



The Death
Penalty Project

**DETERRENCE
AND THE DEATH
PENALTY**

The justification of deterrence

The most common justification for the retention of the death penalty among the minority of states that continue to sentence to death and execute individuals who are found guilty of committing certain serious offences is a belief that this punishment has a unique deterrent effect.

When the notion of ‘deterrence’ is used in this context, it refers to the idea of general deterrence: the claim that, where the costs of the punishment for committing an offence are greater than the perceived benefits, crime will be less likely to occur.

In the case of the death penalty, this means that authorities believe the cost is clear to individuals who may commit murder or other offences that attract the death penalty in different jurisdictions – that to do so would involve a real risk of execution if they were to be caught and convicted.

Underlying the theory of deterrence is a specific logic: that the individuals who may commit offences are rational actors, with knowledge of the law and the legal system, who carefully weigh up the relative costs and benefits of particular actions, adapting their behaviour accordingly.

Lack of research to evidence efficacy

Despite the rhetorical prominence of deterrence in justifying the use of the death penalty, there has been a notable lack of empirical research evidence to support claims made about this theory.

In convincingly demonstrating the presence of a dynamic of deterrence, the key question is not simply whether some people may be deterred, but whether a system of capital punishment enforced through executions actually leads to lower rates of capital offences than a penal

system which uses an alternative severe punishment, such as life imprisonment.

There are challenges to producing the required kinds of empirical evidence which could address this question. It is of course not possible to conduct experiments, for obvious moral and ethical reasons, and so studies have generally relied upon analysis of trends and comparisons between crime rates across similar jurisdictions that retain or have abolished capital punishment.

Looking at homicide rates in the United States

The vast majority of existing studies have been carried out in the US - specifically examining the relationship between capital punishment and homicide rates.

One methodological approach used in these studies has been to compare rates of homicide between those states which retain the death penalty and those which have abolished it.

Overall, homicide rates have been declining since the early 1990s across all US states. And increasing rates of homicide have not followed in those states which have abolished the death

penalty during the past two decades. In fact, over the last 20 years, homicide rates in US states which retained the death penalty have been higher than those without it.

One study found that between 1974 and 2009, 447 executions occurred in the state of Texas, 13 occurred in California and none occurred in New York, yet rates of homicide followed similar patterns of fluctuation throughout this period across all three states, clearly influenced by factors other than punishments.

Deterrence effect beyond the United States

The limited research evidence from beyond the US has produced similar results. One study compared murder rates between Singapore (which retains the death penalty) and Hong Kong (which does not), based on the assessment that they shared a number of relevant characteristics and trends beyond penal policy.

It was found that, over a period of 30 years, homicide rates had followed a similar path of decline, with no observed differences resulting from a stark spike in executions in Singapore in the mid-1990s (which the authors calculated to have reached the highest level in the world at the time), nor any rise in response to the abolition of the death penalty in Hong Kong in 1993.

The impact of abolition on homicide rates

Other studies have focused on the impact of abolition on homicide rates, comparing trends before and after the change. If the death penalty did deter, we would expect murder rates to rise once the deterrent was removed (notwithstanding the fact that murder rates are affected by many factors beyond the criminal justice process). That has not happened.

A study by the United Nations Office on Drugs and Crime (UNODC) found that following the abolition of the death penalty in Czech Republic, Hungary, Moldova, Romania and Poland during the 1990s, homicide rates across the five countries declined by 61% between 2000 and 2008.

Research also found a clear reduction in homicide rates in Australia and Canada in the decades after the abolition of capital punishment.

In South Africa, too, while homicide rates remain very high, they are still lower than they were before the death penalty was abolished in 1995.

No link between the death penalty and reduction in serious crime

Even the most sophisticated quantitative studies have failed to demonstrate any clear evidence of a deterrent effect from the use of the death penalty. Furthermore, the results from the individual studies cited above have also been mirrored

in overarching reviews of the wider deterrence research base.

A meta-analysis of 700 studies into deterrence effects on criminality, including 52 studies focused on the death penalty (90% of which were conducted in the US), found that regardless of the punishment, whether execution or long sentences of

The death penalty and drug crime

Beyond the US, those supporting the retention of the death penalty rely on rationales of deterrence to justify its use in relation to drug offences.

However, there is no existing research evidence to support the deterrence justification for drugs.

Data on drug trafficking suggests that the death penalty does not act as an effective deterrent: Harm Reduction International and UNODC figures show that while there has been an increase in countries

introducing the death penalty for drug offences, drug markets have flourished, with production and trafficking higher than ever.

The only offences for which social scientists have found some indication of a deterrent effect are more minor offences such as tax evasion and certain vehicular offences. In general, the evidence appears to suggest that the more serious the offence, the weaker the influence of the punishment.

imprisonment, no deterrent effect could be found in relation to homicides.

Likewise, a 2012 report by a committee of the US National Research Council concluded that research to date could not provide any credible evidence of a deterrent effect from capital punishment, and recommended that policy judgments should not be made on the basis of existing studies.

Although it makes up the bulk of the empirical evidence on deterrence, research

from the US is not able to produce completely reliable outcomes, given the relatively low numbers of executions overall.

In the absence of credible evidence, the consensus among social scientists and legal scholars is firmly against the existence of a deterrent effect on murder rates when compared with the alternative of lengthy prison sentences – a consensus reflected in the results of a survey of over 1,000 leading criminologists published in the *Journal of Criminal Law and Criminology*.

A fallacy of logic

This may reflect the limits of assumptions of strict rationality. Few of us are entirely rational in all our decisions, and those sentenced to death are more likely

to be vulnerable, disadvantaged and marginalised, so may struggle to make reasoned decisions. Some individuals charged with terrorist offences may even be willing to die for their cause, entirely inverting the logic of deterrence.

Scrutinising an unsafe argument

Even if a deterrent effect were ever to be demonstrated in relation to the death penalty, in order for this to be effective, the death penalty would likely have to be used mandatorily, or at least with high probability, and imposed swiftly on a wide scale across most categories of serious crimes.

To impose the death penalty in such a way would necessarily increase the level of arbitrariness – which is already endemic in its use – increasing the likelihood of those who are innocent, or wrongfully convicted, being executed, and failing to account for those whose cases had sufficient mitigating circumstances.

Ultimately, when understood from a human rights perspective, the possibility of a deterrent effect cannot be supported as a legitimate justification for the retention of the death penalty. The utilitarian arguments behind deterrence theory are incompatible with the right to human dignity of all individuals, even those who may have committed serious offences.

Public belief in deterrence

Despite the lack of research grounding to substantiate the existence of a deterrent effect from the death penalty, notions of deterrence remain influential. Public belief in the deterrent power of capital punishment is often cited by those referring to the apparent strength of public opinion as a basis for retention.

Belief in deterrence appears to become embedded in the social and political cultures of retentionist countries. However, in most jurisdictions, a fall in support for capital punishment has occurred following its abolition, with following generations, who are not socialised to accept it as a norm, being less likely to support its use.

Public opinion research across a number of countries has found that although respondents may initially indicate support for the death penalty on the basis of a belief in its deterrent effect, this support declines markedly when respondents are presented with information on the lack of evidence to support this belief.



The Death Penalty Project is a legal action NGO with special consultative status before the United Nations Economic and Social Council. We provide free representation to people facing the death penalty worldwide, with a focus on the Commonwealth. We use the law to protect prisoners facing execution and promote fair criminal justice systems, where the rights of all people are respected.

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