There's no evidence that death penalty is a deterrent against crime

John J. Donohue, Stanford Law School
There’s no evidence that death penalty is a deterrent against crime

August 8, 2015 8.14am EDT

Demonstration against the death penalty in Paris. World Coalition Against the Death Penalty, CC BY-SA

John Donohue
C Wendell and Edith M Carlsmith Professor of Law at Stanford University

Capital punishment is such a costly, controversial, and divisive issue that, unless it succeeds in saving lives, it clearly should be abolished – as it already has been in the European Union and in 101 countries around the world. But does the death penalty save lives? Let’s consider the relevant factors and the evidence.

Some feel the question of whether the death penalty deters can be argued as a matter of theory: capital punishment is worse than other penalties therefore it must lead to fewer killings. This contention misses much of the complexity of the modern death penalty. First, theory can’t tell us whether the spectacle of state-sanctioned killings operates to unhinge marginal minds into thinking that their own grievances merit similar forms of retribution that they then try to inflict on their own. Even if some other criminals were deterred by the death penalty, one must ask whether these avoided crimes would be more than offset by the possible brutalisation effect.

Second, operating a death penalty regime – at least in the United States – has been incredibly costly, as each case resulting in a death sentence will spend years in various types of legal appeals, eating up the valuable time of judges, prosecutors, and defence lawyers, overwhelmingly at government expense.

The best research on the issue suggests that life imprisonment is a less costly penalty, since locking someone up is far less expensive than both locking them up and paying a team of lawyers for many years – often decades – to debate whether a sentence of death should be imposed. In California, for example, execution is only the third leading cause of death for those on death row (behind old age and suicide).

Some might contend that the lengthy appeals are a needless burden that should be jettisoned so that the penalty is administered more cheaply and quickly, but the large number of exonerations of those on death row (155 including 21 by DNA evidence at last count) underscores the danger of any effort to short circuit the judicial process. Killing a few innocent defendants is an unavoidable consequence of having a capital regime – so unless there is some clear evidence of deterrence, it is hard to argue positively for the death penalty.
Lack of evidence

So what is the evidence on deterrence? Here the answer is clear: there is not the slightest credible statistical evidence that capital punishment reduces the rate of homicide. Whether one compares the similar movements of homicide in Canada and the US when only the latter restored the death penalty, or in American states that have abolished it versus those that retain it, or in Hong Kong and Singapore (the first abolishing the death penalty in the mid-1990s and the second greatly increasing its usage at the same), there is no detectable effect of capital punishment on crime. The best econometric studies reach the same conclusion.

A number of studies – all of which, unfortunately, are only available via subscription – purported to find deterrent effects but all of these studies collapse after errors in coding, measuring statistical significance, or in establishing causal relationships are corrected. A panel of the National Academy of Sciences addressed the deterrence question directly in 2012 and unanimously concluded that there was no credible evidence that the death penalty deters homicides.

The report went on to say that the issue of deterrence should be removed from any discussion of the death penalty given this lack of credible evidence. But if the deterrence argument disappears, so does the case for the death penalty.

Those familiar with criminal justice issues are not surprised by the lack of deterrence. To get the death penalty in the United States one has to commit an extraordinarily heinous crime, as evidenced by the fact that last year roughly 14,000 murders were committed but only 35 executions took place.

Since murderers typically expose themselves to far greater immediate risks, the likelihood is incredibly remote that some small chance of execution many years after committing a crime will influence the behaviour of a sociopathic deviant who would otherwise be willing to kill if his only penalty were life imprisonment.

Any criminal who actually thought he would be caught would find the prospect of life without parole to be a monumental penalty. Any criminal who didn’t think he would be caught would
be untroubled by any sanction.

**Wasted resources**

A better way to address the problem of homicide is to take the resources that would otherwise be wasted in operating a death penalty regime and use them on strategies that are known to reduce crime, such as hiring and properly training police officers and solving crimes.

Over the past three decades there has been a downward trend in the number of murders that lead to arrest and conviction to the point that only about half of all murders are now punished. The graphic below shows the steady decline in the number of homicides cleared by arrest in Connecticut, which mimics the national trend. Of course, even if there is an arrest, there may not be a conviction so the percentage of killers who are punished is smaller than this figure suggests.

![Graph showing the decline in homicide cases cleared by arrest](image)

Murder cases cleared by arrest or other means: 1970 - 2009
John Donohoe, Author provided

Far better for both justice and deterrence if the resources saved by scrapping the death penalty could be used to increase the chance that killers would be caught and punished – and taken off the streets.

To give a sense of the burden of capital punishment, note that over the past 35 years the state of California spent roughly $4 billion to execute 13 individuals. The $4 billion would have been enough to hire roughly 80,000 police officers who, if appropriately assigned, would be expected to prevent 466 murders (and much other crime) in California – far more than any of the most optimistic (albeit discredited) views of the possible benefits of capital punishment.

In other words, since the death penalty is a costly and inefficient system, its use will waste resources that could be expended on crime-fighting measures that are known to be effective. It is not surprising that last summer a federal judge ruled that California’s capital regime is unconstitutional on the grounds that it serves no legitimate penological interest.

The sharp decline in executions in the US from the peak of 98 in 1999 down to 35 last year (with death sentences falling from a 1996 peak of 315 to 73), coupled with the steady pace of states abolishing the death penalty over the past eight years (including conservative Nebraska in May) shows that “smart on crime” entails shunning capital punishment.
With zero evidence that the death penalty provides any tangible benefits and very clear indications of its monetary, human, and social costs, this is one programme about which there can be little debate that its costs undeniably outweigh any possible benefits.

- Crime
- US justice
- death penalty
- executions
- Capital punishment
- US prisons