenders in order not to be killed by revenge by the victims' families emphasise the idea that "*vengeance belongs to the Lord*" and that we should "*love our neighbour as ourselves*".<sup>66</sup>

The existence of such contradictory positions over death penalty in the Old Testament may be confusing about what must be understood from the Old Testament. But religious leaders explain that many passages of the Bible, especially those telling about vengeance are taken out of context, and thus; misunderstood or misinterpreted. One of the most misunderstood passages is: "*eye for an eye*". Religious scholars explain that it pushes to restrict rather than to incite for vengeance. And that it doesn't mean that whatever the others had done or taken, we must do or take exactly the same thing, but that we must not take from others more than what has been taken. In other words; it limits our desire for vengeance.<sup>67</sup> However, the interpretation of such passages is shaped to the aim for which it is used, whether pushing for death abolition or death keeping.

It is true that the Old Testament allows the application of death penalty in theory, but in practice it is about to be impossible. Putting a man to death demands a huge procedure of gathering proves and witnesses.<sup>68</sup> For example, in the Talmudic courts, putting an offender to death required two witnesses able to testify that they assisted to the scene of the crime. Moreover, neither confessions nor testimony of any relative of

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<sup>65</sup> Mark Costanzo. Just Revenge: Costs & Consequences of the Death Penalty. ST Martin's Press. New York. 1997. P. 130.

<sup>66</sup>[John 10:50] cited in, Louis P. Pojman & Jeffrey Reiman. The Death Penalty: For & Against. Rowman & Littlefield Publishers, Inc. Maryland. 1998. P. 8.

<sup>67</sup> Ibid.

<sup>68</sup>Bailey, L.R. Capital Punishment: What the Bible Says. Nashville: Abington Press. 1987. pp. 19-22  
the victim against the offender were accepted. <sup>69</sup>

Today Christians prefer following the Interpretation of the New Testament concerning the resort of offenders. In fact the New Testament incites to forgiveness and love of the others, and rejects totally any act of vengeance. The following passage of the Bible testifies it:

*You have heard that it was said, 'An eye for an eye and a tooth for a tooth.'  
But I say to you, do not resist one who is evil. But if any one strikes you on  
the right cheek, turn him the other also*<sup>70</sup>

Or

*Judge not and you will not be judged; condemn not, and you will not be  
condemned; forgive, and you will be forgiven*<sup>71</sup>

The three main arguments used by Christians today to back their position against executions are that death penalty is first of all immoral following one of the Ten Commandments: “*You shall not kill*”, second; it makes impossible any eventual evangelism of the wrongdoer, in other words sending him to hell without giving him the chance to repent and confess. Third; death is acceptable for the offense of murderer while it is not accepted for other offenses.<sup>72</sup>

One of the most cited stories in the New Testament that teach forgiveness and compassion, is that of a woman who has committed the crime of adultery and was about to be stoned to death. (Adultery was considered as a crime punishable to death at that time). When the Christ was asked:

*Teacher, this woman hath been taken in adultery, in the very act. Now the Law of Moses commanded us to stone such: What then sayest thou of her?” he answered to the crowd: 'He that is without sin among you, let him cast the first stone'.*<sup>73</sup>

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<sup>69</sup> Erez, M. (1981). “Thou Shalt Not Execute: Hebrew Law Perspective on Capital Punishment.” *Criminology*, vol. 19. Cited in Mark, op., cit., p. 131.

<sup>70</sup> (Matthew 5:38-41).

<sup>71</sup> (Luke 6:37)

<sup>72</sup> Kevin Clauson, “The Great Law- Book of the Nation in Explicitly Christian Politics”, ed. William O. Einwechter (Pittsburg: The Christian Statesman Press. 1997), pp. 154-173.

<sup>73</sup> (John 8:3-11).

However, the New Testament also contains cases where death could be necessary as a sentence, but it also needs such conditions to be gathered that it becomes rare to apply, and used only if no other way is possible to protect society. Pope John Paul II explained that punishment ought not go to the extreme of executing the offender except in cases of absolute necessity. In other words, when it would not be possible otherwise to defend society. Today, as a result of steady improvements in the organisation of the

penal system, such cases are very rare, if not practically non-existent....If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and safety of persons;public authority must limit itself to such means.<sup>74</sup>

Among the numerous religious leaders who call for forgiveness, and condemn capital punishment, Pope John Paul II has may be given the strongest message of forgiveness when he went to see the Turkish Mehmet Ali Agca in prison and pardoned him for having tempted to assassinate him on May 13, 1981. The Pope asked people to pray for his brother (Agca), whom he has sincerely forgiven. Mehmet was condemned to life imprisonment in July 1981 in Italy, but he has been pardoned in June 2000 following the Pope request.<sup>75</sup>

### **2.3.1. The Roman Catholic Church**

Death penalty is seen by the Roman Catholic Church as an efficient means of deterrence as well as prevention. In fact, it is considered as kind of “lawful slaying” delegated to the authorities, in accepting the death sentence as lawful sentence, the Roman Catholic Church does not consider that it is a violation of the universal right to life, on September 14, 1952, Pope Pius XII declared:

*When it is a question of the execution of a condemned man, the State does not dispose of the individual's right to life. In this case it is reserved to the public power to deprive the condemned person of the enjoyment of life in expiation of his crime when, by his crime, he has already disposed himself of his right to live.*<sup>76</sup>

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<sup>74</sup>Pope John Paul II (1995). *The Gospel of Life: On the Value and Inviolability of Human Life*. Washington, D.C.: United States Catholic Conference, p. 100.

<sup>75</sup>Ibid

<sup>76</sup><http://www.ewtn.com/library/PAPALDOC/P12PSYCH.HTM>

But the Church supports capital punishment only when no other means can prevent society from a second offense of the criminal. The Catechism of the Catholic Church declares:

*Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively*

*defending human lives against the unjust aggressor. If, however, nonlethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and are more in conformity to the dignity of the human person. Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm- without definitely taking away from him the possibility of redeeming himself- the cases in which the execution of the offender is an absolute necessity are very rare, if not practically non-existent.*<sup>77</sup>

### **2.3.2. The Southern Baptist Convention**

The Southern Baptist Convention also favours death penalty. It considers that criminals who deserve capital punishment have to be executed by the state, and that appliance of the sentence is nothing but following the law of God.

### **2.3.3. Anglican and Episcopalian**

The Anglican and Episcopalian are among the fervent opponents of death penalty. In 1988, the Anglican and Episcopalian bishops condemned the use of the death penalty in The Lambeth Conference.<sup>78</sup>

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<sup>77</sup>Catechism of the Catholic Church, no.2267

[http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>78</sup>[http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

### **2.3.4. United Methodist Church**

The United Methodist Church also opposes the death penalty use. It considers that any argument of deterrence or revenge can justify the killing of a human life. Adding to the fact that capital punishment is not spared from being affected by discrimination (could

it be racial, social, or religious), justice errors and the condemnation of vulnerable people like the mentally ill.<sup>79</sup>

In its struggle against capital punishment, the United Methodist Church organised The General Conference inviting its bishops to support the opposition of death penalty, and pushing the government to pass a pressing moratorium on the death penalty issue.<sup>80</sup>

### **2.3.5. The Evangelical Lutheran Church in America**

The Evangelical Lutheran Church in America considers that carrying out executions for the motive of revenge is simply not acceptable in our days. In 1991, The ELCA declared its official condemnation of the use of capital punishment.<sup>81</sup>

### **2.3.6. Mormonism**

A great part of the Mormonism history contains violence whether used by or against the church. In early times, the United States persecuted any group of different religion or belief. One of these groups was The Latter Day Saints who wanted to found their church. Their persecution ended by the murder of their leader and founder of the church Joseph Smith, Jr. Meanwhile, the church also allowed and justified violence for a long period of time.<sup>82</sup>

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<sup>79</sup>(The United Methodist Church: Official church statements on capital punishment.)

[http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>80</sup> [http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>81</sup> (ELCA social statement on the Death Penalty)

[http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>82</sup> Bromley, Melton, David, Gordon. "Cults, Religion, and Violence," Cambridge University Press. 2002. pp. 1.

Like the other Holly books, the Book of Mormon allows death penalty in some of its passages. The most clear on the death penalty issue states that: "*if a man murdered he should die.*" However, it also contains some passages of forgiveness by God and government over numerous repented murderers. Mormons believe that murderers have to repent before their death to avoid going to hell.<sup>83</sup>

Retribution was one of the main purposes for which Mormonism claims death penalty. Mormons believe that the blood of a killed honourable person “*cries out*” until vengeance is done. Like most of Mormons leaders; Joseph Smith supported death penalty and favoured methods that involved the shedding of blood as retribution for crimes of bloodshed. He stated that if he was given the responsibility to enact a law; he would oppose hanging the offender. Instead, he would “shoot him, or cut off his head, spill his blood on the ground, and let the smoke thereof ascend up to God.”<sup>84</sup>

The successor of Smith in The Latter Day Saints Church was Brigham Young; he followed the steps of Smith concerning capital punishment. He stated that decapitation of repeated sinners “*is the law of God and it shall be executed*”.<sup>85</sup>

One of the most controversial concepts among Mormons was Blood atonement. The sinners had to be voluntary to atone for their sin by “*having their blood split upon the ground, that the smoke thereof might ascend to heaven as an offering for their sins.*”<sup>86</sup> This concept was taught in the 1850’s, when Brigham Young governed the Utah territory as a near- theocracy (government by God). However, no one can proof this concept had been ever applied during that period.<sup>87</sup> Yet it contributed to a violence already cultivated by the church as a consequence of its long persecution by the United States authorities.

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<sup>83</sup> [http://en.wikipedia.org/wiki/Mormonism\\_and\\_violence](http://en.wikipedia.org/wiki/Mormonism_and_violence)

<sup>84</sup> [http://en.wikipedia.org/wiki/Mormonism\\_and\\_violence](http://en.wikipedia.org/wiki/Mormonism_and_violence)

<sup>85</sup> Roberts, B. H., ed, History of the Church of Jesus Christ of Latter- Day- Saints, 5, Salt Lake City: Desert New. 1909, p. 296.

<sup>86</sup> Diary of Willard Richards, Dec. 20, 1846: Watson. Manuscript History of Brigham Young, 1846-1847, p.480.

<sup>87</sup> Young Brigham (September 21,1856), “ The People of God Disciplined by Trials- Atonement by the Shedding of Blood- Our Heavenly Father- A Privilege Given to all the Married Sisters in Utah”, in Watt, G.D., Journal of Discourses by Brigham Young, President of the Church of Jesus Christ of Latter-day Saints, His Two Counsellors, and the Twelve Apostles, 4, Liverpool: S.W. Richards, 1857. p 53.

Although Blood Atonement was repudiated by The Latter Day Saints Church in 1978, the concept remained in Mormon culture and was a main cause for the killing of a great number of Arkansan emigrants by Mormons believing that some of the emigrants had been among the Mormon persecutors or had a relation with their persecution. The

massacre happened in September the 11<sup>th</sup>, 1857 and was named The Mountain Meadows Massacre.<sup>88</sup>

The Mormon Church was largely criticised and accused of being guilty of the massacre through its concept of Blood atonement. Mormons violent past had seen many other violent massacres and wars.<sup>89</sup> However, today the Church of Jesus Christ of Latter Day Saints representing the Mormons does neither support nor prohibits the application of capital punishment. It stays neutral about the issue.<sup>90</sup>

#### **2.4. Capital punishment and Islam**

As it is the case in Christianity, Muslims are in disagreement concerning the issue of death penalty. When some religious leaders like Shahid Athar, an Islamic speaker and writer, show their total support for the application of death penalty. Others like Tariq Ramadan,, PhD, Professor of Islamic Studies at Oxford University disapprove it. They both back their arguments by quoting passages from the Quran. The passages do not change, but their interpretation changes.

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<sup>88</sup> Campbell, Eugene E. Establishing Zion: The Mormon Church in The American West, 1847-1869, Salt Lake City: Signature Books. 1988. Ch. 11

<sup>89</sup> Denton, Sally, American Massacre: The Tragedy at Mountain Meadows, September 1857, London: Secker & Warburg. 2003. p. 65.

<sup>90</sup> [http://en.wikipedia.org/wiki/Mormonism\\_and\\_violence](http://en.wikipedia.org/wiki/Mormonism_and_violence)

Dr Shahid Athar, is one of the religious leaders that favour capital punishment, and estimate that the passages dealing with death penalty in the Quran are clear. He gave some verses to show Islam's position over death penalty:

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*“He who created life and death, that he may test which of you is best in deed. He is the mighty, the forgiving.”<sup>91</sup>*

*“No one can die except by God’s permission, the being fixed as by writing.”<sup>92</sup>*

*“Life is sacred. Do not take the life which God has made sacred except in the course of justice.”<sup>93</sup>*

*“We decreed for the children of Israel that whoever kills a human being for other than man’s slaughter or corruption on earth, it would be as if he killed all mankind; and whosoever saves one life, it would be as if he had saved the life of mankind.”<sup>94</sup>*

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<sup>91</sup> (Quran 67:2)

<sup>92</sup> (Quran 3:145)

<sup>93</sup> (Quran 6:151)

<sup>94</sup> (Quran 5:32)

In these verses, it is explained that God alone has the right to take one’s life, he forbids us to kill other human being except through justice. God has elaborated precise rules and circumstances under which qualified people can sentence a man to death. In Islam, death penalty is a form of retaliation which is also mentioned in the Old Testament. But retaliation in Quran is under the name of “Qissas”<sup>95</sup> as said in these verses:



*And we prescribe for them there in the life for a life, the eye for the eye, the nose for the nose, the ear for the ear, the tooth for the tooth, and for wounds of retaliation. But whoever forgives it (in the way of charity), it shall be expiation for him. Whoever judges not by that which God has revealed, such as wrong doers.*<sup>96</sup>

According to Dr Shahid Athar, death sentence was not initiated by Islam, but it existed long before in the laws of the Old Testament. But a new concept was added by Quran called blood money. In fact blood money, is an old concept that was used by the Arabs before Islam. Murder can be punished on two manners in Islam; Qissas or payment of Diyah<sup>97</sup> if the victims' family accepts it, as it is mentioned in Quran<sup>98</sup>:

*O you who believe, retaliation is prescribed for you in the matter of murder, the free man for the free man, the slave for the slave, the female for the female, but if any remission is met to him by his brother ( brother in faith), then grant any reasonable demand and compensate him with handsome gratitude. This is alleviation and mercy from your Lord, and whosoever transgresses after this for him, there will be a painful punishment. In qisas, there is life for you, for men of understanding, in order that you may become God conscious.*<sup>99</sup>

Capital punishment is applied in Islam only under specific conditions.<sup>100</sup>

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<sup>95</sup> Al Quissas is the law of equality in punishment. It is the equivalent of the law of retaliation.

<sup>96</sup> (Quran 5:45).

<sup>97</sup> Diyah is the concept of blood money

<sup>98</sup> <http://www.islam-usa.com/e106.htm>

<sup>99</sup> (Quran 2:17)

<sup>100</sup> See Appendix 2, page 99

Imad-ad-Dean Ahmed, PhD, President of the Minaret of Freedom Institute, wrote in an article on American Muslims attitude over death penalty:

*The views of American Muslims on the death penalty vary somewhat, but the range is narrow compared to the enormous disagreements among Christians. All Muslims accept the permissibility of the death because it is addressed in the Qur'an. However, our views range from those who would apply it for a moderately short list of crimes (short compared to the*

*enormous list of capital crimes in the old testament)to those who would apply it to a somewhat shorter list still, and finally, to those who would call for a moratorium on the death penalty in America altogether.*<sup>101</sup>

On the other hand Tariq Ramadan, wrote in an article about the emergency of the suspension of the application of death penalty under the Islamic law. He stated that:

*We launch today a call for an immediate international moratorium on corporal punishment, stoning and the death penalty in all Muslim majority countries. Considering that the opinions of most scholars regarding the comprehension of the texts and the application of hudud<sup>102</sup>, are neither explicit nor unanimous ( indeed there is not even a clear majority), and bearing in mind that political systems and the state of the majority Muslim societies do not guarantee a just and equal treatment of individuals before the law, it is our moral obligation and religious responsibility to demand for the immediate suspension of the application of the hudud which is inaccurately accepted as an application of 'Islamic Sharia'.*<sup>103</sup>

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<sup>101</sup> Imad- ad- Dean Ahmed. (Nov. 6, 2001). "Timothy Mc Veigh and The Death Penalty" on [www.islamonline.net](http://www.islamonline.net) cached at <http://deathpenalty.procon.org/view.answers.php?questionID=001180#answer-id-005946>

<sup>102</sup> Hudud is the concept of Quissas

<sup>103</sup> Tariq Ramadan. (Apr, 5, 2005). "An International Call For Moratorium on Corporal Punishment, Stoning and the Death penalty in the Islamic World". Cached at <http://deathpenalty.procon.org/view.answers.php?questionID=001180#answer-id-005946>

## **2.5. Capital punishment and Buddhism**

Among Buddhists also, disagreement is about whether capital punishment is allowed or forbidden. Their first precept forbids the destruction of life. Chapter 10 of the Dhamapada<sup>104</sup> states:

*-Everyone fears punishment; everyone fears death, just as you do.  
Therefore do not kill or cause to kill.*

*-Everyone fears punishment; everyone loves life, as you do. Therefore do not kill or cause to kill.*<sup>105</sup>

Chapter 26 of the Dhammapada states: *Him I call a Brahmin who has put aside weapons and renounced violence toward all creatures. He neither kills nor helps others to kill.*<sup>106</sup>

These are the main passages usually used by Buddhists against any form of violence. Yet most of the Buddhist countries like Thailand use death penalty. On the other hand, Buddhists who favour death penalty also find support in their religion. The Bodhicaryavatara of Shantideva,<sup>107</sup> who allows the use of death if it is necessary to avoid suffering, states:

*One should always strive for the benefit of others. Even that which has been prohibited has been permitted for the compassionate one who foresees benefit”; “May I be a protector for those who do not have protectors”; and “If the suffering of many disappears because of the suffering for the sake of one, then a compassionate person should induce that suffering for the sake of others.*<sup>108</sup>

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<sup>104</sup> The Dhammapada is a verified Buddhist scripture traditionally ascribed to the Buddha himself. The word Dhammapada is constituted of two parts: dhamma and pada. Each of these words has various denotations and connotations. Dhamma refers to the Buddha’s “doctrine or an “eternal truth” or “righteousness” or all “phenomena”. Pada means “foot” or “path” or “verse” or both. cached at <http://en.wikipedia.org/wiki/Dhammapada>

<sup>105</sup> [http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>106</sup> Ibid

<sup>107</sup> The *Bodhisattvacharyāvatāra* or *Bodhicaryavatāra*, sometimes translated into English as *A Guide to the Bodhisattva's Way of Life*, is a famous [Mahāyāna Buddhist](#) text written in Sanskrit verse by [Shantideva](#) (Śāntideva), a Buddhist monk at [Nālandā](#) Monastic University in India around [700 A.D.](#) Cached at: <http://en.wikipedia.org/wiki/Bodhicaryavatara>

<sup>108</sup> [http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

## 2.6. Capital punishment and Hinduism

Hinduism can both allow and forbid death penalty. It preaches ahimsa<sup>109</sup>, but also that when a human being is killed his physical body only is dead and not his soul. But in a general manner, Hinduism opposes violence, and any principle of killing for revenge. Supporters of death penalty claim that death penalty is in the tradition of Hinduism and

that there is no reason not to practice it. Parmatmananda Saraswati, Coordinator of the Hindu Dharma Acharya Sabha, states:

*"Capital punishment is allowed under Hindu tradition. Lord Rama is the embodiment of dharma, yet he killed King Bali, who had stolen his own brother's wife... Sometimes I feel that the crimes today are even more heinous than in the past. Hence capital punishment, If sanctioned by the scriptures, should continue."*<sup>110</sup>

Jagdish Muni, Head of Sant Mandal Ashram, wrote about capital punishment:

*"The scriptures speak both for and against the system of capital punishment. The scriptures give the ruler or the government the power to use capital punishment. However, the saints and mahatmas do not believe in capital punishment. They believe in reforming people. There are a large number of instances in which saints have reformed criminals, in some cases so much so that the reformed people themselves became saints."*<sup>111</sup>

Ghandi who was a fervent opponent of death penalty wrote: *"An eye for an eye ends up making the whole world blind"*.<sup>112</sup>

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<sup>109</sup> Ahisma means non violence

<sup>110</sup> Parmatmananda Saraswati, (Oct. / Nov. / Dec. 2006). "Capital Punishment: Time to Abandon It?". Hinduism Today. Cached at <http://deathpenalty.procon.org/view.answers.php?questionID=1011>

<sup>111</sup> Jagdish Muni, (2006), "Capital Punishment: Time to Abandon it?", Hinduism Today. Cachet at <http://deathpenalty.procon.org/view.answers.php?questionID=1011>

<sup>112</sup>. <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/capitalpunishment.shtml>

## **2.7. Ethical Aspect of the Application of Capital Punishment in the USA**

*What kind and what degree of punishment does public justice take as its principle and norm? None other than the principle of equality in the movement of the pointer of the scale of justice, the principle of not inclining to one side more than to the other. Thus any undeserved evil*

*which you do to someone else among the people is an evil done to yourself.  
If you rob him, you strike yourself; and if you kill him, you kill yourself.*<sup>113</sup>

Criminals should be punished according to the gravity of their crimes, but the difficulty for justice is to find the adequate kind and amount of punishment that suits the committed crime without depriving the criminal of his dignity. The balance between crime and punishment is a matter of controversy when it concerns the most violent and severe crimes. The controversy is in whether killing the individual who has deliberately committed murder; or finding alternatives to death because it violates Human Rights, and hurts dignity. The criminal should be punished in the same way he has committed his crime. For example condemn a thief to pay an amount of money for what he has stolen, but for the majority cases it is impossible to apply, especially in cases of premeditated murder. If a murderer takes the life of one person, maybe he deserves to have his life taken through justice, but if he takes the life of many people his sentence is still the same; death; even if the gravity of the crime is heavier in the second situation than the first. Kant has elaborated three theses about the justification of punishment:

*1-guilt is a necessary condition for judicial punishment; that is, only the guilty may be punished.*

*2-guilt is a sufficient condition for judicial punishment; that is, all the guilty must be punished. If you have committed a crime, morality demands that you suffer an evil for it.*

*3-the correct amount of punishment imposed upon the morally (or legally) guilty offender is that amount which is equal to the moral seriousness of the offense.*<sup>114</sup>

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<sup>113</sup>Immanuel Kant, The Metaphysics of Morals, Trans. E. Hastie, Edinburgh, 1887; originally published 1779. p. 155.

<sup>114</sup> Ibid, pp. 155-56.

One of the pioneers who had elaborated a system of proportioning retribution to crime was Thomas Jefferson who declared:

*whosoever shall be guilty of rape, polygamy, sodomy with man or woman, shall be punished, if a man, by castration, if a woman by cutting through the cartilage of her nose a hole of one half inch in diameter at the least. (And) whosoever shall maim another, or shall disfigure him.....shall be maimed, or disfigured in the like sort: or if that cannot be, for want of*

*some part, then as nearly as may be, in some other part of at least equal value.*<sup>115</sup>

There is a huge contradiction in the American society that creates a continual conflict over capital punishment. Arguments had little changed through time, at the present day, no peaceful solution had been found to satisfy both sides of the conflict. The two sides of the conflict present pertinent arguments to support their positions.

Opponents of the death penalty emphasise on the irreversibility of the sentence. When executing people, the government is put at the same scale as the criminal, and such a harsh sanction doesn't have place in a contemporary society. Moreover; there are cases where individuals are executed by error, and there is no way to go back when a person's life has been taken. Another reason is that sometimes the punishment is used in a discriminatory manner. But the opponents' strongest argument is that death penalty violates the Eighth Amendment of the constitution. As an alternative, they propose life imprisonment.

The alternative of life imprisonment is often contested to be very hard to live, and some life imprisonment condemned declare that they would have preferred to die rather than staying in a closed room for the rest of their natural life. Bobby Brown is one of the life imprisonment condemned in New Jersey, he writes:

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<sup>115</sup>Thomas Jefferson, Bill for Proportioning Crime and Punishments (1779) quoted in Ernest van den Haag, Punishing Criminals: Concerning a Very Old and Painful Question (Basic Books, 1975).

*“Prison life isn't easy nor is it a smooth ride for anyone. It's easier to die here without the help of the state or anyone else. The mind seems to die slowly with the mere frustration and mental pain, if only you know! That alone is the death penalty.”*<sup>116</sup>

### **2.7.1. The Irreversibility Argument and Justice Errors**

The difference between the death penalty and other punishments is that death is a final punishment because of its irreversibility. There is no way to go back if there is any Justice Errors. Even if nowadays the probability of sentencing an innocent person to death is very small, it is not totally excluded. Any system of justice is likely to commit mistakes. The irreversibility of capital punishment is shown as strength and weakness at the same time, Strength because it is the ultimate punishment that removes permanently the worst criminals from society. Its weakness relies in case of justice errors. Roy Calvert; the leading figure in the English abolition movement of capital punishment during the 1930's stated:*The fact that few errors of justice come to light in connection with capital offenses should not lead us to suppose that such mistakes do not occur.*<sup>117</sup>

Governor George Ryan states on justice errors:

*"I now favour a moratorium because i have grave concerns about our states' shameful record of convicting innocent people and putting them on death row. I can't support a system which in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life."* Governor George Ryan of Illinois May 2001.<sup>118</sup>

Scott Turow, a Lawyer who published a book in which he gives his reflections on dealing with death penalty wrote:

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<sup>116</sup> Jan Arriens, ed. Welcome to Hell: Letters & Writings from Death Row. Second Edition. North-eastern University Press. Boston. 2005. p. 45.

<sup>117</sup> Inciardi, op., cit., p. 488.

<sup>118</sup> Stearman, op., cit., p. 21.

*In Illinois, we have 102 elected State's Attorneys, each with the power of life and death in his or her hands while confronting a frightened electorate demanding quick justice, as the public inevitably does in the face of ghastly murders. It is not simple posturing to say that most prosecutors withstand these pressures with professionalism. But even if only a few in a hundred proceed with a blind eye to the facts or the law, the results are unacceptable.*<sup>119</sup>

There are international standards supposed to protect the innocents against capital punishment. The UN Safeguard No. 4 concerns the protection of the rights of people confronted to capital punishment. It states that: *'capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts'*.<sup>120</sup>

Safeguard No. 5 concerning the same issue:

*'capital punishment may only be carried out pursuant to final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings'*.<sup>121</sup>

Errors of justice do not happen frequently, but the fact is that there are cases where the executed person later turns to be innocent, by providing a determining proof, or through new circumstances. Adding to the fact that death sentenced people, are usually represented by a court appointed lawyer who sometimes have a lack of skills, resources and knowledge for such serious criminal affairs. Moreover, prosecutors, juries and judges are sometimes influenced whether consciously or not by the racial and social belonging of the offenders. These factors accentuate the deficiency of the criminal justice system.

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<sup>119</sup> Scott Turrow. Ultimate Punishment. Picador: Farrar, Straus & Giroux. New York. 2004. p. 43.

<sup>120</sup> Roger, op., cit., p. 131.

<sup>121</sup> Ibid.

Many politicians and people working in close contact with the criminal justice have changed their position from supporters to opponents of death penalty, after noticing the amount of errors done by the Criminal Justice. Governor George Ryan declared that the justice system *"is haunted by the demon of error—error in determining guilt and error in determining who among the guilty deserves to die."*<sup>122</sup>



In 2000, Governor George Ryan of Illinois has observed that during a certain period, the state of Illinois had executed twelve condemned, and released thirteen innocents from death row, meaning that among the 24 prisoners in death row; thirteen were innocent. The occurrence of such a high number of Justice Errors in the state of Illinois pushed Governor Ryan to commute the sentences of 170 death row prisoners to life imprisonment.<sup>123</sup>

An example of the numerous Justice Errors is that of Timothy Evans who in 1950 was hanged in London for the murder of his baby daughter. Even if he confessed his guilt under police pressure, it later emerged that the murderer was his neighbour, John Christie. Timothy Evans was proclaimed innocent in 1966, but he had been executed in 1950. Errors of Justice happen most of the time with young, uneducated people, or those having mental illness and had been forced by the police to confess, and faced to an incompetent Justice system. In September 2004, 117 wrongfully convicted murderers have been proved innocent and thus freed from death row in the United States.<sup>124</sup>

Some progress has been done recently to minimise the occurrence of justice errors. The Innocence Protection Act; a group of death penalty reforms have been presented to Congress by Senator Patrick Leahy of Vermont in 2000. Acting for the same aim, Senator Russel Feingold of Wisconsin proposed the first congressional bill calling for a nationwide moratorium on executions in 2000. Some of the proposed

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<sup>122</sup>Hugo Adam Bedeau & Paul Cassel. Debating the Death Penalty: Should America Have Capital Punishment? Oxford: Oxford University Press. New York. 2004. p. 153.

<sup>123</sup> David R. Dow. Executed on a Technicality: Lethal Injustice on America's Death Row. Beacon Press. Boston. 2005. pp. xii- xiv.

<sup>124</sup> Sister Helen Prejean. The Death of Innocents: An Eyewitness Account of Wrongful Executions. Vintage Books: A Division of Random House, Inc. New York. 2005. Preface.

reforms are to make DNA testing accessible to every probable innocent, and to make it a banal procedure in each capital murder investigation among other proposed reforms that may be adopted in the near future.<sup>125</sup>

The recent introducing of DNA tests to solve murder cases has helped a lot in diminishing the number of Criminal Justice Errors, because DNA test is by far the most efficient manner to proof the innocence or the guilt of someone. Many cases of people sentenced to death have been proved innocent thanks to the DNA test.

The proponents' response to the irreversibility argument and justice errors is that some innocents could pay the price for the safety of society from many guilty people; this is the price of justice. Errors happen even in the most efficient system of justice.

### **2.7.2. The Discrimination Argument**

Holders of this argument state that the death penalty is a "lottery system", and most of the time it is applied on those who are poor and are not able of defending themselves. Justice Thurgood Marshall wrote in *Furman V. Georgia*:

*"It is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society. It is the poor and the members of minority groups who are least able to voice their complaints against capital punishment. Their importance leaves them victims of a sanction which the wealthier, better represented, just-as-guilty person can escape....."*<sup>126</sup>

One of the most debated subjects in death penalty is discrimination, in fact the prominent question is: is death penalty applied fairly or in a discriminatory manner? This question is still at a controversial stage, opponents and supporters are continually giving arguments to prove that death penalty is unfair, arbitrary, and racially discriminatory, or at the contrary, deny any discrimination, and say that the researches made in this domain are wrong and statistics wrongly interpreted.

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<sup>125</sup> Ibid., p. 251.

<sup>126</sup> James. A, op., cit., p. 489.

Throughout history, blacks have been often victimised by capital punishment especially in the South. Their number was largely superior to death condemned whites. This phenomenon is due to the difference between the lists of death sentenced crimes; for example, in 1830, blacks were condemned to death for over 70 crimes, while the whites had only five capital crimes.

Fairness and non-discrimination should be the principles of all trials and punishments, not only capital punishment. If law is applied correctly, no one could be put in trial without a genuine case to answer. Fairness needs certain conditions to be fulfilled, such

as absence of corruption and incompetence from the side of these parts: police, witnesses, and the legal system. In 1967, The President of the Commission on Law Enforcement and Administration of Justice declared that death penalty: *“is most frequently imposed and carried out on the poor, the Negro, and the members of unpopular groups.”*<sup>127</sup>

The following statistics support the idea of discrimination among the executed prisoners by the United States authorities; the study was done by race and offence from 1930 to 1963. 110 of the 823 blacks convicted of rape were executed, whereas only 9 of the 442 whites convicted of murder were sentenced to death <sup>128</sup>. Capital punishment was used as an instrument of discrimination at that period, but the most recent studies also show that capital punishment is still administered in a selective and discriminatory manner.

African-Americans are imprisoned in a higher number than any other ethnic group, while they represent only 12% of the U.S. population, however, they represent almost 50 % of the convicted prisoners. 42 % of the 3,700 prisoners on death row are Black, 45 % are White, and 10.5 % are Hispanic (Latin-American). Since 1976, over one third of the executed have been blacks. Table A. 2 holds statistics that have been done between 1976 and 2006, on the racial background of prisoners executed in the United States. Blacks represent only 12 % of the population in the United States, but they are 50 % to be convicted prisoners. 43 % of

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<sup>127</sup> Ibid., p. 472.

<sup>128</sup> Ibid., 473.

the 3,700 prisoners on death row are black, whereas 45 % are white, and 10.5 % are Hispanic. As a whole, blacks represent one third of the executed prisoners from 1976 to 2006.<sup>129</sup>(See Table A.2)

## **Table A. 2**

### **Racial background of prisoners executed in the U.S. (1976- July 2006).**

<b>racial background of executed prisoners</b>	<b>Racial background of executed prisoners in numbers</b>	<b>Racial background of executed prisoners as percentage of total</b>
<b>Black</b>	351	34
<b>Hispanic</b>	68	6
<b>White</b>	588	58
<b>Other</b>	24	2
<b>total</b>	1,031	100

Source:  
The Death

Penalty Information Centre Website quoted from

Kaye Stearman.

The Debate About the Death Penalty. Rosen Publishing Group. New York. 2008. p. 31.

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<sup>129</sup>. Kaye, op., cit., p. 31.

The fact that blacks are poorer than whites in the U.S. is clearly apparent, there are much more blacks living in bad conditions (whether social or educational) than whites. It seems logical that because of the difficulties blacks meet in their lives; they are higher in number to be jailed and executed for harsh crimes. However, research has proved that the victims' race is the most determining factor in deciding whether death is sentenced or not to the offender. What happens is that when blacks kill whites, blacks are most of the time sentenced to death, but when whites kill blacks, whites are

rarely sentenced to death. If we resume the statistics in the above table, we find that 80 % of the executed were convicted of killing whites, whereas only 14 % executed were convicted of killing blacks.<sup>130</sup>

The Supreme Court Justice Blackmun declared in 1994:*Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.*<sup>131</sup>

### **2.7.3. The Argument of Cruel and Unusual Punishment**

The argument of ‘Cruel and Unusual Punishment’ explains that capital punishment is a violation of the constitutional right guaranteed by the Eighth Amendment that states: *“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted”*. But the notion of cruel and unusual punishment varies from a person to another and its interpretation changes from a Criminal Court of Justice to another. The same Court could both asserts and rejects the constitutionality of death penalty. But until *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), the court didn’t face any claim that capital punishment was violating the Eight Amendment of the constitution because it was considered as cruel and unusual punishment.<sup>132</sup>

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid

<sup>132</sup>Wayne, op., cit., p. 335.

### **2.7.4. Environment Influence**

Abolitionists try to prove that the environment of the murderer is responsible for his act, since every individual is the product of his society, and that the murderer suffers of a mind disease just as a person suffers of an illness in her body. The chief justice of Iowa Supreme Court told the Iowa Anti-Capital Punishment and Prison Discipline Society that:*“And as in the one case we provide hospitals for the treatment of severe and*

*contagious diseases, so in the other, prisons and asylums should be provided for similar reasons.*”<sup>133</sup>

But this argumentation was attacked by the opponents, arguing that: *“If crime was a social disease, contracted through no fault of the criminal, then retribution of any kind, not just capital punishment, ought to have been considered inappropriate.”*<sup>134</sup>

On the other hand, proponents of death penalty also gathered strong elements to argue their position.

### **2.7.5. The retribution argument**

The retribution argument focuses on punishing the offender according to what he deserves and not to what it could positively serve the society. Kant wrote:

*“Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime.....”*<sup>135</sup>

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<sup>133</sup> Stuart, op., cit., p. 118.

<sup>134</sup> Ibid. p. 119.

<sup>135</sup> Immanuel, op., cit., pp. 155-56.

Writers dealing with the issue of death penalty and favouring it like Louis Pojman who explains that the application of death penalty in the U.S is necessary upon murderers. He states that when an individual acts positively he deserves to be rewarded. On the other hand, when he acts negatively, he deserves to be punished according to the principle of retribution. He also believes in the deterrent effect that death penalty can have on certain future murderers.<sup>136</sup>

This argument received much criticism from abolitionists. Jeffrey Reiman, one of the fervent opponents to death sentence, considers that sentencing an offender to death for the only reason of retribution approves the desire of the victim to make the offender suffer. Thus, it is from that suffering that the victim feels satisfied. He maintains that such a feeling is primitive.<sup>137</sup>

### **2.7.6. The Argument of Community Protection**

The Argument of Community Protection simply claims that the only way to protect society from the danger of criminals is to sentence them to death, and that prison is not a sure means for protecting society from a second offense of criminals. Even if it is very rare; their evasion is a possibility, and there are many cases of criminals that had benefited of a conversion of their life sentence to a definite number of years, whether for their good behaviour in prison, or for other reasons. But the fact is that once they are out, no one can guarantee that they will not commit other crimes. Moreover, there is not any other sanction that suits the gravity of certain crimes except capital punishment. One of the main objectives of death penalty supporters is to shorten the delay between the sentence and the execution to a maximum. Concerning the victims' families, it is the only way to bring relief and revenge.

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<sup>136</sup> Louis P. Pojman & Jeffrey Reiman. The Death Penalty: For & Against. Rowman & Littlefield Publishers, Inc. Maryland. 1998. p. 1.

<sup>137</sup> Hugo Adam Bedeau & Paul Cassel. ed, Debating the Death Penalty : Should America Have Capital Punishment? Oxford: Oxford University Press. New York. 2004. p. 88.

The opponents' response to this argument is that the time when America was a frontier society without the existence of prisons is over. Today the United States have the most performing prisons in matters of maximum security, where all the dangerous individuals like serial killers can be totally isolated for the rest of their life. Moreover, society will benefit more from leaving a murderer alive than from killing him. The murderer can work without income to compensate the crime he has committed; the income will be given to the victim's family, even if it is evident that money never

compensates the loss of person. Through this method, the offender will pay back the victim's family as well as society.

### **2.7.7. Public Opinion**

It seems that during the recent development of the death penalty movement, the Americans' opinion over this sentence was predominantly favourable, in such a way that people in California, protested against the abolition of death penalty in February 1972, and pushed the California Supreme Court, five months later, to approve an amendment to the state constitution that made capital punishment mandatory for selected crimes. In 1985, 72 % of the Americans were for capital punishment.<sup>138</sup>

Figure B.1 analyses the evolution of public opinion on death penalty issue from 1957 to 2007. The first observation is that both public support and opposition had experienced important fluctuations. Public support had seen different periods of rise and fall, but compared to public opposition, it was relatively high. In 1957, its' percentage was of 47 %, to reach its' peak in 1994 with 80 %. The number decreased to 65 % in 2000, but it quickly moved up as a consequence of the tragic events of September 11, 2001, to decrease in late 2007 to 66 %. Public opposition, on the other hand, had relatively low percentages. In 1957 it had a percentage of 34 %, to reach its' peak in the mid 1960's with a little more than 45 %, but it had experienced a serious fall to 16 % in the 1990's and rose again to 32 % in 2007.<sup>139</sup> (See Figure B.1)

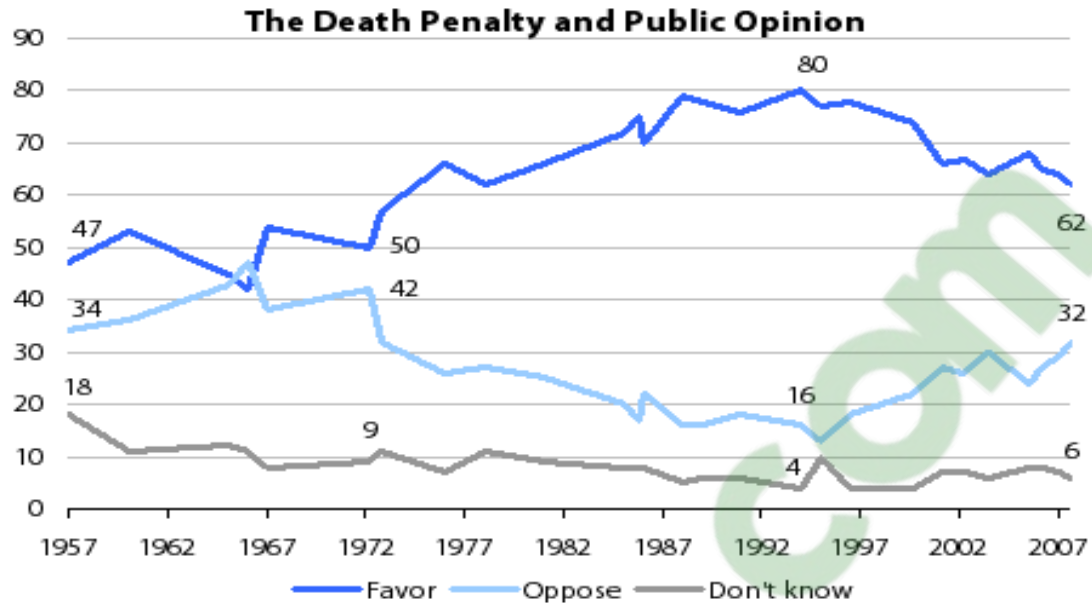
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<sup>138</sup> New York Times, February 3, 1985, page 3. Quoted in James A. Inciardi. Criminal Justice. Second Edition. Harcourt Brace Jovovich, Inc. Chicago. 1987, 1984. p. 488.

<sup>139</sup> <http://pewforum.org/Death-Penalty/Capital-Punishments-Constant-Constituency-An-American-Majority.aspx>

### **Figure B.1**





Note: Data from 1995 and earlier are from Gallup; data from 1996 to 2007 are from the Pew Research Center.

Source: <http://pewforum.org/Death-Penalty/Capital-Punishments-Constant-Constituency-An-American-Majority.aspx> by Robert Ruby, Senior Editor, and Allison Pond, Research Associate, Pew Forum on Religion & Public Life    LEGAL REPORT December 19, 2007

Generally people are in favour of death penalty rather than life imprisonment concerning criminals, because they want to guarantee that society will not suffer from a second offense of the same criminal. They think that there is a risk that their life sentence could be shortened. But as soon as they are told about the number of innocents executed further to Criminal Justice Errors, the execution of juveniles, the inefficacy in deterring crimes, and its cost three times higher than life imprisonment; the majority change their mind.

Justice Thurgood Marshal stated about that in Furman (1972): *The American people are largely unaware of the information critical to a judgment on the morality of the death penalty..... If they were better informed they would consider it shocking, unjust and unacceptable.*<sup>140</sup>

<sup>140</sup>Sister Helen, op., cit., p. 234

Public executions are no more held, one can think it was an evolution in the abolition movement, but may be the fact of allowing citizens watch the terrifying scene of execution, will make them oppose death.

The fact of informing people of all the parameters of the death sentence is very important since public opinion has an influence on many domains. The Supreme Court's judgments on criminal cases rely on public opinion surveys on the question of what constitutes cruel and unusual punishment, and what does not. Office holders as well as Politics are also affected through the political candidates' position, promises, and actions over death penalty. Politicians generally state that they are putting into practice the will of the people, but public opinion over the death penalty is not what the statistics show, since the majority lacks information about the parameters of the sanction.<sup>141</sup>

Public opinion varies according to the different categories of people. Difference of gender, race, income and political orientation makes people think and behave differently over death penalty. Males favour the death penalty with about 9 % more than females. Whereas females oppose the sentence with 4 % more than males. Whites favour death penalty by 20 % more than blacks, and blacks show an opposition of 17 % over whites. People with high income favour death penalty by 14 % over people with low income. Americans of nearly all political influences favour the death penalty, with a strongest support from Republicans. And finally, people who live in the South and the West show more support for the sanction than others.<sup>142</sup>

Public opinion supports not only death penalty in a general manner, but its application on juveniles as well. Public opinion over juveniles execution raised from 24 % in the 1960's, to 72 % by the 1990's. People's argument for such behaviour is that adolescents are responsible for a great part of crimes, and that sending them to executions will have a deterrent effect. But studies revealed that adolescents commit

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<sup>141</sup> Mark, op., cit., p. 113.

<sup>142</sup>Bohm, R. M., (1991) 'American Death Penalty Opinion, 1936- 1986: A Critical Examination of the Gallup Polls'. In R. M. Bohm (ed.), *The Death Penalty in America: Current Research*. Cincinnati: Anderson. Quoted in Mark Costanzo. Just Revenge: Costs & Consequences of the Death Penalty. ST Martin's Press. New York. 1997. pp. 115-116.

13% of the crimes only, whereas people think they are responsible of 43% of crimes.<sup>143</sup>

During the last thirty years, arguments of public opinion support for death penalty shifted from deterrence to retribution, because of people's awareness of the non-

efficiency of capital punishment deterrent effect on criminals. Thus, the majority of people moved from deterrence to revenge claiming death sentence under the argument of retribution.<sup>144</sup>

High rate of violent crimes goes hand in hand with high support of public opinion for capital punishment. At each period of time where crimes reached high levels in the United States, public support followed the same rise.<sup>145</sup> Probably the reason of such behaviour is that people express their anger and scare about the increase of violence in their country. When people are asked questions about death penalty, their answers are guided by emotion rather than reason.<sup>146</sup>

### 2.7.8. The Deterrence Argument

The Deterrence Argument holds that adding to prevent society from another crime by the offenders; death penalty has another utility which is to deter other people from committing crimes. According to some studies, it had been concluded that in areas where death penalty is practiced, the rate of crimes is lower after an execution than before.<sup>147</sup> Recent studies show that for every execution in America, 18 murderers are prevented.<sup>148</sup>

Figure **B. 2** shows that the death penalty is more efficient in deterrence than life imprisonment. This graph analyses two populations of would-be murderers. One of the

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<sup>143</sup> Moore, David W. (September 1994). "Majority Advocate Death Penalty for Teenage Killeers". *The Gallup Poll Monthly*, pp. 2-6.

<sup>144</sup> Mark, op., cit., p. 118.

<sup>145</sup> Page, B. I., and Shapiro, R. Y. *The Rational Public*. Chicago University Press. 1992. Quoted in Mark Costanzo. *Just Revenge: Costs & Consequences of the Death Penalty*. ST Martin's Press. New York. 1997. pp. 121-122.

<sup>146</sup> Mark, op., cit., p. 122.

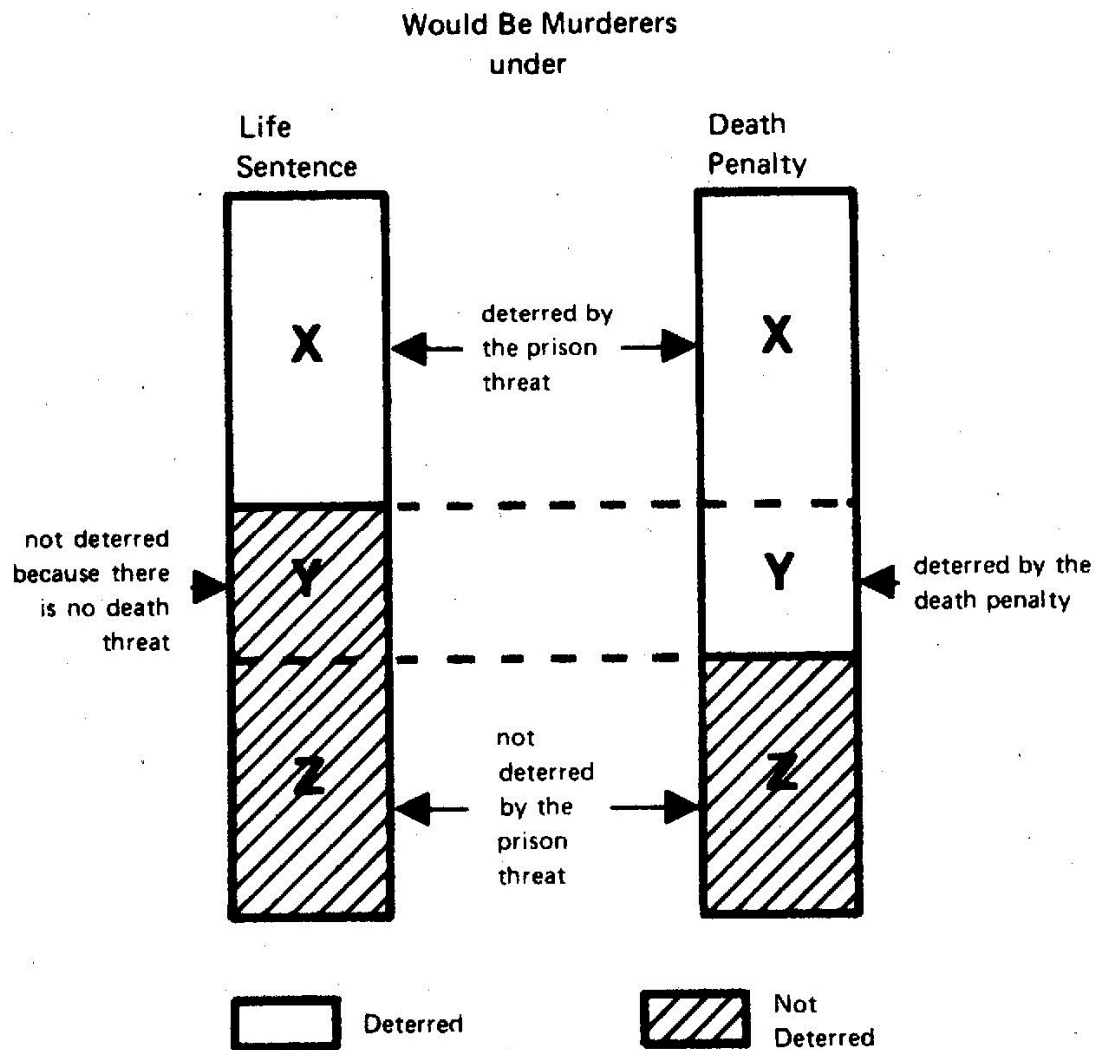
<sup>147</sup> Inciardi, op., cit., p. 488.

<sup>148</sup> Hashem Dezhbakhsh, Paul Rubin, & Joanna Sheperd, "Deterrence and the Death Penalty", Emory University, January 2002. Quoted in Hugo Adam Bedeau & Paul Cassel. ed, *Debating the Death Penalty: Should America Have Capital Punishment?* Oxford: Oxford University Press. New York. 2004. P. 126.

two populations lives under an authority applying death sentence and the other under an authority applying life sentence instead of capital punishment. (X) is the number of

would-be murderers deterred in both groups. (Z) is the proportion of would-be murderers who are not deterred neither by death sentence nor by life imprisonment. (Y) is the proportion of would-be murderers that would be deterred by death sentence and not by life imprisonment. <sup>149</sup> (See Figure B.2)

**Figure B. 2** Experimental Paradigm Showing a Deterrent Effect of the Death Penalty over the life sentence.



Source: Hugo, Adam, Bedeau. The Death Penalty in America. Third Edition. Oxford: Oxford University Press. New York. 1982.

<sup>149</sup>Hugo Adam Bedau, ed., The Death Penalty in America: An Antology, New York, Doudleday, 1964. p. 118.

The result of this experimentation is that the death penalty does effectively deter a certain category of people who are vulnerable to be future murderers, and on whom life

sentence doesn't have any effect. In 1975, the econometrician Isaac Ehrlich published one of the most famous studies in favour of the deterrent effect of death penalty: *The Deterrent Effect of Capital Punishment: A Question of Life and Death*. Ehrlich concluded that for each carried execution in the United States for the period from 1933 to 1967; eight lives were saved.<sup>150</sup> However, his study was strongly contested, for the argument that the period he has chosen for his study includes a period from 1963 to 1969 where no execution was carried, and that homicide rate rose for other reasons than the non-appliance of death penalty. Yet many other studies have proved that the death sentence does not produce any deterrent effect on would be murderers.<sup>151</sup>

Thorsten Sellin is one of the researchers, earlier to 1970, who worked to prove the inefficiency of deterrence of death penalty. He noticed that the states where there were no raise of homicide rate were the states that abolished death penalty.<sup>152</sup> Working for the same aim, in 1970, Hugo Bedau also concluded that the deterrent effect of the death penalty is not higher than that of life imprisonment, especially for the crime of murder.<sup>153</sup> Deterrence continues to be the object of many studies and statistics that are persuasive for both sides of the conflict.

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<sup>150</sup> Joshua Dressler. *Cases & Materials on Criminal Law*. Third Edition. West Group. 1999. p. 344.

<sup>151</sup> Louis, op., cit., p. 101.

<sup>152</sup> Thorsten Sellin, *The Death Penalty*, Philadelphia: American Law Institute, 1959. Quoted in Louis P. Pojman & Jeffrey Reiman. *The Death Penalty: For & Against*. Rowman & Littlefield Publishers, Inc. Maryland. 1998. p. 100.

<sup>153</sup> Hugo Adam Bedau, *Deterrence and the Death Penalty: A Reconciliation*, *Journal of Criminal Law, Criminology, and Police Science* 61, no. 4 (1970): 539-48.

## **2.8. Conclusion**

Capital punishment continues to be in a continual debate from both the religious and ethical sides. Giving all the possible arguments and statistics whether to support or to oppose the punishment, does not allow to know how much death penalty deters. Public opinion is permanently changing influencing the position of the American states over the issue. Today, Americans are stuck with a compromise between adopting and abolishing capital punishment, and the issue is so important that neither side would flinch.

However, there is still a majority of the American population, even if it is continually regressing, in favour of death penalty. May be one of the reasons to explain this fact is that the apparent religious group in America predominantly favours capital punishment under the law of retaliation.

# **Chapter 3**

## **POLITICAL AND ECONOMIC ASPECTS OF DEATH PENALTY, IN AMERICA**

### **3.1. Introduction**

Politics plays an effective role on the issue of capital punishment in the United States. The political influence comes from both inside and outside the country. Politicians know that capital punishment is one of the most actual discussed subjects, and use it to win the public opinion on their side. On the other hand, the United States cannot ignore the political influence of the other developed countries that have

abolished death penalty. Adding to that; the influence of Human Rights organizations, the International Commission of Jurists, Amnesty International, the United Nations, and the Council of Europe. On the ground of this, light should be cast on the important roles that play the latter elements to come to an end to the puzzled issue of capital punishment in the United States, and the evolution of the abolition movement throughout time. Finally, the economic aspect of death penalty will be studied.

### **3.2. The position of Democratic Western Countries Regarding Death Penalty**

The European movement for the abolition of capital punishment was very effective. In fact, the European Political institutions were trenchant in their opposition to death penalty. Moreover, they used pressure and political influence on the countries that had not yet abolished death penalty. This pressure was the most important reason that pushed these countries to enter the movement and engage themselves in the abolitionists' cause.

Many resolutions have been decided by the Parliamentary Assembly of the Council of Europe regarding the complete abolition of death penalty from both European countries and other countries in the world. Resolution 1044 and recommendation 1246 of 1994, followed by resolution 1097 of 1996, then resolution 1187 of 1999 called for: A Death Penalty Free Continent. The Parliamentary Assembly called upon 'all the Parliaments in the world which have not yet abolished the death penalty, to do so promptly, following the example of the majority of Council of Europe member states'.<sup>154</sup>

These resolutions had a positive reaction mainly on the countries who were interested in joining the Council of Europe. One of the political pressures exercised by the European Union is the fact of imposing the abolition of death penalty as a precondition for membership. Turkey is one of the countries that abolished death penalty in 2001, for the only reason to join the European Union leaving the United States the only NATO country that still has the death penalty.<sup>155</sup> By April 2002, 16 East European countries abolished capital punishment and ratified the Sixth Optional Protocol to the ECHR, and three had signed it.



In 1998, the European Union enlarged its objectives to countries outside Europe. It adopted Guidelines to European Union Policy towards Third Countries on the issue of capital punishment. The guidelines declared that the objective of the European Union is to: '*work toward the abolition of the death penalty a strongly held policy view agreed by all EU member states*'. And also that '*abolition of the death penalty contributes to human dignity and the progressive development of human rights*'.<sup>156</sup>

In December 2000, the draft Charter of Fundamental Rights has been adopted by the European Council in association with the European Parliament and Commission.

Article 2 (2) affirms that:

*No one shall be condemned to the death penalty or executed' and article 19 that 'No one shall be removed, expelled or extradited to a State where there is a serious risk that the [the person] would be subjected to the death penalty, torture or other inhumane or degrading treatment or punishment.*<sup>157</sup>

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<sup>154</sup> Wohlwend, R., The Death Penalty: Abolition in Europe, Strasbourg: Council of Europe Publishing. 1999. pp. 55-67.

<sup>155</sup> Amnesty International, "Death Penalty Developments in 2001," (January 10, 2003)]. at <http://web.amnesty.org/rmp/dplibrary/nsf>

<sup>156</sup> Council of the European Union, *Guidelines to European Policy towards Third Countries on the Death Penalty*, Brussels, 3 June 1998. Quoted in Roger Hood, The Death Penalty: A Worldwide Perspective. Third Edition. Oxford: Oxford University Press. New York. 2002. p. 1

<sup>157</sup> Roger, op., cit., p.17.

Another resolution concerning death penalty worldwide had been adopted by the European Parliament in July 2001. It declared that: *The abolition of the death penalty, which is iniquitous, degrading and contrary to the universal principles of justice, is essential to the affirmation of human dignity and for the progressive development of human rights, the first of which is the right to life.*<sup>158</sup>

It also invited the European Commission to: *Consider the abolition of the death penalty and a universal moratorium on executions as an essential element in relations between the European Union and third countries, and to take this issue into account in concluding agreements with third countries.*<sup>159</sup>

As the United States is in the list of countries practicing capital punishment, the European Union made political attempt to persuade it to abolish the sentence of death. The steps are in relation to individuals facing execution, to the Governor and Boards of Pardons of several US states, including Tennessee, Oklahoma, Missouri, Georgia, Texas, and Virginia.<sup>160</sup>

One of the examples of the political influence of the European Union on the US is the public declaration of the former US Ambassador to France Felix Rohatyn. He asserted that hostility to death penalty in Europe had opened his eyes to the issue because it was a direct challenge to the U.S 'moral leadership' in world affairs. And turned him from a supporter of capital punishment to a sceptic who now supported a moratorium on executions so that the whole issue could be reviewed.<sup>161</sup>

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<sup>158</sup>Ibid

<sup>159</sup> Ibid

<sup>160</sup>European Policy and Action on the Death Penalty at: [www.eurunion.org/legislat/Deathpenalty/deathpenhome.htm](http://www.eurunion.org/legislat/Deathpenalty/deathpenhome.htm)<sup>161</sup> Felix G. Rohatyn, 'America's Deadly Image', [Washington Post](http://www.washingtonpost.com/archive/local/2001/02/20/page/wp20010220-023/), 20 Feb. 2001, p.23.

The most important resolution adopted by the Parliamentary Assembly is resolution 1253 on 25 June 2001. It has been decided to remove the status of observer of both Japan and the United States unless they make 'significant progress' on abolishing executions by 1<sup>st</sup> January 2003.<sup>162</sup>

even if many efforts and improvement had been made to push the biggest number of countries to join the cause of abolition, through political influence and international treaties, a great number of countries resisted politically and refused to accept the issue

as an 'international Human Rights norm'. They consider that the application of death sentence in their countries does not concern anyone but them, and that their system of criminal justice is an internal matter that belongs to their national sovereignty. Moreover, it is a reflection of their cultural and religious values.<sup>163</sup>

To ban Capital Punishment from their judicial system, the refusing countries are predominantly Muslims in reason of their religious influence, but other countries are included like the United States and Japan. They all rejected the adoption of the Second Optional Protocol to the ICCPR and UN resolutions, in general. Singapore as one of these countries, affirmed that '*capital punishment is not a Human Right issue*', and presented an amendment '*affirming the sovereign right of States to determine the legal measures and penalties which are appropriate in their societies to combat serious crime effectively*'.<sup>164</sup>

This was made in response to resolution A/C.3/49/L.32 29 Dec. 1994 of the General Assembly that suggested to the states opposing abolition to '*consider the progressive restriction of the number of offenses for which the death penalty may be imposed*'. It pushed them to '*consider the opportunity of instituting a moratorium on pending executions with a view ensuring that the principle that no state should dispose of the life of any human being be affirmed in every part of the world by the year 2000*'. The reaction of Singapore was that the resolution was '*some way towards dictating a particular set of values from countries which have abolished capital punishment on those which have not*'.<sup>165</sup>

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<sup>162</sup> Roger, op., cit., p. 18.

<sup>163</sup> Ibid

<sup>164</sup> Ibid, p. 19.

<sup>165</sup> Ibid

In October 1999, a draft resolution (A/C.3/54/L.8) was introduced to the UN General Assembly by Finland. It invited all the states maintaining death penalty to quickly fulfil their international obligations, to observe the safeguards, to restrict progressively the number of capital offenses, to establish a moratorium with a view to abolishing death penalty completely, and to make available to the public information with regard to the imposition of the death penalty.<sup>166</sup>

In April 2002, another resolution of the UN Human Rights Commission stressed on the fact that non abolitionist states must ensure that *'the notion of "most serious crimes" should not encompass non-violent financial crimes or any non-violent religious practice or expressions of conscience; and not to impose the death penalty on a person suffering any form of mental disorder or to execute any such person'*.<sup>167</sup>

The resolutions in general met many oppositions and resistance from non-abolitionist states, through a series of amendments claiming for the liberty to choose their own political, economic, and social systems. These amendments attracted as much co-sponsors as the opposite side, the fact that slowed down the United Nation in its aim of achieving total abolition worldwide. Nevertheless; thanks to the achievement of the United Nations, non-abolitionist states are much inferior in number of abolitionist states.<sup>168</sup>

In December 2000, the European Union adopted The Charter of Fundamental Rights. It holds the prohibition to send any criminal to any non-abolitionist state of the capital punishment unless it is guaranteed that he will not be sentenced to death.<sup>169</sup>

This prohibition of extradition includes all sorts of criminals, even suspected terrorists against the United States after the events of the 11<sup>th</sup> September 2001. In fact many abolitionist countries took the decision not to extradite offenders to the United States for fear of their execution. Their aim is to create a kind of international embargo

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<sup>166</sup> Ibid, pp. 19-20.

<sup>167</sup> Ibid

<sup>168</sup> Ibid

<sup>169</sup> Charter of Fundamental Rights of the European Union, O.J.E.C. 18.12.2000, 2000/C 364/1, Art. 19 (2). Quoted in Roger Hood. The Death Penalty: A Worldwide Perspective. Third Edition. Oxford: Oxford University Press. New York. 2002. P. 21.

on death penalty. However, as the U.S position over death penalty is continually in variation and taking into account the events of the 11<sup>th</sup> September 2001 that increased her application of death sentence. This position influenced the attitudes of countries toward America in case of extradition.<sup>170</sup>

May be one of the best examples of the countries fluctuation toward the United States on the issue of capital punishment is Canada in the case of United States v. Burns

(2001). In February 2001, the Canadian Supreme Court decided that the extradition of the capital crime offender Burns to the state of Washington, cannot be done unless it will be guaranteed that death sentence will not be imposed on him, and this, in reason of the violation of Section 7 of the Canadian Charter of Rights and Freedom (right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with 'the principles of fundamental justice'). In 1991, the Canadian Court of Justice in its judgment in *Kindler v. Canada (Minister of Justice)* decided that the extradition of a capital crime offender to Pennsylvania was not unconstitutional even without guarantee of not sentencing him to death. The Majority of the Canadian Court stated finally:

*Extraditing an individual accused of the worst form of murder to face capital prosecution does not shock the conscience of the Canadian people, nor is it in violation of internal standards...In determining what is fundamentally just, the global context must be considered. Although there is a growing trend towards the abolition of capital punishment, the vast majority of the nations in the world retain the death penalty. There is no international norm.*<sup>171</sup>

The Constitutional Court of South Africa also affirmed that the government should have not deported to the United States Illegal immigrants suspected of bombing the U.S. Embassy in Dar es Salaam, in 1998 (without having obtained any guarantee of not sentencing them to death in case of inculpation).<sup>172</sup>

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<sup>170</sup> Roger, op., cit., p. 21.

<sup>171</sup> *Criminal Reports* 8 C.R. (4<sup>th</sup>), (1991), p 4. Quoted in Roger, op., cit., pp. 21-22.

<sup>172</sup> *Mohamed V. President of the South Africa and Others* 2001 (7) BCLR 685 (CC). Quoted in Roger, op., cit., p. 22.

There is no doubt that the evolution of this issue is of great importance for its evolution elsewhere in the world. The United States government weighs heavily in the political court, and claims that he is in first position in matters of Human Rights. The fact that makes the non-abolitionist countries feel protected in their resistance to abolish death penalty. They continue to support and practice capital punishment, and will continue to

do it as long as the United States will do it, since they hide behind the most powerful political state.<sup>173</sup>

Even if the United States has always ignored the attitude and policy of other developed nations in taking decisions on different issues, the future of death penalty policy in the United States will be certainly influenced culturally and politically by other developed countries. Maybe the most controversial and disputed issue between the U.S and other developed nations, is that of capital punishment.

The view of the developed nations on the question of capital punishment is that nations that qualify themselves as civilised countries, must firstly, not allow the application of such a barbaric sentence in their country. This fact makes all foreign leaders criticise and stigmatise the American practice. The former U.S Ambassador to France Felix G. Rohatyn declared on the strong foreign criticism over the U.S that: “no single issue evoked as much passion and as much protest as execution in the United States”.<sup>174</sup> This negative judgment is of great impact on the U.S elite. They think that if such criticism persists, it will tarnish the U.S external image.<sup>175</sup>

The difference that made Western Europe reach the complete abolition of death penalty and keep definitively in this position is that the issues shifted from a criminal justice matter to a constitutional limit on government power. It is no longer regarded as a question of punishment policy.<sup>176</sup>

Despite the political pressure practiced by abolitionist governments through the refusal of extradition of offenders to the U.S, other sorts of pressure have been used to influence the U.S economically and culturally. Economically it affected trade with high

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<sup>173</sup> Roger, op., cit., p 22.

<sup>174</sup> Hugo and Paul, ed, op., cit., p. 156.

<sup>175</sup> Franklin E. Zimring, The Contradictions of American Capital Punishment, Oxford: Oxford University Press. New York. 2003. P. 181.

<sup>176</sup> Ibid. p. 182.

execution level American states, culturally through foreign books, music, and films on the issue. Probably the most important impact will be psychological when American citizens compare the attitude of the educated people from other developed countries over capital punishment.<sup>177</sup>

As Stephen B. Bright said: *just as the United States could not assert moral leadership in the world as long as it allowed segregation, it will not be a leader on Human Rights as long as it allows capital punishment*<sup>178</sup>

### **3.3. The influence of the Media on Public Opinion**

Generally the Media has a tendency to exaggerate facts, violence and crimes are one of the favourite topics of the American Media, whether through documentaries or fictive movies, it plays a great role in influencing people to favour death penalty since it accentuates the feeling of insecurity, anger, and frustration on people, fuelled by the politicians who use the Media to vehicle a message pushing them to choose death penalty as the most efficient means to keep criminals far from society.

Glenn Pierce and Michael Radelet stated about that:

*In terms of political strategy, media promoted stereotypes of criminals and crime are invaluable vehicles for politicians advocating capital punishment. A one-dimensional policy such as the death penalty seems justified if the crime problem it addresses is also one-dimensional and simple. If, on the other hand, crime is a highly complex and diverse phenomenon, an extraordinary limited policy such as the death penalty is of little relevance.*<sup>179</sup>

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<sup>177</sup> Ibid., p. 783.

<sup>178</sup> Hugo and Paul, ed, op., cit., p. 157

<sup>179</sup> Pierce, G.L., and Radelet, M.L. The Role and Consequences of the Death Penalty in American Politics.” *New York University of Law and Social Change*, vol 18, 1991. p. 24.

### **3.4. Methods of Execution**

The evolution of methods of execution throughout time had been considerable. Humanising the methods had been the aim for which some methods had been

abolished, while others had been invented. Different harsh methods have been used to inflict death by the past; execution by fire, stoning, slow and prolonged torture. Even if these methods are today considered as “inhumane” in the U.S. and around the world, some countries still use some of them. In Saudi Arabia beheading is the most current method of sentencing offenders, whereas in Iran, stoning and hanging were among the used methods of executing people. These executions were done in front of crowds in public places. By the 1990’s, China shot its’ criminals after being shown to large public in the streets.<sup>180</sup> The most recent and famous case of executing a person by hanging is the execution of the president of Iraq in 2007, who was accused of tyranny among other controversial offenses.

Many efforts had been made to make death penalty more “humane” and to put an end to public executions. The guillotine that was first used in 1792 during the French revolution was promoted as a quicker, more human, and scientific method of execution. It was used in France until 1977, but the last public execution took place in 1939, whereas in the U.K, public execution ended in 1868.<sup>181</sup>

Today, prisoners are executed inside the prison, in a room reserved exclusively for executions, and the U.S. was the first country to make real and effective efforts to make the death penalty the less painful and inhuman possible. The first use of the electric chair was in New York, in 1890, the first use of cyanide (in a sealed gas chamber was in Nevada, in 1924.<sup>182</sup>

Currently there are five methods of executions in use:

- Lethal injection
- Electrocutation
- Lethal gas

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<sup>180</sup>Kaye, op., cit., p. 24.

<sup>181</sup> Ibid., p. 25.

<sup>182</sup> Ibid.

- Hanging
- Firing squad

Different methods of execution are held by each American state. In April 1, 1998, for example, the most used method of execution is lethal injection; used by 35 states, the



second used method is: Electrocution; used by 17 states, the third used method is: lethal gas; used by 7 states, and the less used methods are: hanging and firing squad; used by 3 states each only.<sup>183-184</sup>

Some recent studies have proved that lethal injection; which is the most used method of execution, and supposed to kill the condemned quickly and without pain; contains in fact a paralyzing drug called: pancuronium bromide. If a person is in pain after being administered the injection, there is no way to know it because he will be completely paralyzed until he dies. So the utility of this drug is rather to spare the witnesses a horrifying scene of a person suffering and shouting as he dies.<sup>185</sup>

### **3.5. The Human Rights Struggle Against Capital Punishment**

Frederick Douglass said over a century ago: *Life is the great primary and most precious and comprehensive of all human rights—[and] whether it be coupled with virtue, honour, and happiness, or with sin, disgrace and misery,...[it is not] to be deliberately or voluntarily combined in what is called government.*<sup>186</sup>

The first step of the struggle of the Human Rights against capital punishment was done in 1966, when the United Nations approved The International Covenant on Civil and Political Rights (ICCPR). Article 6 (1) affirmed that *'every human being has the right to life'*, and that *'no one shall be arbitrarily deprived of his life'*. Article 6 (2) affirmed that the sentence of death should be restricted to *'the most serious crimes'*.<sup>187</sup>

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<sup>183</sup>Robert. M. Bohm. Introduction to Criminal Justice. Second Edition. New York. Mc Graw- Hill Companies. 1997. p. 285.

<sup>184</sup>See Appendix 3 page 98

<sup>185</sup>Sister Helen, op., cit., p. 235.

<sup>186</sup>. Resolution Proposed for Anti-Capital Punishment Meeting International Publishers Co. Rochester, N.Y., October 7, 1858, in *The Life and Writings of Frederick Douglass*, p. 418 (P. Foner, ed., 1950).

<sup>187</sup> Roger, op., cit., pp. 14-15.

Even if the two articles did not call for the abolition of capital punishment, it soon became the United Nations universal goal through (Resolution 2857) in 1971 and (Resolution 32/61) in 1977. It invited for *'the progressive restriction of the number of offenses for which the death penalty might be imposed, with a view to its*

abolition'.<sup>188</sup> By the end of the 1970's the second step of The United States to the abolition was to call the Committee of Ministers of the Council of Europe to regard penalty of death as 'inhuman'.<sup>189</sup> Protocol No.6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was adopted in December 1982, and put for signature on 28 April 1983. Article 1 abolishes death penalty in time of peace, and article 2, allows death penalty only in time of war.<sup>190</sup>

The Second Optional Protocol to the ICCPR was adopted by the United Nations General Assembly in December 1989. Article 1 states: '*No one within the jurisdiction of a state party to the present Optional Protocol shall be executed*'. This clause was one of the most important U N steps of progress to the abolition.<sup>191</sup>

The Protocol to the American Conventions on Human Rights to Abolish the Death Penalty was adopted in June 1990 by the General Assembly of the Organisation of American States. Its main call was for the abstinence of using death penalty without obliging states to modify their laws regarding death penalty. In 1994, the Parliamentary Assembly of the Council of Europe suggested the establishment of a Protocol to the European Convention on Human Rights, aiming for the total abolition of capital punishment, and in all circumstances.<sup>192</sup>

The result was the adoption of Protocol No. 13 by the Committee of Ministers in February 2002. It was to transmit a '*strong political signal that the death penalty is unacceptable in all circumstances*'.<sup>39</sup> countries ratified Protocol No. 6 to the ECHR in December 2001, and 3 other countries signed it. 3 countries ratified Protocol No. 13 and 33 other countries signed it on 14 June 2002. 46 countries ratified the Second

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<sup>188</sup>. Ibid.

<sup>189</sup>. Kruger, H. C., 'Protocol No. 6 to the European Convention on Human Rights', in Council of Europe, *The Death Penalty: Abolition in Europe*, (1999) Strasbourg: Council of Europe Publishing, pp. 69-78.

<sup>190</sup>. Roger, op., cit., p. 15.

<sup>191</sup>. Ibid

<sup>192</sup> Parliamentary Assembly of the Council of Europe, 1994 Session, *Recommendation 1246 (1994) on the Abolition of the Death Penalty*. Quoted in Roger, op., cit., p. 15.

Optional Protocol to the ICCPR, and 7 other countries signed it. 8 countries ratified the Protocol to the American Convention on Human Rights and one country signed it.<sup>193</sup>

### **3.6. Protecting the People on whom Capital Punishment Must not be Applied**

Apart from debating the constitutionality of the issue of death penalty, and from the debate for its abolition or retention, stands the issue of a certain category of offenders on whom capital punishment must not and should not be applied in any case, whether the state in which they live is abolitionist or retentionist.

The question of juveniles, together with the insane, the mentally retarded, the pregnant women and the new mothers is one of the issues taken into consideration by the United Nations through the establishment of safeguards protecting those people from the death sentence. In 1984, safeguard No. 3 was based on the norm that: *Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried on pregnant women, or on new mothers, or on persons who have become insane.*<sup>194</sup>

In 1989, a safeguard reinforcing the precedent one stated that there should be: *a maximum age beyond which a person may not be sentenced to death or executed; and by eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.*<sup>195</sup>

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<sup>193</sup>. Roger, op., cit., p. 15.

<sup>194</sup>. Ibid., p. 15.

<sup>195</sup>. Ibid.

#### **3.6.1. The Issue of Juvenile Offenders**

Even if the execution of juvenile offenders (criminals under the age of 18 year at the time of the crime) has become rare in general, we continue to hear about countries that

are still sanctioning juveniles to death. The United States is part of the nine countries that in 1990, had executed criminals who were still juvenile when they had committed the crime. (The nine countries are: the United States, China, D.R. Congo, Iran, Pakistan, Nigeria, Sudan, Yemen and Saudi Arabia.).<sup>196</sup>

The issue of the application of death penalty on juveniles in the United States is controversial. The group who opposes the modification of the U.S. law on juveniles claims that among the offenders under the age of 18; some had committed such heinous crimes and are so dangerous that they must be sentenced in the same way as adults are.<sup>197</sup>

On the other hand, the opposing group claims that juveniles could not be sentenced in the same manner as adults because their degree of maturity is lower than that of adults; therefore, they are not fully guilty. Moreover, they stress on the fact that most of the juveniles who commit murder have been themselves victims of violence. Thus, their rehabilitation is more adequate than their execution.<sup>198</sup>

However the United Nations Convention on the Rights of the Child (Article 37a) (adopted by General Assembly Resolution 44/125 of 20 Nov. 1989 and at this time ratified by 191 countries) had been signed but not ratified by the United States together with Somalia. The Convention formally forbids the application of the death penalty on juveniles.<sup>199</sup>

All the states belonging to the International Covenant on Civil and Political Rights (ICCPR) (Article 6 (5)) and the American Convention on Human Rights (Article 4 (5)) do not have the right to sentence offenders under the age of 18 years to

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<sup>196</sup> [http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment).

<sup>197</sup> Warren M. Kato, Note and Comment. 'The Juvenile Death Penalty', *Journal of Juvenile Law* 18. (1997). Pp. 112-149.

<sup>198</sup> Steiker, C. S., and Steiker, J. M., 'ABA's Proposed Moratorium. Defending Categorical Exemptions to the Death Penalty: Reflections on the 'ABA's Resolutions Concerning the Execution of Juveniles and Persons with Mental Retardation'. *Law and Contemporary Problems* 61 (1998), pp. 89-104.

<sup>199</sup> Roger, op., cit., p. 114.

death.<sup>200</sup> The ICCPR was ratified in June 1992, by all the concerned states except by the United States who ratified it but with adding a reservation on Article 6, concerning the protection of juveniles from the death penalty. The reservation stated:

*That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.*<sup>201</sup>

It is reported that the Committee of The UN Human Rights declared the US reservation was unacceptable in reason of Article 4 of the ICCPR that prohibits any derogation from article 6, and asked the US Supreme Court to review the issue, but until today, the US Supreme Court has not reconsidered the issue.<sup>202</sup>

It is said that in 1999, the UN Sub-Commissions on the Promotion and Protection of Human Rights denounced ‘unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of commission of the offense’ and invited all the states to abolish capital punishment for juveniles. Nevertheless, 16 concerned countries and 25 states in the United States did not respond to the UN call. And the minimum age in these countries is still fixed to 16 years.<sup>203</sup>

The law regarding juveniles in the United States varies from a state to another, for example; in 1988, death penalty had been abolished for criminals under the age of 16 by the United States Supreme Court in *Thompson v. Oklahoma*.<sup>204</sup> Yet, in 1989, the Court of *Stanford v. Kentucky* and *Wilkins v. Missouri*, declared that it was not unconstitutional to sentence offenders who were aged 16 or 17 at the time of the murder, to death. In March 2002, the execution of juveniles under the age of 18 years was abolished by 13 of the 38 non abolitionist states together with the federal jurisdiction; four other states limited the age to 17, and 12 states to 16.<sup>205</sup>

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<sup>200</sup> Ibid.

<sup>201</sup> Ibid., p. 66.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid., p. 115.

<sup>204</sup> [http://en.wikipedia.org/wiki/Religion\\_and\\_capital\\_punishment](http://en.wikipedia.org/wiki/Religion_and_capital_punishment)

<sup>205</sup> Skovoron, S. E., Scott, J. E., and Cullen, F. E., ‘The Death Penalty for Juveniles: An Assessment of Public Support’, *Crime and Delinquency* 35 (1989), pp. 546-561.

Today, many bills prohibiting death penalty under the age of 18 have been passed in the United States. But in the same time bills to lower the age of execution to 17 or 16 are also passed. In 2001, the death row of 15 states had juveniles among the condemned.<sup>206</sup> There is a long road of laws and bills to be passed in favour of

juveniles before the Supreme Court declares the execution of juveniles under 18 unconstitutional in every state.

### 3.7. The Abolition Movement

George Kendall is the first European colonist who was executed in Virginia's Jamestown colony. He was hanged in 1608 for the crime of "*spying for the Spanish*". During four centuries more than twenty thousand people were executed for crimes like spying, murder, kidnapping and witchcraft.<sup>207</sup>

The abolition movement of the death penalty is rooted in the European enlightenment at the end of the eighteenth century. This period of "Enlightenment" was mainly known by new ideas of citizenship, and Human Rights, what pushed the abolition movement of the death penalty to arise and start to develop throughout the years. One of the first books concerning the death penalty abolition movement is that of Cesare Beccaria who published in 1764 "On Crimes and Punishment" in which he demonstrated with strong arguments that death penalty gives nothing good to society. He claimed for the replacement of death penalty that he described as inhumane and ineffective, adding that it was an unacceptable weapon for a modern enlightened state to employ and less effective than the certainty of imprisonment.<sup>208</sup>

It is assumed that Influenced by Beccaria's writing; Grand Duke Leopold decided to abolish the death penalty in Tuscany in 1786. Austria and Imperial Russia also suspended death penalty in the 1780's for many years. In Britain, America and many European countries, capital punishment became limited to the harshest crimes only. For example in 1794, the state of Pennsylvania restricted death penalty only for first degree murder, and England applied the same decision in 1861.<sup>209</sup> Venezuela abolished the

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<sup>206</sup> Roger, op., cit., p. 118.

<sup>207</sup> Hugo and Paul, ed, op., cit., p. 15.

<sup>208</sup> Roger, op., cit., p. 9.

<sup>209</sup> Ibid.

death penalty in 1863 after the federal war, and it was written in the constitution in 1864. In the kingdom of Portugal, the abolition took place in 1867 for common rights.

Whereas in Canada, death penalty has been officially abolished for all crimes, except for military crimes, since July 16, 1976.<sup>210</sup>

Benjamin Rush, who was a physician and one of the founding fathers, was one of the first opponents of public executions through his pamphlet “Considerations on the Injustice and Impolicy of Punishment Murder by Death”, published in 1797, a period where the death penalty abolition movement was in developing.<sup>211</sup> The death penalty abolition movement went through many stages which led to a series of actions such as introducing degrees of murder, ending public executions, introducing jury sentencing discretion, humanising methods of execution, and federal appellate intervention.

### **3.7.1. Introducing Degrees of Murder**

The first step of the abolition movement was dividing murder into two classes through the enactment of a law in 1793 in Pennsylvania. The two classes are : first-degree murder and second-degree murder which includes premeditated murder and felony murder (any killing in to commit another felony; example: burglary). The division of murder into two classes helped the progression of the abolition movement in the fact that death sentence became limited to criminals of first degree murder only.<sup>212</sup>

### **3.7.2. Ending Public Executions**

The second main achievement was to put an end to public executions. The condemned were henceforth executed behind the walls of the prison with still some spectators. The reporters, prison officials and the victim’s family members. The first place where this reform was adopted is New York in 1834, than the other states followed. Public execution however, is a subject of controversy among the

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<sup>210</sup> Ibid., pp. 9-10.

<sup>211</sup> Hugo and Paul, ed, op., cit., p. 16.

<sup>212</sup> Ibid., pp. 16-17.

abolitionists. While some consider that carrying executions in public is repugnant and voyeuristic. The others say that since the retribution is constitutional, everybody must have the right to attend it.<sup>213</sup>

### **3.7.3. Introducing Jury Sentencing Discretion**

The third step of the abolition movement was a reform that gave the power to the trial jury to decide whether the convicted murder will be sentenced to death, or to life imprisonment. It was first applied in 1838, in Tennessee.<sup>214</sup>

#### **3.7.4. Humanising Methods of Execution**

The use of methods of execution was not static, throughout time; many efforts were done to find new methods of executions that were more human or less cruel, depending on the point of view of the moment. For example; the electric chair came to be used for the first time in 1890, in New York to replace hanging considered at that time as cruel, inhuman and inefficient punishment.

Today, the electric chair is on its turn viewed as violating the eighth amendment of the constitution, and only the states of Alabama and Nebraska still use this method of execution without giving the condemned the choice of any other method. The most used method today is lethal injection because it is the method that causes the less suffering.<sup>215</sup>

#### **3.7.5. Federal Appellate Intervention**

The other step in the abolition movement evolution, is giving the convicted murderer the right to have an Appellate and Federal court to re-examine his case. This ordinary right today; was not possible a century ago. This reform aims to the limitation of justice errors.<sup>216</sup>

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<sup>213</sup> Ibid., pp. 17-18.

<sup>214</sup> Ibid., pp. 18-19.

<sup>215</sup> Ibid., pp. 19-20.

<sup>216</sup> Ibid., pp. 20-21.

Abolitionists' concern is also focused on two issues of great importance; the first is to totally exclude the mentally retarded from death penalty. The second is to exclude the people under 18 from death penalty at the time of the crime. The first issue has been reached in June 2002 when the Supreme Court ruled in *Atkins V. Virginia* that a mentally retarded murderer cannot be held fully responsible for his crime.<sup>217</sup>



In its development, the abolition movement was progressive but very gradual. Some governments restricted the list of crimes for which capital punishment was applied, executions were no more carried in public, and less cruel methods of executions were used. Other governments even tried to find other alternatives to sanction the criminals such as life imprisonment.<sup>218</sup>

The abolition movement progressed in the same way in America; each state had its own position and jurisdictions over capital punishment. In 1786, Pennsylvania was the first state in America to restrict death penalty to first degree murder and to abolish it for burglary, robbery, and sodomy. Michigan abolished death penalty except for treason, and many states followed the same way few time after like; Arizona, Colorado, Kansas, Minnesota, Missouri, Oregon, North Dakota, South Dakota, Tennessee, and Washington, but almost all the states re-established death penalty few years after. The South is the only region who did not know any abolition movement. States like Texas and Florida know the highest number of executions in the United States.<sup>219</sup>

In 1960, the list of capital crimes for which death penalty was applied was different from a state to another, the number of punishable crimes by death penalty is 36 if we gather all the states lists. the most popular crime is of course murder, after which comes, kidnapping with 34 jurisdictions, treason (21), rape (18), carnal knowledge (15), armed robbery (10), and perjury in a capital case (10).<sup>220</sup>

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<sup>217</sup> Ibid., p.21.

<sup>218</sup> Kaye, op., cit., p. 10.

<sup>219</sup> Hugo and Paul, ed, op., cit., p. 22.

<sup>220</sup> Hugo, Adam, Bedeau, ed, The Death Penalty in America. Third Edition. Oxford: Oxford University Press. New York. 1982.

1967 was a year of great evolution for the abolition movement; after long years of control only by state legislatures and Congress; lawyers decided to explore the constitutional side of capital punishment, demonstrating that its transgression of “due process of law,” “equal protection of the law,” and the prevention against “cruel and unusual punishment.” Consequently, a de facto moratorium took place to debate the issue of death penalty with the Supreme Court.<sup>221</sup> It was decided in *Furman v. Georgia*

(1972) that death penalty violates both the Eighth and the Fourteenth Amendments, but in 1976, the abolitionists' downfall was imminent after the Court decision that the death penalty was finally constitutional in *Gregg V. Georgia* (1976). However; in the

Year	Number of countries
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same year, other courts declared death penalty not constitutional like in *Woodson V. North Carolina*, and in *Coker V. Georgia* (1977), where death penalty was declared violating the constitution in the case of rape. Nevertheless; since the 1970s, crimes sentenced by death decreased considerably to the point that only criminal homicides are still sentenced that way.<sup>222</sup>

A great number of states abolished death penalty at a period or another, but it has never been static; states abolishing death sentence today, may re-establish it tomorrow and vice versa. However; today the number of states abolishing capital punishment is higher than ever.

By the end of the twentieth century, the abolition movement got stronger with support of politicians, Human Rights organisations, the International Commission of Jurists, Amnesty International, the United Nations (UN) and the council of Europe. This is one of the reasons that led many countries to the complete abolition of capital punishment.<sup>223</sup>

The number of countries abolishing death penalty for all crimes increased progressively. In 1900, 3 countries only had abolished death penalty, in 1948, the number increased to 8, than to 19 in 1978, and 62 in 1998, to reach the number of 86 countries abolishing death penalty in 2005. See table A. 4.<sup>224</sup> (See Table A 3)

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<sup>221</sup> Michael Meltsner, *Cruel and Unusual: The Supreme Court and Capital Punishment*, New York, Random House, 1973. Quoted in Hugo and Paul., ed, op., cit., p. 23.

<sup>222</sup> Hugo and Paul., ed, op., cit., p. 23.

<sup>223</sup> Kaye, op., cit., p.1.

<sup>224</sup> Amnesty International. Quoted in Kaye, op., cit., p. 11.

**Table A. 3**  
**Number of countries that have abolished the death penalty for all crimes since 1900.**

1900	3
1948	8
1978	19
1998	62
2005	86

Source: Amnesty International quoted in Kaye Stearman. The Debate About the Death Penalty. Rosen Publishing Group. New York. 2008. P. 11.

Following the evolution of the abolition movement, it can be clearly deduced that it is nothing but a matter of time to reach the complete abolition in the United States. The historian Thomas Laqueur stated: *The death penalty as it is carried into practice today is like an endangered species brought back from the brink of extinction, a creature from an earlier age making its way in a very different time from when it ruled the earth.*<sup>225</sup>

### **3.8. The Difference of Attitude between the South and the North over Capital Punishment**

This difference of attitude over death penalty between the South and the North of the country today can be related to the dark past of slavery that the South knew. Whites were used to employ the harshest methods of punishment. Blacks were much more

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<sup>225</sup> Thomas Laqueur. 'Festival of Punishment', London Review of Books, October 5, 2000. p. 20.

exposed to be sentenced to death than whites; the fact was that whites were sentenced to death only in the case of having committed a murder, but the list for which blacks were executed was much longer. Between 1800 and 1860 for example; black were

executed for the following crimes: rape, slave revolt, attempted murder, burglary, and arson. <sup>226</sup>Stuart banner stated:*The institution of slavery prevented southern state from developing alternatives to the death penalty for blacks. Incarceration or forced labour would not have been much worse than slavery itself, so these would not have been effective deterrents.*<sup>227</sup>

Slavery was not only a direct cause for keeping death penalty for blacks, but also for whites, death was a common sanction, and they were not shocked by its use. Stuart banner stated: *The South had always been a more violent place than the North, and one may suppose that the continued employment of violent punishments for slaves acclimated white southerners to violent punishment generally*<sup>228</sup>

Most of executions from 1976 to 2004, took place predominantly in the South with 757 executions. Texas and Virginia alone executed 414 condemned in 28 years. Whereas the other parts of the country, held very few executions during the same period of time. The West: 60 executions, the Midwest: 101 executions, and the Northwest: only 3 executions.<sup>229</sup>(Figure B 3, p. 82).The attitudes of the South and other parts of the country toward death penalty; are due to the cultural gap created by slavery.

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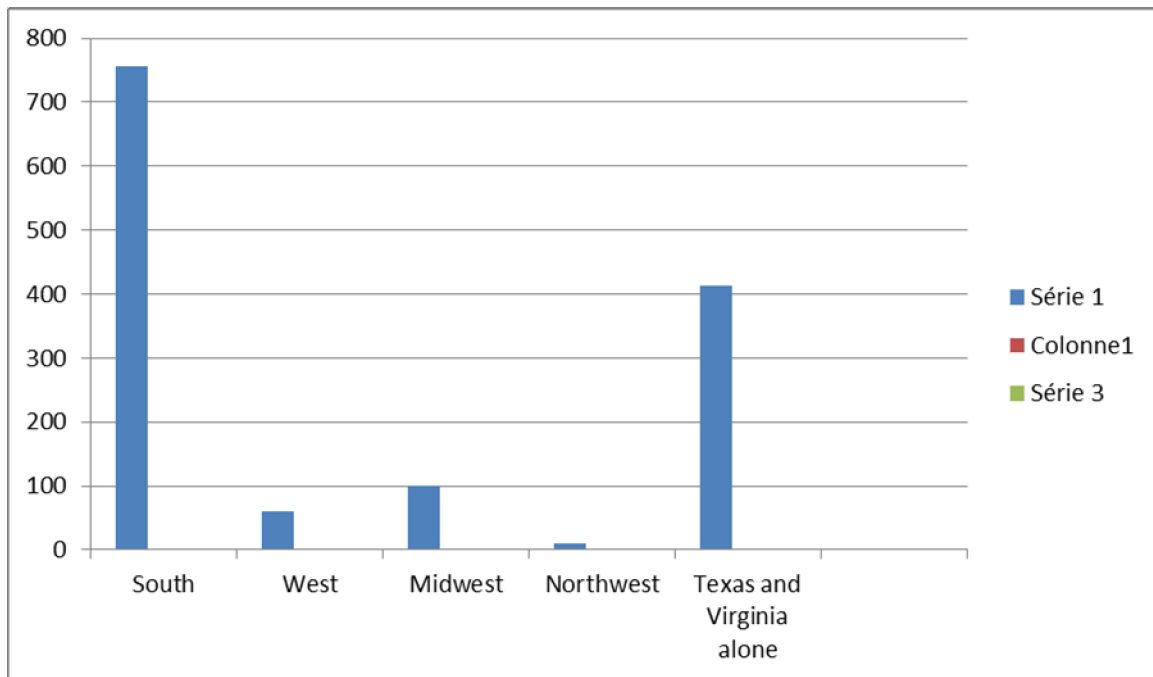
<sup>226</sup> Stuart, op., cit., p. 141.

<sup>227</sup> Ibid., p. 142.

<sup>228</sup> Ibid., p. 143.

<sup>229</sup>Death Penalty Information Centre, July 23, 2004. Quoted in Sister Helen, op., cit., p. 227.

### **Figure B. 3      Number of Executions by Region Since 1976**



Note: Federal executions are included in the state where the crime occurred.

Source: Death Penalty Information Centre, July 23, 2004 quoted in Sister Helen Prejean. The Death of Innocents: An Eyewitness Account of Wrongful Executions. New York:Vintage Books: A Division of Random House, Inc. 2005. P. 227.

### 3.9. The Economic Aspect of Death Penalty

Many proponents of death penalty stress on the fact that life imprisonment sentence costs much more than death penalty sentence. In fact, a life prisoner needs food, clothes, health care and supervision added to other costs. This is right if we look back centuries ago, when the execution of a wrongdoer was held few days after his conviction, and that the only money to pay was for the men who carried the execution. But things have changed, and the American Criminal Justice as well as in most other justices in the world had seen great changes in carrying procedures preceding an execution, handling interest to morality, consistency, avoiding justice errors and discrimination. It costs a huge amount of money and time.<sup>230</sup>

<sup>230</sup> Mark, op., cit., p. 59.

Studies from both sides had proved that life imprisonment as well as executions cost a lot to the government and the offender's family.

Life imprisonment needs high security cell, the annual cost to build and operate this kind of cells is of about \$5,000, and maintaining a prisoner in maximum security costs \$20,000, annually.<sup>231</sup> Adding to this that the average age of incarceration is 30.8 years. Raymond Paternoster has calculated an approximate total cost of \$750,000 to \$1.1 million for only one prisoner<sup>232</sup>. The only way to reduce the costs of life imprisonment is to make the prisoners work under the prison to compensate a part of the costs. But this solution cannot be applied on all life prisoners, especially the most dangerous. Moreover, it has not proved efficiency in reducing the tremendous amount of money spent in life imprisonment alternative.

On the other hand, execution can be very costly. The estimate of the cost execution of Caryl Chessman in California was of more than half a million dollars.<sup>233</sup> Or the execution of Gary Gilmore who cost to the state of Utah in the 78 days before his execution; \$98,568 for food, clothing and supervision, \$60,000 for preventing him from another attempt of suicide, \$18,330 for convalescence care, \$19,000 for paying the secretaries and deputies the day of the execution, \$513 for a charter flight, and \$725 for the payment of the six men who executed him by firing squad.<sup>234</sup> It seems that the economic argument doesn't move the scale of the balance in favour of any of the two sides.

However, the economic recession that hit the United States in 2008 exacerbated the cost of the application of death penalty. In fact it can cost until 10 times the cost of a life imprisonment. So in several states having exercised some executions only since the restoration of death penalty in 1976, the Colorado, the Connecticut, the Kansas, the Maryland, the Montana, the New Hampshire, the New Mexico or the Nebraska; the question of the abolition came back to actuality mainly for economic reasons.

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<sup>231</sup>Cavanaugh, D. P., and Kleiman, M.A. A Cost-Benefit Analysis of Prison Cell Construction and Alternative Sanctions. Cambridge, Mass.: Botec Analysis. 1990. Quoted in Mark, op., cit., p. 60.

<sup>232</sup>Paternoster, R. Capital Punishment in America. New York: Lexington Books. 1991. Quoted in Mark, op., cit., p. 60.

<sup>233</sup>Sue Titus Reid. Crime and Criminology. New York: Holt, Reinhart and Winston, 1979. p. 566.

<sup>234</sup>New York Times, January 31, 1977, p. 12c.

Since the beginning of the crisis, many proposals of law saw the day. An elected republican of Kansas, Caroline Mc Ginn, introduced a proposal of law to forbid all condemnation to death from July 1<sup>st</sup>, 2009 in order to fill the deficit of the state. In

October 2009, the governor of California Arnold Schwarzenegger, leaning on the fact that the capital punishment had been the object of a referendum consultation, declared that the state was going to pursue efforts to reduce costs and to accelerate executions. But objectors to the capital punishment estimate that such measures would encourage arbitrariness and errors of justice.<sup>235</sup>

### **3.10. Conclusion**

In this chapter, we tackled with the political influence of the increasing number of the developed countries of the world, on the question of death penalty in the United States, and the various perceptions of the Human Rights and the numerous other organisations that had lead a hard struggle to at least protect a certain category of people like juveniles from death penalty.

Nevertheless, the question of the complete abolition of death penalty in America is far from being resolved. Especially when other factors like the influence of the Media on public opinion, politicians, and the economic aspect of the punishment that is still debated on the question of whether life imprisonment or capital punishment costs more for the government. However, the position of politicians follows that of public opinion, and the latter is predominantly in favor.

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<sup>235</sup> <http://eco.rue89.com/2009/10/24/la-peine-de-mort-trop-chere-en-periode-de-crise-123134>

## **General Conclusion:**

In this dissertation, we aimed to search the historic, religious, ethical, political, and economic impact. The result of our research is that all these factors have an impact, to the various degrees, on the United States position over the issue of capital punishment.

We developed, in the three main chapters of the present work, the different aspects of the problematic bound to the question of the controversy about the capital punishment in the USA.

The major difficulty we have faced, during our research, was the profusion of documents about the debates around the capital punishment in the USA. These debates bring, according to each of the two main tendencies (the proponents and the opponents of the application of capital punishment), arguments in support of their position on this question. These arguments seem, overlooked today, by difficulties generated by the involvement of the USA in wars far from their borders, by the world economic and financial crisis, by the loss of the position of the Unique Powerful State that became the USA, after the disappearance of the Eastern bloc (The fall of the Berlin wall and the downfall of the USSR).

The study of the question of the death penalty from different sides shows that the historically debated capital punishment in the United States is a real puzzle. The issues that make it a complex subject are numerous and holding strong arguments keeping the different philosophies in a continual debate, and progressing throughout time, at the level of the culture of American people, and at the level of justice and the supreme court as well.

Since the question of death penalty is dealt with in all religions and the United States is multi religious, capital punishment is therefore, a religious problematic also. But the



struggle is also continual at this level, as each religion has opponents and proponents on the issue.

The death penalty has been analysed in this work from the ethical, the religious, and the human rights perception as well as from the political side in the United States. The answer to the question whether the death penalty is concerned with one of the above issues is that each of them partially influences the United States position over the death penalty.

Capital punishment in the United States is concerned with ethics. American people express divergent opinions on the question. Deterrence and retribution usually motivate the choice of supporting death penalty, while arguments like discrimination, irreversibility, and justice errors are the reason for which opponents claim the abolition of the sentence.

Even if the American people are known for being empathetic people, they support the application of the sentence in majority for the most dangerous crimes, pushed by a feeling of anger and fear at the same time. Americans are balanced between adopting and abolishing capital punishment.

Their opinion about the sanction has never been static, and is still going to change. As far as the question of the death penalty concerns the population in the United States, it will be always a debated question in relation with political aims, in the sense that the elected are influenced by public opinion in making decisions concerning the future of capital punishment.

Today, Americans start to feel the negative external sight concerning the retention of death penalty by their government. Adding to the fact that the U.N is gathering all its efforts to influence the United States among the other retentionist countries to abolish the sentence.

Even if the United States have always considered death penalty as an internal issue that does not concern its foreign relations, and is not willing to incorporate death penalty to the international human rights norms; it is today the subject of political pressures that will certainly influence its position over capital punishment. It is only a question of time to come to an end to the application of capital punishment in the United States.

Even if the extent and the strength of the struggle required for the end of the death penalty are not yet known, the Problems with the death penalty are too considerable and too perceptible for this practice to endure. But the last events like the war in Iraq, the war in Afghanistan, and the world economic crisis have pushed the politicians to relegate the problem of capital punishment.

When the execution of criminals will not become a routine activity in some American States, it will be a signal that it is the commencement of the end of death penalty in the United States through the progressive political changes.

In this survey that we hope had contributed to enrich the reader at least with few information about the origin of the controversy over the application of the death penalty in the United States, we have faced huge difficulties in finding enough reference.

We would have liked to really deepen our research, directly, in archives of the American Ministry of justice, concerning the question of the application of the capital punishment. However, restrictions to the entry for the foreigners to the USA, after the events of September 11<sup>th</sup>, made it impossible.

Our dissertation can be followed and can be deepened by a research on the issue of whether the problematic is the same with those convicted to death penalty, on one hand, and on the other hand, wars led by the USA, in Iraq and Afghanistan where hundreds of innocent people are killed every day.

## Appendix1

### List of crimes subject to death in the Torah

Source:[http://www.religioustolerance.org/exe\\_bib11.htm](http://www.religioustolerance.org/exe_bib11.htm)

Jehovah required the state to execute every person for:

-Following another religion: “He that sacrificeth unto any god, save unto the LORD only, he shall be utterly destroyed”.<sup>(53)</sup> -A stranger entering the temple: “...when the tabernacle is to be pitched, the Levites shall set it up: and the stranger that cometh nigh shall be put to death.”<sup>(54)</sup>

-Proselytizing :( Deuteronomy 13:1-10) states that a person who tries to convince an Israelite to convert to another religion must be killed.

-Communicating with the dead: (Leviticus 20:27) calls for the execution by stoning of all mediums and spiritists (aka spiritualists), both male and female.

-Black magic: “Thou shalt not suffer a witch to live.”<sup>(55)</sup>

- Adultery: “And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death.”<sup>(56)</sup>

- Incest: “And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death...”<sup>(57)</sup>

- Temple prostitution: “If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death...”

<sup>(58)</sup> The verses in the original Hebrew refer to homosexual prostitution in Pagan temples, which was a common religious practice in the tribes surrounding the Israelites.

- Bestiality: “And if a man lie with a beast, he shall surely be put to death: and ye shall slay the beast. And if a woman approach unto any beast, and lie down thereto, thou shalt kill the woman and the beast....”<sup>(59)</sup>

- Sexual activity before marriage: “Then they shall bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die...”<sup>(60)</sup> being engaged or married. There appears to have been no penalty for men who engaged in pre-marital sexual activity. (it was applied only to women; men weren't put to death if they had sexual intercourse before marriage.)

- Sexual activity with both a woman and her mother: Deuteronomy 20:14 requires that all three be burned alive.

- Being seduced if engaged: “If a damsel that is a virgin be betrothed unto an husband, and a man find her in the city, and lie with her; Then ye shall bring them both out unto the gate of that city, and ye shall stone them with stones that they die.”<sup>(61)</sup> Here also, the sentence was applied on women only.

- Rape of an engaged woman: “But if a man find a betrothed damsel in the field, and the man force her, and lie with her: then the man only that lay with her shall die.”<sup>(62)</sup> A man who raped a single woman who was not engaged would only have to marry her and give 50 shekels of silver to her father.

- Prostitution: “And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire.”<sup>(63)</sup>

- Committing murder: "he that killeth any man shall surely be put to death."<sup>(64)</sup>

It is mentioned in Exodus 21:20 that if a slave owner kills his slave, he shall be merely “punished”, but it is not mentioned that he will be killed. Moreover, if the slave survives for a period of time after being injured, than he dies, the owner will not receive any punishment.

- Kidnapping: “And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.”<sup>(65)</sup> . It concerns kidnapping for the purpose of selling him into slavery.

- Human sacrifice: “Whosoever.... giveth any of his seed unto Molech; he shall surely be put to death.”<sup>(66)</sup> . The meaning of: To "give ones seed to Molech" is to sacrifice one's child to a Pagan God by ritual.

- Cursing parents: “And he that curseth his father, or his mother, shall surely be put to death.”<sup>(67)</sup> .The exact meaning of the key Hebrew word is ambiguous; it might mean, in English, to curse or blaspheme, or to degrade or shame.

- Abusing one's parents: “And he that smiteth his father, or his mother, shall be surely put to death.”<sup>(68)</sup>

- Careless handling of an animal: “But if the ox .....hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death”<sup>(69)</sup> . It concerns the owner who had not killed an animal who had repeatedly injured people. In that case, both the animal and his owner can be put to death.

- Stubbornness and rebellion: “If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother.....all the men of his city shall stone him with stones, that he die.....”<sup>(70)</sup> . But the application of death in this case is difficult because of the ambiguity of the meaning of the verses.

- Blasphemy: “And he that blasphemeth the name of the LORD, he shall surely be put to death.”<sup>(71)</sup> Blasphemy was defined as uttering the name of Jehovah while cursing.

- Working on Saturday: ...”but on the seventh day there shall be to you a holy day, a Sabbath of rest to the LORD: whosoever doeth work therein shall be put to death.”<sup>(72)</sup>It tell about a man who because he gathered wood on Saturday, he was executed.

-Ignoring the decision of a priest or judge: “And the man that will do presumptuously, and will not hearken unto the priest that standeth to minister there before the LORD thy God, or unto the judge, even that man shall die....”<sup>(73)</sup>

- Perjury: “....if the witness be a false witness, and hath testified falsely against his brother; then shall ye do unto him, as he had thought to have done unto his brother....”<sup>(74)</sup> That is, a perjurer would himself be killed.

- Accidentally killing a pregnant woman: "If men strive [i.e. fight], and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine. And if any mischief follow, then thou shalt give life for life, Eye for eye, tooth for tooth, hand for hand, foot for foot, Burning for burning, wound for wound, stripe for stripe."<sup>(75)</sup> This is in case where two men accidentally hurt a pregnant woman while fighting:

If the woman fully recovers, then the man responsible will have to pay a fine to the woman's husband.

If the woman dies, then the man would be killed also.

If some other harm comes to the woman, (e.g. loss of an eye or tooth) then that would be inflicted upon the man as well.

Death is also sentenced on:

- A male who was not circumcised<sup>(76)</sup>
- Eating leavened bread during the Feast of Unleavened Bread<sup>(77)</sup>
- Manufacturing anointing oil.<sup>(78)</sup>
- Engaging in ritual animal sacrifices other than at the temple<sup>(79)</sup>
- Consuming blood<sup>(80)</sup>. This would include eating rare meat.
- Eating peace offerings while ritually unclean<sup>(81)</sup>
- Waiting too long before consuming sacrifices (82)
- Sexual activity with a woman who is menstruating<sup>(83)</sup>.

- Going to the temple in an unclean state <sup>(84)</sup>
- Persons teaching another religion <sup>(85)</sup>
- A prophet whose prophecy does not come true (86) Gluttony and excessive drinking <sup>(87)</sup>

## Appendix2

### Conditions to apply capital punishment in Islam

Source: <http://www.islamqa.com/en/ref/20824>

In Islam, capital punishment should be applied to any person who meets any of the following conditions :

- The apostate: the apostate is the one who disbelieves after being a Muslim. The Prophet (peace and blessing be upon him) said: *“Whoever changes his religion, execute him.”* <sup>(127)</sup>

- The married adulterer. The Prophet said:

*“Learn from me. Allah has given them a way out. If an unmarried person commits fornication with an unmarried person, (the punishment is) one hundred lashes and exile for one year. If a married person commits adultery with a married person, (the punishment is) one hundred lashes and stoning.”* <sup>(128)</sup>

- The murderer (one who kills deliberately). He is to be killed in quissas <sup>(129)</sup>, unless the victim’s family let him off, or agree to accept the diyah . Because God says:

*“O you who believe! Al quissas is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives) of the killed against blood money, then adhering to it with fairness and payment of the blood money to the heir should be made in fairness. This is alleviation and a mercy from your Lord. So after this, whosoever transgresses the limits (kills the killer after taking the blood money), he shall have a painful torment.”* <sup>(131)</sup>

- Bandits, i.e. al muharib, the one who wages war against Allah and his Messenger. God says:

*“the recompense of those who wages war against Allah and his Messenger and do mischief in the land, is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from*



*the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter.” (132)*

- Spies. The spy is the one who spies on the Muslims and transmits information to their enemies.

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## Appendix3

### Methods of Execution, by Jurisdiction, April 1, 1998

**Source:** Death Row, U.S.A., NAACP legal defense and Educational Fund (Spring 1998); The Death Penalty Information Center. Quoted in Robert. M. Bohm. Introduction to Criminal Justice. Second Edition. Mc Graw- Hill Companies. New York. 1997. P. 285.

([WWW.essential.org/dpic/methods.html](http://WWW.essential.org/dpic/methods.html)), January 9, 1998

#### States that practice Lethal Injection

Arizona	Louisiana	Ohio	Washington
Texas	Maryland	Oklahoma	Wyoming
Arkansas	Mississippi	Oregon	
California	Missouri	Pennsylvania	
Colorado	Montana	South Carolina	
Connecticut	Nevada	South Dakota	
Delaware	New Hampshire	Texas	
Idaho	New Jersey	U.S. government	
Illinois	New Mexico	U.S. military	
Indiana	New York	Utah	
Kansas	North Carolina	Virginia	

### Appendix 3 (continued)

#### States that practice:

<u>Electrocution</u>	<u>lethal Gas</u>	<u>Hanging</u>	<u>Firing Squad</u>
Alabama	Arizona	Delaware	Idaho
Arkansas	California	New Hampshire	Oklahoma
Florida	Maryland	Washington	Utah
Georgia	Mississippi		
Kentucky	Missouri		
Nebraska	North Carolina		
Ohio	Wyoming		
Oklahoma			
South Carolina			
Tennessee			
Virginia			

Arkansas authorizes lethal injection for those whose capital offense occurred after 3/4/83; those whose offense occurred before that date may select lethal injection or electrocution.

Colorado authorizes lethal gas for those whose crimes occurred before 7/1/88 and lethal injection for crimes that occurred on or after 7/1/88.

Delaware authorizes lethal injection for those sentenced after 6/13/86; those sentenced before that date may select hanging or lethal injection.

Maryland authorizes lethal injection for those sentenced after 3/11/94; those sentenced before that date may select lethal injection or lethal gas.

Mississippi authorizes lethal injection for those convicted after 7/1/84; execution of those convicted before that date is to be carried out with lethal injection.

New Hampshire authorizes hanging only if lethal injection cannot be given.

Oklahoma authorizes electrocution if lethal injection is held unconstitutional and firing squad if both lethal injection and electrocution are held unconstitutional.

Arizona authorizes lethal injection for persons whose capital sentence was received after 11/15/92; those sentenced before that date may select lethal injection or lethal gas.

Wyoming authorizes lethal gas if lethal injection is ever held unconstitutional.

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# Explanatory Terms

## +Controversy:

Controversy is a state of prolonged public dispute or debate, usually concerning a matter of opinion. The word was coined from the Latin *controversia*, as a composite of *controversus* - "turned in an opposite direction," from *contra* - "against" - and *vertere* - to turn, or *versus*, hence, "to turn against."

Perennial areas of controversy include history, religion, philosophy and politics. Other minor areas of controversy may include economics, science, finances, and race. Controversy in matters of theology has traditionally been particularly heated, giving rise to the phrase *odium theologicum*. Controversial issues are held as potentially divisive in a given society, because they can lead to tension and ill will.

In the theory of law, a controversy differs from a legal case; while legal cases include all suits, criminal as well as civil, a controversy is a purely civil proceeding.  
[www.en.wikipedia.org](http://www.en.wikipedia.org)

## + Death penalty

The death penalty is when an individual's life is taken by the government as a sanction for a wrong behavior. The origin of the word "capital" is taken from Latin word "caput" which means "head" (since decapitation was the earliest method of execution). The death penalty or the legal term "capital punishment" is considered as the harshest punishment an individual can receive, and at the same time as a last resort used for certain categories of crimes considered as capital crimes. Kaye Stearman. [The Debate About the Death Penalty](#). Rosen Publishing Group. New York. 2008, p 6.

## +Amicus Curiae

Amicus Curiae is a Latin term meaning "friend of the court". The name for a brief filed with the court by someone who is not a party to the case.

*Amicus Curiae* briefs are filed in many Supreme Court matters, both at the Petition for Writ of Certiorari stage, and when the Court is deciding a case on its merits. Some studies have shown a positive correlation between number of amicus briefs filed in support of granting certiorari, and the Court's decision to grant certiorari. Some friend of the court briefs provide valuable information about legal arguments, or how a case might affect people other than the parties to the case. Some organizations file friend of the court briefs in an attempt to "lobby" the Supreme Court, obtain media attention, or impress members.

An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored." Rule 37(1), Rules of the Supreme Court of the U.S.

FRAP 29. BRIEF OF AN AMICUS CURIAEA brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for a later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons." Rule 29. Federal Rules of Appellate Procedure.

<http://www.techlawjournal.com/glossary/legal/amicus.htm>





## Abstract

Capital punishment has always been a matter of debate, and it is still a controversial issue in Europe, as well as in the United States. The disagreement over the subject is stronger than any other important political question.

Capital punishment in the United States today is an issue of great legal, religious, ethical, political, and economic importance. This work is an attempt to clarify the question of American capital punishment, and explain the elements that create the controversy about the issue in America. Therefore, three major points have been analysed in this paper.

- 1) The historical background and Judicial position on the Issue of death penalty in the United States.
- 2) Religious and Ethical aspects of the controversy about death penalty in the United States.
- 3) Political and Economic causes of death penalty in America.

Analysing the historical background of capital punishment in the United States is necessary to understand the actual situation of the puzzled question. It is also important to study the United States death penalty system in specific, as an American phenomenon, and its position in the American constitution throughout the Eighth Amendment.

This dissertation also deals with the religious and ethical debates about the issue in America, as well as the political and economic aspects. Emphasis will also be put on the struggle of the Human Rights to abolish capital punishment.

### **Keywords:**

Capital punishment; abolish; American constitution; Death penalty; Human Rights; Religious; Controversy; Death penalty in USA; Ethical debates; Eighth Amendment.