



Spring 2024

Capital Punishment: Analyzing the Demise of the Death Penalty's Usefulness

Emma Reyes

Follow this and additional works at: https://digitalcommons.ursinus.edu/ethics_essay



Part of the [Ethics and Political Philosophy Commons](#), and the [Race, Ethnicity and Post-Colonial Studies Commons](#)

[Click here to let us know how access to this document benefits you.](#)

Capital Punishment: Analyzing the Demise of the Death Penalty's Usefulness

Emma Reyes

Abstract

As there are evident flaws within the practice of capital punishment, I urge the United States federal government to question ways in which they should change how the death penalty is implemented into law. I propose that lawmakers consider fully abolishing the death penalty as a means of eliminating ethical and economic concerns within our judicial system. However, if this option does not seem possible, I instead propose the federal government act in revising the current practices used within the capital trial process. Previous research has found that the continued use of the death penalty can cause risk of economic loss, inhumane punishment, and racial discrimination within the sentencing process. In addition, data analysis has also highlighted the ineffectiveness of the death penalty in terms of its inability to deter crime and its potential to place innocent lives at risk.

Capital Punishment: An Overview

Beginning at the end of 18th century during the time of the European Enlightenment, an abolition movement surrounding the use of capital punishment had begun to spread around the world. Though the death penalty has existed as form of punishment for centuries, spanning as far back to times in ancient Greece and China, a rapid decline in its use throughout the globe has occurred throughout the past couple hundred years. In more recent times, many countries within Europe, South America, and Africa have already chosen to fully ban the practice of capital punishment, with most citing their concerns surrounding the violation of human rights as part of their decision (Hood, 2023).

Despite the global trend towards abolition, the United States is currently one of the only first world countries that still allows for the practice of capital punishment. As of 2019, the United States was ranked fifth globally in terms of number of executions that occurred within a single year ("Death penalty", 2020). Currently, 24 states have made steps towards outlawing the use of the death penalty within their own judicial systems. However, 27 states, most of which being more conservative leaning, have continued to keep its practice intact. This is especially evident in the fact that two-thirds of all executions that have occurred since the year 1976 have taken place in primarily red states – Texas, Florida, Missouri, Louisiana, and Oklahoma (Hood, 2023). Due to this fact, the death penalty has become a partisan issue that has been greatly debated throughout the nation. As continued discussions surrounding capital punishment occur, it has led to the greater question of whether steps should be taken to change how it is currently practiced. In other words, should the United States federal government change how capital punishment be implemented into law?

The United States federal government should consider moving towards revising the way in which capital punishment is currently being utilized throughout the country. In following suit

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

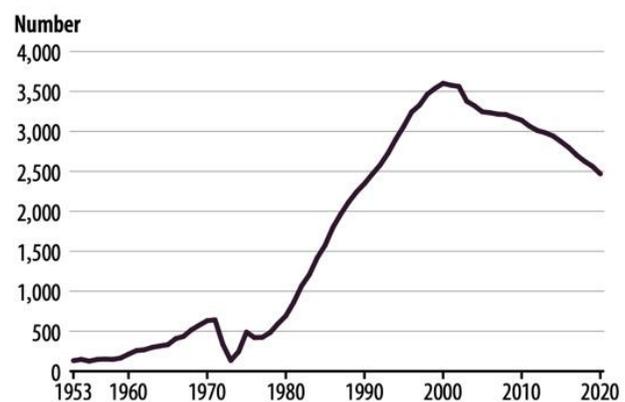
with the global trend of limiting the use of the death penalty, the federal government can take steps towards fully abolishing its practice across the country. However, if abolishment does not seem like a viable option for whatever reason, lawmakers could instead act in altering the current death sentencing processes that are still in place. Through either option, the United States government will have the ability to greatly eliminate the ethical and economical concerns around the use of capital punishment and as a result, better protect the well-being of its citizens.

An Examination of the History and Debate of Capital Punishment

Capital punishment has long existed within our country's history, and with this has come many discussions surrounding the morality and economic viability of its practice as time has gone on. The death penalty has existed within this country long before the creation of the Constitution, with its interpretation and practice being revised and changed multiple times throughout its existence. The ethical concerns surrounding the death penalty have ranged from whether it can be considered a humane and fair form of punishment to if it poses any risk of taking an innocent life. The discourse surrounding its economic viability have centered around whether capital punishment is effective enough to be worth the cost it imposes onto taxpayers and the judicial system. Through these numerous debates, the death penalty currently stands as a highly partisan issue throughout the United States.

Following the Revolutionary War, many states defined capital offenses as murder, treason, or rape. At this time, death by hanging was the most used form of execution, taking after the same practice used within Great Britain. It was not until the early 20th century, such as when death by asphyxiation was introduced, did the most common form of execution begin to shift (Malik et al., 2014). Around this same period, the number of death sentences given started to slow throughout the country. This trend continued until the 1970s, when the case of *Furman v. Georgia* took place. In this Supreme Court ruling, capital punishment around the country was halted following the decision that it was in violation of the Eighth Amendment. It was further explained that the death penalty laws instated at that time were considered to lead to "arbitrary and discriminatory" sentencing. As a result, many states enacted new laws that enforced death penalty trials in better alignment with the Supreme Court's new interpretation. By 1976, a second Supreme Court ruling, *Gregg v. Georgia*, ruled that these newly reconstructed laws were constitutional. These newly refurbished capital punishment trials included bifurcated trials and stricter sentencing guidelines. Shortly after, the reinstatement of the death penalty within many states coupled with the increase in public approval of capital punishment during the 1980s came a rapid rise in the amount of death sentences well into the early 2000s

Number of persons under sentence of death, 1953–2020



Note: Data on the number of prisoners under sentence of death at yearend have been collected since 1953. See appendix table 2 for counts. Source: Bureau of Justice Statistics, National Prisoner Statistics program (NPS-8), 1953–2020.

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

(Malik et al., 2014). In modern times, the crimes that are considered worthy of death sentencing have been reduced to first degree murder coupled with other crimes. These other crimes include but are not limited to robbery, multiple murders, or causing another to commit murder (Costanzo et al., 1994). Today, lethal injection is also by far the most common used form of execution, with 31 states having authorized it as of 2020. Along with this change in practice, there has also been a shift once again in the amount of people sentenced to death. Since the year 2000, the number of those facing capital punishment have been on the decline (Snell, 2021). If the death penalty remains on its current path, it will likely continue to face many more alterations to its use and interpretation into the future.

The debate surrounding capital punishment has become a greater source of discussion due in part to the ethical dilemma surrounding it. Those in support of the death penalty are often aligned with more conservative lines of thought. In addition, these are often people who are push for “tough-on-crime” policies, which are essentially a group of stricter measures aimed at punishing those who commit felonies. One of the main arguments used by these advocates is the theory of retribution. Many supporters believe the death penalty is morally correct due to its ability to give victims proper justice. In this way, retribution can be broken down into two parts. The first part, corrective justice, seeks to reinstate the equality that existed between the victim and the perpetrator prior to the crime. The second part, distributive justice, requires that all offenders are fairly punished according to what they deserve (Fletcher, 1999). In the case of the death penalty, this would mean it would be seen as a fair punishment for those that have committed an equally heinous crime.

Those that believe the death penalty to be morally wrong share a different view. Amongst those against the death penalty include advocacy groups, such as the American Civil Liberties Union and Amnesty International, who often call for its abolition. One of the reasons for this extreme opposition is due to the risk of inhumane punishment. Those in against the death penalty have argued that even lethal injection, which is considered the most humane form of execution, poses risk of cruel and unfair punishment. Most notably, there have been concerns over incorrect administration of lethal drugs due to multiple instances of botched executions that have occurred as recently as 2022 alone (Lozano, 2022). Some are also opposed to capital punishment due to the chance of an innocent life being taken away if their conviction is later proven wrong. This is of special concern to minority groups, as it has been longed believed that they are more at risk at being sentenced to death when a victim is white due to racial biases within the court system. This concern has been further supported by the fact that as of 2010, 75% of the total 250 exonerees all belonged to a minority group (Smith et al., 2011). Overall, this ethical debate held between its supporters and its critics highlights the greatly differing viewpoints of both groups.

The economic aspect of capital punishment has also become a greater topic of concern within recent times. Those in support of the death penalty believe the cost it imposes upon taxpayers is worth the deterrence to crime it offers. The general deterrence theory typically used support this claim explains how the presence of the death penalty helps to install a greater sense of fear in people to prevent them from committing a capital crime. Even if it does not stop all people from committing murder, it can still be viewed as an effective tool to prevent many from committing murder (Flanders, 2013). As a result, it is believed that the death penalty would be

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

beneficial economically wise. It not only would allow tax dollars to be spent on something that helps the wellbeing of society but would also help reduce the amount of money spent on murder cases as less would be occurring overall.

Others view the death penalty as an economic disadvantage. Many have questioned if the death penalty is truly effective in deterring enough crime to where it can be considered a useful tool. Some of this concern has stemmed from findings that have compared the murder rates between states that still allow the death penalty, versus those that have deemed it illegal. For instance, it was found between the years of 2000 to 2010 that states with the death penalty had murder rates ranging from 25% to 46% higher than those without (Helber, 2022). When taking this information into consideration, this causes many critics of the death penalty to question if its practice is a financial waste. This concern has come from states such as Wyoming, who has only gone through with one execution since 1977 but still gives \$750,000 to the public defender's office each year to handle capital punishment cases (Frosch, 2019). As capital punishment has an obvious financial impact on both state and federal fund usage, it is apparent that the debate over its economic viability will last well into the future.

Evaluating the Concerns Surrounding the Death Penalty

Capital punishment has been shown to cause harm towards the general well-being of American citizens in a variety of ways. The death penalty acts as an economic strain on taxpayer dollars due to its capacity to waste millions of dollars each year. Capital punishment is also carried out in an inhumane manner due to the physical and mental abuse it can inflict onto those sentenced to be executed. Finally, death sentencing has been found to be influenced by racial biases due to faults within the judicial system which places innocent lives at risk. A closer evaluation of what scholars have previously stated below leads reason to believe that the death penalty can generate disregard for the welfare of this country's citizens and can no longer be interpreted as constitutional by United States law.

Millions of dollars in wasted state and federal funds have been found to be linked to the costs incurred from capital trials and death row. For example, a study that analyzed the expense of the death penalty in Maryland found that a total of 162 death penalty cases between the years of 1978 to 1999 costed taxpayers an extra \$163 million. In addition, they found that out of the total amount of cases that sought out capital punishment during that same time period, 100 of those cases had ended in a verdict where no death sentence was ever handed out (Roman et al., 2008). When cases are considered for a capital trial, this automatically increases the costs incurred to conduct these cases tremendously. As seen in the state of Maryland, this is especially wasteful when most capital cases end with a verdict contrary to the punishment that was originally sought out. Even if one considered the expenses of a capital trial worth it if a defendant was successfully sentenced, death sentencing is still far more costly when compared to the average murder case due to the added time and complicated procedures that are a part of the capital trial process.

Sending a person to death row will likely only result in further misuse taxpayer dollars. For instance, the state of California spends \$135,000 per year on each death row inmate as

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

opposed to only \$51,500 on each inmate within the general inmate population (McFarland, 2016). To further add to this, the average inmate on death row is likely to spend 10 to 20 years sitting in jail as their case continues to be circled through additional hearings which may eventually lead to a lesser charge being given. Along with this, fewer states follow through with executions. Out of the 36 states that still allow the death penalty, 17 have carried out seven or less executions since 1976. Even more, 13 of those 17 states have carried out three or less executions since 1976 (Memmer et al., 2019). Executions often take a long time to be carried out due to the drawn-out appeals procedures that must occur before they can be fully approved. This means that not only can a death row inmate cost over double the average general inmate, but this cost is only further increased due to many inmates being forced reside in jail for up to a decade or more. Especially if the inmate is also later resentenced to a lower punishment, anywhere from thousands to millions of dollars are gone to waste to pay for more expensive facilities, additional fees, and added judicial costs that were otherwise not needed. Overall, the use of the death penalty drains away vital economic resources that could otherwise be used for the betterment of American citizens in other areas. Furthermore, this wasteful misuse of taxpayer money highlights the government's ability to neglect the needs of its nation in place of programs that no longer serve its people.

Inhumane practices have been evident in many instances involving the use of capital punishment. The most used form of execution in modern day is lethal injection, with 98 percent of all executions since the year 2000 being carried out in this manner. Lethal injection is currently favored due to the belief that it is a far more innovative and humane alternative compared to other methods utilized in the past (Dieter, 2008). However, it has been found that lethal injection still poses a risk of causing undo harm towards the condemned. It has been found that lethal injection has the highest occurrence rate of "botched" procedures as compared to other execution methods, at 7.12% out of all 1054 people who have received it (Eaton, 2018). This has been largely due to improper administration of lethal drugs through the intravenous access, causing anesthesia failure, chemical burns, and suffering that has proceeded at an upwards of 30 minutes or more ("Lethal Injection", 2007). Even though lethal injection may offer a safer and more merciful approach to execution, when done incorrectly it can cause terrible physical pain during the process of death. Furthermore, the relative frequency of its occurrence makes it harder to justify as there will always be a possible chance that something could go wrong during its administration process.

The delays in executions can also attribute to an additionally dehumanizing treatment towards death row inmates. In the case of *Thompson v. McNeil*, the defendant had spent 32 years in solitary confinement while facing multiple different execution dates as well as two near executions. Long-term solitary confinement of this nature has also been found to greatly impact mental health, causing symptoms similar to those who have experienced severe torture or trauma (Memmer et al., 2019). It can be argued that this practice can be considered another form of unjust punishment due to the mental turmoil that is caused due to the never-ending waiting period the inmate is subjected to. Along with this, evidence of extreme mental health impacts only further reinforces the concern that capital punishment can lead to inhumane treatment. As the death penalty has the potential to inflict both physical and mental torture, it can be considered in violation of the eighth amendment. As the constitution does not uphold the practice of any

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S
USEFULNESS – Emma Reyes

form of cruel or unusual punishment, capital punishment has palpable faults that oppose the very precedent of this amendment.

Racial biases have been found to be present within capital trial proceedings which have led to unfair consequences. Though jurors are supposed to make an impartial decision when deciding on a verdict, it has often been evident a jurors' own prejudices make way into their decision-making. For example, it has been found that evidence of psychiatric impairment within a defendant was used as the basis for death sentencing 18 percent of the time when the defendant was black as opposed to only 9 percent of the time when the defendant was white. Along with this, it was found that a black defendant convicted of killing a white victim was sentenced to death 54 percent of the time, as opposed to a white person only being sentenced to death 40 percent of the time when the victim was black (Lynch et al., 2000). These findings not only reveal obvious evidence of discrimination, but also the arbitrariness that is existent within the judicial processes surrounding the death penalty. This is of significant concern as the case of *Furman v. Georgia* has temporarily banned the use of the death penalty across the nation due to these same findings. Additionally, it was also found within the state of Connecticut that when a white defendant committed a multiple-victim homicide where all victims were also white, they would have only a 0.57 percent chance of receiving a death sentence. However, black defendants who committed the same crime on white victims had a 91.2 percent chance of being sentenced to death (Donohue, 2014). This further highlights the unfairness that is still prevalent within capital trials even after the case of *Furman v. Georgia*. Even when two people commit the same exact crime, the color of their skin and of their victims' skin alone could attribute to variances in the severity of their sentencing. Furthermore, biases held by jurors lead them to decide on a verdict based discriminatory beliefs rather than basing their decision off the evidence given within the trial.

These faults within the capital trial process can cause even more dangerous outcomes. For instance, between the years of 1973 to 2004 there was a total of 118 prisoners originally sentenced to death that were eventually exonerated due to their innocence being proven. Among those exonerated, over half were found to be African American ("Lethal Injection", 2007). It has also been found that over 75 percent of all death sentencing reversals have been due to violations that had compromised the outcome of the original trial, among those violations being biases from judges and jurors (Liebman, 2002). Not only have racial biases caused unfair rates of death sentencing between white and black defendants, but they have also shown that black defendants are much more likely to be sentenced to death even when they are completely innocent. Capital trials are evidently not immune to racial biases and therefore have a hard time following the criterion originally set by previous Supreme Court rulings. The use of the death penalty therefore seems to impose a serious risk of conducting improper capital trial proceedings which can lead to unjust sentencing as well as the taking of innocent life, especially when it comes to minority defendants.

Examining the Effectiveness of Capital Punishment

Two major factors are often considered when determining whether the death penalty can be considered an effective form of punishment. One of these factors is if capital punishment can be used as a deterrent for capital crimes. The other is if the court procedures surrounding this form of punishment have the capability to accurately sentence a defendant to death. However, through the interpretation of information provided by the Death Penalty Information Center, it can be found that capital punishment does not have the ability to fully meet either one of these standards.

Have the differences in murder rates between death penalty and non-death penalty states across the past three decades (Figure 1) shown to be substantially different? As previously stated, many critics of the death penalty have argued that it has shown no evidence of having a deterrent effect against capital crimes when comparing the murder rates between states. Throughout the most recent decades, it has been found that the murder rates within states who still practice the death penalty have been shown to be considerably higher than the murder rates in states who no longer practice it. For example, between the years of 1995 to 2010, murder rates within death penalty states ranged anywhere between 20% to almost 50% higher than the murder rates recorded within non-death penalty states. Even after a slight decline in the percent difference between both groups in the early 2010s, the more recent years of 2016 to 2019 have once again shown a much more substantial contrast in murder rates ranging from 20% to 30% (Figure 1). It can be seen through these results that as the use of the death penalty does not seem to have any obvious influence on the rate of murder between states. Instead,

it is likely other factors such as higher poverty rates or tough on crime policies within red states that may be more contributive towards these results. Moreover, another perspective can be taken from the empirical study conducted by the National Research Council in 2012. In their findings, they concluded that they were unable to determine whether the death penalty increased, decreased, or had no effect on the rate of homicide across the country (Nagin et al., 2012). Overall, the death penalty does not have any seemingly strong evidence to support its ability to deter crime. Whether or not future findings may prove to find its true effect,

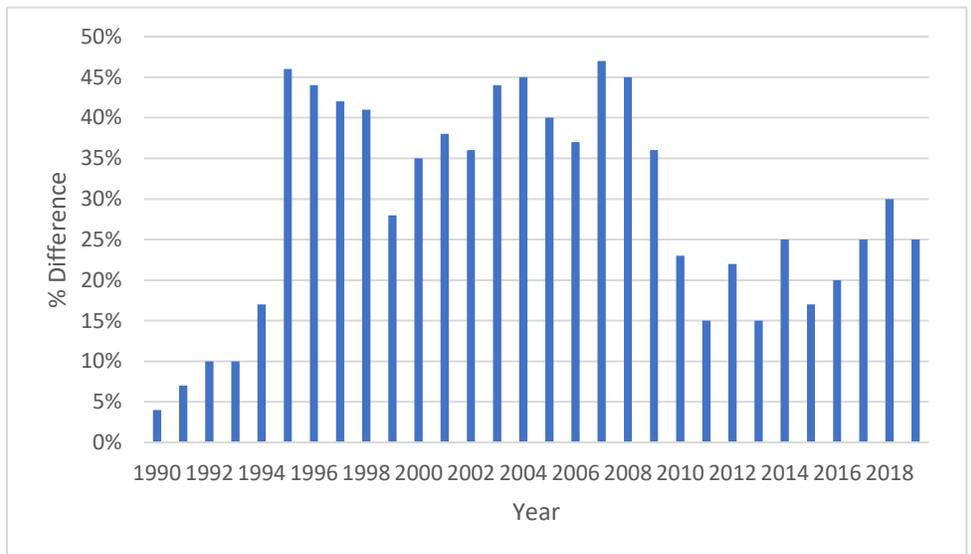


Figure 1. Increase in Murder Rates of Death Penalty States Compared to Non-Death Penalty States

Source: Death Penalty Information Center

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

it is still clear as of now that capital punishment does not show any strong correlation with the prevention of criminal activity.

Have the number exonerations from death row within the past 50 years (Figure 2) shown to be considerably frequent and reveal biases? Previously stated concerns surrounding capital punishment have largely stemmed from the possibility that innocent life may be taken away if trial misconduct occurs. During the past half century alone, exonerations have consistently occurred almost every year with the exceptions of 1983, 1984, and 2016. For instance, since the year 2000, 99 exonerations have taken place out of the total 191 recorded since 1973 (Figure 2). In other words, over half of the exonerations that have taken place within recent times have occurred within the past twenty-three years alone. Additional concern surrounding these exonerations have also arisen from analyzing the racial identities of the exonerees. As shown in Figure 3, the majority of exonerees belong to minority groups, the highest of which being 103 out of the 191 exonerees identifying as black. In comparison, only 68 of the total exonerees identified as white. Several factors have contributed to these eventual pardons, most often due to faults within the sentencing process. Reasons cited as evidence of wrongful conviction have included false confessions, racial biases, erroneous eyewitness accounts, forensic fraud, or prosecution misconduct (Warden, 2004). As a result, the court system not only seems increasingly ineffective in properly sentencing defendants to death, but also places additional risk of wrongful accusation on to minority groups.

Capital punishment has proven unable to be fully effective in its capability to prevent crime and sentence only those deemed deserving of it. Comparison between death penalty and non-death penalty states have helped to reveal its likely inability to greatly deter crime. In addition, a time period analysis has highlighted an increase in the rate of exonerations since the start of the century, with added comparisons revealing most of the exonerees belonging to a minority group. In all, inadequate preventive measures coupled with the fault of the court system have highlighted the probable ineffectiveness of the death penalty.

Assessing Ways to Mediate the Concerns Surrounding Capital Punishment

In order to lessen the current issues that continue to persist surrounding the death penalty, many suggestions can be made to alleviate said concerns. The death penalty can be permanently

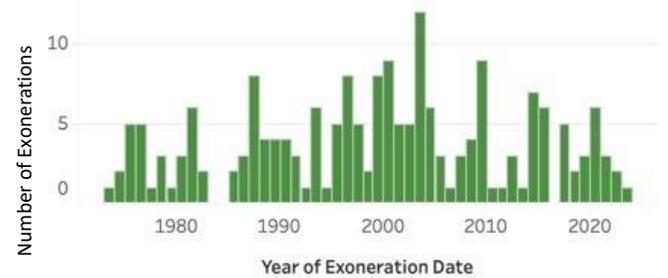


Figure 2. *Number of Death Row Exonerations in the United States*

Source: Death Penalty Information Center

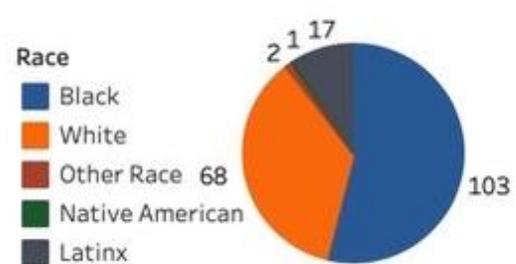


Figure 3. *Exonerations From Death Row in the United States by Race*

Source: Death Penalty Information Center

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

abolished in order to reduce the economic strain on federal and state funds. The current court room procedures surrounding capital punishment can also be modified to better combat racial biases and incorrect sentencing. Through a further evaluation of ways to alter the current state of capital punishment below, more actionable changes can be made in order to help ensure that these problems no longer continue.

The debate surrounding the abolishment of the death penalty has caused a greater discussion of whether it holds the ability to support the overall common good of American citizens. As previously mentioned, those who wish to continue to uphold the death penalty have argued that it is necessary to keep regardless of its economic cost due to its deterrent effect. This belief stems largely from the general deterrence theory, which states that the presence of capital punishment helps to install a greater sense of fear in people to prevent them from committing a capital crime (Flanders, 2013). However, those in support of capital punishment have failed to recognize how ineffective this form of punishment can actually be in terms of reducing crime rates. As stated before, little evidence has been found to prove whether the death penalty has any real deterrent effect against capital crimes. Without any proof of this added protection, this only adds to the economic loss that is felt by tax-payer dollars, such as death row inmates costing double the amount of the average general population inmate within California (McFarland, 2016). As evidence shows how capital punishment is not only ineffective but also drains the government of funds that could otherwise be used for more beneficial purposes, the permanent abolishment of the death penalty must be considered as a means of reducing these issues.

Abolishing the death penalty can help to greatly reduce the financial strain felt by tax-payer dollars as well as increase the amount of money available to improve the well-being of the American public. In the state of Washington, the average cost of a trial when the death penalty is sought is \$3.07 million as opposed to only \$2.01 million when the death penalty is not sought. In addition, between the years of 1997 to 2014, out of the 147 first degree murder cases that occurred only 33 imposed death sentences. Out of those 33, 18 resulted in a reversal while another 9 had been on appeal as of 2014 (Collins et al., 2014). The difference between a capital trial versus a regular first-degree murder trial comes to an outstanding \$1.06 million. Considering the 18 verdicts that were later overturned along with the 9 that were being reviewed, this means that anywhere from \$19.08 million to \$28.62 million had gone to waste through pursuing the death penalty. If the death penalty were abolished, these funds could instead be used towards other government programs or even be used to go back into judicial system to increase resources needed to better mitigate other criminal cases.

In the state of California, it had also been found that between 1976 and 2013, only 13 inhabitants on death row had been executed. On the other hand, 84 inhabitants during the same time period that had remained on death row had died of natural causes before ever being executed. Furthermore, the Legislative Analyst's Office had estimated that if California abolished the death penalty, the state would save more than \$100 million annually (Aviram et al., 2013). Not only do the initial costs of a capital trial increase economic strain, but the already more expensive death row inmates raise the overall cost of the death penalty even more. Especially if most inmates are never executed, this wastes additional funds and further proves the uselessness of the death penalty as executions are rarely ever utilized. Abolishing the death

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

penalty would thus ensure no more money is put towards capital punishment and can instead help every state increase their budget by millions of dollars every year due the amount of money they would save from doing so. As most death row inmates are never executed, abolishing the death penalty is the most economically sound way to decrease wasted funds and increase the amount of money that go towards more beneficial programs and resources needed for the betterment of American society.

If for whatever reason abolishing the death penalty does seem viable, it can also be suggested to modify the current court room procedures surrounding capital sentencing. Controversy surrounding the effectiveness of capital punishment trials have caused many to question whether further changes need to be made to their processes. Some have argued that because only 4.1% of all defendants within recent times have been found to be innocent, this number is not significant enough to cause alarm surrounding sentencing issues (Pilkington, 2014). In addition, some have also argued that because most death row inmates identify as white, racial discrimination cannot be deemed as evident within death sentencing. However, these opposers fail to realize how misleading these statistics can be. As previously stated, 191 people have still been exonerated between the years of 1973 to now (“Innocence”, 2022). Along with this, as of 2010, 75% of all exonerees have belonged to a minority group (Smith et al., 2011). Though the percentage may seem small, this still means almost 200 innocent lives have been subject to facing near death within modern times with majority belonging to minority groups. In addition, previously mentioned study by the state of Connecticut found that when black and white defendants had been found to commit the same exact crime, black defendants had a 91.2% chance of being sentenced to death if the victim was also white as opposed to white defendants who only had a 0.57% chance of being sentenced if the victim was black (Donohue, 2014). It is apparent that racial prejudice does exist within the court system as even if most people sentenced to death overall are white, minorities are more likely to be more harshly sentenced or be wrongfully convicted. As clear evidence shows that the current processes in place are not capable of properly sentencing defendants to death, other methods must be implemented within the court system in order to reduce these risks.

Additional revisions towards capital punishment trials have the potential to greatly decrease sentencing errors and racial biases found within this process. In terms of prosecutorial misconduct, one of the most major reasons for death sentence reversals, a precaution that can be taken is making the disciplining of prosecutors mandatory in the case misconduct still occurs. This would include requiring judges to give their names to state bar disciplinary committees and abolishing their right to absolute immunity to civil liability when it comes to intentional misconduct within capital cases (Williams, 2001). Requiring punishment would be effective in helping to ensure prosecutors are more honest and fairer when going about death penalty trials. Along with this, holding prosecutors more accountable for their actions within the court room helps to prevent unjust treatment of the defendants. This is because the law would protect against prosecutors who would otherwise have an unfair advantage due to their current ability to not face any sort of serious repercussions for their actions.

In terms of racial bias, one solution to alleviate this issue would be for the federal government to pass The Racial Justice Act. Originally proposed in 1994, this act would prevent

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S USEFULNESS – Emma Reyes

any person from being executed under federal or state law if it was found the sentence was imposed due to the race of the defendant. This act would require a three-step process, which would include the defendant presenting evidence of supposed racial discrimination coupled with statically significant proof, the validation from the court to support its accuracy, and the inability of the prosecution to offer sufficient evidence that could otherwise contradict it (Chemerinsky, 1994). As of today, only two states have enacted The Racial Justice Act. North Carolina, being the first to enact it in 2009, had found through research that racial disparity had greatly decreased following its passage. Furthermore, they attributed this decrease to the fact that prosecutors were held more accountable for their actions during the process of the case, which includes reducing their reliance on race during the jury selection process (Rocco, 2021). Enacting The Racial Justice Act nationally would help to greatly decrease the level of racial bias still currently present within the death sentencing process. As evident within North Carolina, the use of laws that actively highlight the hazard of discrimination along with the ability to hold prosecutors liable for any possible use of discriminatory practices can be key in helping to greatly reduce the number of exonerations minority groups are otherwise subject to later on.

Conclusion

It can be understood that the debate surrounding the death penalty has brought to light many faults surrounding its practice, ranging from inhumane treatment, economical concerns, and evidence of racial discrimination. As a result, it is clear the United States federal government must act towards changing how the death penalty is currently implemented into law. Whether they outright abolish capital punishment or move towards making the sentencing process fairer, it is important that the government recognizes these issues and changes how the death penalty should be carried out. In addition, a bipartisan decision made by lawmakers to modify its practice will not only aid in alleviating the issues mentioned previously but will also allow for the ongoing debate surrounding capital punishment to subside. As a result, taking these steps will help to better support the welfare of our country's citizens as well as ensure that our judicial system can be represented in a more impartial and just way.

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S
USEFULNESS – Emma Reyes

Reference List

Aviram, H., & Newby, R. (2013). Death row economics: the rise of fiscally prudent anti-death penalty activism. *Crim. Just.*, 28, 33.

BBC. (2020). Death penalty: How many countries still have it? *BBC News*.

<https://www.bbc.com/news/world-45835584>

Chemerinsky, E. (1994). Eliminating Discrimination in Administering the Death Penalty: The Need for the Racial Justice Act. *Santa Clara L. Rev.*, 35, 519.

Collins, P. A., Boruchowitz, R. C., Hickman, M. J., & Larrañaga, M. A. (2015). An analysis of the economic costs of seeking the death penalty in Washington state. *Seattle J. Soc. Just.*, 14, 727.

Costanzo, M., & White, L. T. (1994). An overview of the death penalty and capital trials: History, current status, legal procedures, and cost. *Journal of Social Issues*, 50(2), 1-18.

Death Penalty Information Center. (2022). Innocence. Death Penalty Information Center.

<https://deathpenaltyinfo.org/policy-issues/innocence>

Dieter, R. C. (2008). Methods of execution and their effect on the use of the death penalty in the United States. *Fordham Urb. LJ*, 35, 789.

Donohue III, J. J. (2014). An Empirical Evaluation of the Connecticut Death Penalty System Since 1973: Are There Unlawful Racial, Gender, and Geographic Disparities?. *Journal of Empirical Legal Studies*, 11(4), 637-696.

DPIC. (2018). Murder Rate of Death Penalty States Compared to Non-Death Penalty States.

Death Penalty Information Center. <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>

Flanders, C. (2013). The Case Against the Case Against the Death Penalty. *New Criminal Law Review*, 16(4), 595-620.

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S
USEFULNESS – Emma Reyes

- Fletcher, G. P. (1999). The place of victims in the theory of retribution. *Buffalo Criminal Law Review*, 3(1), 51-63.
- Frosch, D. (2019). *Republicans leading new charge to end the death penalty*. The Wall Street Journal. Retrieved from <https://www.wsj.com/articles/republicans-leading-new-charge-to-end-the-death-penalty-11550572205>
- Helber, S. (2022). *PolitiFact VA: Does the death penalty deter murder?* VPM. Retrieved from <https://www.vpm.org/news/2021-02-19/politifact-va-does-the-death-penalty-deter-murder>
- Hood, R. (2023). capital punishment. *Encyclopedia Britannica*.
<https://www.britannica.com/topic/capital-punishment>
- Liebman, J. S. (2002). Rates of reversible error and the risk of wrongful execution. *Judicature*, 86, 78.
- Lozano, J. A. (2022). *Report: Executions continued decline but many 'botched'*. AP NEWS. Retrieved from <https://apnews.com/article/capital-punishment-18a24913cdf8ab8bae1cb03e329365e0>
- Lynch, M., & Haney, C. (2000). Discrimination and instructional comprehension: Guided discretion, racial bias, and the death penalty. *Law and Human Behavior*, 24(3), 337.
- Malik, S. C., & Holdsworth, D. P. (2014). A Survey of the History of the Death Penalty in the United States. *U. Rich. L. Rev.*, 49, 693.
- Memmer, A. M., Worsley, M. K., & Rowe, B. I. (2019). The Long Wait for an Improbable Death: A Look at Delays in Executions in Kansas and Possible Reforms to Capital Punishment.
- McFarland, T. (2016). The Death Penalty vs. Life Incarceration: A Financial Analysis. *Susquehanna University Political Review*, 7(4), 46-87.
- Nagin, D. S., & Pepper, J. V. (2012). Deterrence and the death penalty. Washington, DC: National Academies Press.
- Pilkington, E. (2014). US death row study: 4% of defendants sentenced to die are innocent. *Theguardian.com*.
- PLoS Medicine Editors. (2007). Lethal injection is not humane. *PLoS Medicine*, 4(4), e171.
- Rocco, S. (2021). *Racial justice acts of North Carolina and California*. Equal Justice Initiative Reports. Retrieved from <https://eji.org/report/race-and-the-jury/what-needs-to-happen/sidebar/racial-justice-acts-of-north-carolina-and-california/>

CAPITAL PUNISHMENT: ANALYZING THE DEMISE OF THE DEATH PENALTY'S
USEFULNESS – Emma Reyes

Roman, J. K., Chalfin, A. J., & Knight, C. R. (2009). Reassessing the cost of the death penalty using quasi-experimental methods: Evidence from Maryland. *American law and economics review*, 11(2), 530-574.

Smith, E., & Hattery, A. J. (2011). Race, wrongful conviction & exoneration. *Journal of African American Studies*, 15, 74-94.

Snell, T. L. (2021). *Statistical Tables - Bureau of Justice Statistics*. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/cpus20st.pdf>

Warden, R. (2004). Illinois death penalty reform: How it happened, what it promises. *J. Crim. L. & Criminology*, 95, 381.

Williams, K. (2001). The death penalty: Can it be fixed. *Cath. UL Rev.*, 51, 1177.