The Use of the Death Penalty

A Paper Presented by the National Policy Committee to The American Society of Criminology

National Policy Committee

James Austin, Chair
Kitty Calavita
Roland Chilton
Jeffrey Fagan
Calvin C. Johnson
Delores Jones-Brown
Mark Moore
Ira Schwartz
Linda Teplin
Franklin Zimring

November 2001

The findings and opinions contained herein are those of the National Policy Committee and do not necessarily reflect the official position or policies of the American Society of Criminology. Ronald Weitzer, Professor of Sociology, Dana Coleman, Research Assistant, and Sarah Benatar, Graduate Research Assistant at the Institute on Crime, Justice, and Corrections at George Washington University provided substantial assistance in the preparation of this document.

Introduction

Capital punishment is among the most hotly debated issues in American politics. Passions run high for both those who want the death penalty abolished and those who seek to preserve or expand its use. What follows is a summary of key issues in the death penalty debate, research findings on the application of capital punishment, and a discussion of policy considerations. The American Society of Criminology (ASC) is greatly concerned with the death penalty and its application in the United States. This year, ASC President Ronald Huff and the ASC Executive Board authorized the ASC’s National Policy Committee (NPC) to develop a policy paper that would focus on the death penalty issue. The ASC Board has emphasized that the NPC paper would not speak for the Society but to its membership. The recommendations contained in this report reflect a concern that the Society needs to set a research agenda that is independent of the federal government and perhaps independent of conventional wisdom. The NPC hopes that this paper will stimulate a healthy and much overdue debate on the role of the ASC in public policy in general, and on the issue of the death penalty in particular.
The Purposes of Capital Punishment

Traditionally, criminologists have noted that the major ideologies underpinning criminal justice sanctions are retribution, deterrence, incapacitation, and rehabilitation. Relative to the application of capital punishment for murder and other violent crimes, one can quickly dispense with rehabilitation as a justification for such a sanction. Retribution, which argues that the state has the right to impose a level of pain and punishment equal to or greater than the pain suffered by the victim, is clearly a major justification for the use of the death penalty. Also commonly referred to as “an eye for an eye,” retribution holds no utilitarian value that would imply that the widespread application of the death penalty would reduce crimes. Simply stated, those who kill deserve to be killed. But instead of the victim’s family or friends carrying out the deed, the state is authorized to kill for them.

Conversely, deterrence implies a utilitarian purpose. There are two forms of deterrence—specific and general. Specific deterrence seeks to prevent the individual offender from committing future crimes by punishing him or her for previous criminal activity. General deterrence seeks to prevent such crimes from occurring in the first place. The knowledge that the state can inflict the death penalty, for example, serves to deter others from committing capital crimes to avoid a similar punishment. Finally, the goal of incapacitation is met simply by removing an offender from society, although opponents of capital punishment can and do argue that this goal can be achieved by simply sentencing the offender to a life sentence without the possibility of parole.

These traditional perspectives for assessing the use of criminal justice sanctions suggest one other important perspective measure for assessing the value of capital punishment, which is the issue of justice. On one hand, justice ensures that those who commit criminal offenses are called to account for their crimes. But justice is also concerned with ensuring that no innocent person is wrongly punished by the state, that the response to the crime is, in some sense, proportionate, and that law is fairly enforced across different social groups.

To some, justice not only permits, but requires capital punishment. Nothing else adequately expresses our horror and moral indignation about certain criminal acts; nothing else is consistent with the principle of “an eye for an eye.” To others, capital punishment could never be justified, since it involves the state taking a life – something that the state is not entitled to do. To still others, capital punishment would be acceptable as a matter of justice if it could be narrowly focused on cases that deserved to be considered capital cases, and if it could be reliably administered. Yet there remains concern that it is impossible for a state to administer the sanction with the required accuracy and fairness, and that the injustice associated with these mistakes would be far greater than the justice that was made possible through the death penalty.

Both opponents and advocates of capital punishment rely upon these conflicting perspectives to justify their positions. The opponents of capital punishment argue not only that it fails to deter crime and serves no other utilitarian purpose, but also that it cannot be fairly applied by a discriminatory criminal justice process. Abolitionists believe that the state should not be involved in executions, as it signals to its citizens that violence is an acceptable means for resolving disputes and righting wrongs (Sarat 2001). An unintended consequence of state
sanctioned executions, therefore, is that they can contribute to violence, through a “demonstration effect” or “brutalization effect” on the public, either desensitizing people with respect to killing or leading potential killers to identify with those executed and perhaps emulate their behavior (Bowers and Pierce 1980).

Advocates of capital punishment claim that a growing body of research shows a clear and visible deterrent effect demonstrating that the death penalty prevents homicides. While there may be some outstanding due process issues surrounding the application of the sanction, these are either rare or can be corrected by legislative and administrative reforms. More importantly, as evidenced by public opinion, the most commonly accepted argument in favor of the death penalty in America, today remains retribution. Of those Americans who support the death penalty, polls show that most favor it because of just deserts, or an “eye for an eye” even though this principle is not applied in any other offense – arson, rape, etc. Since this moral justification is not amenable to nor requires scientific testing, it is a sufficient basis for continuing the use of the death penalty. However, when presented with evidence that the death penalty is currently administered in a way that produces significant racial disparities, substantial error rates, and other problems, common moral ground may be achieved between proponents and abolitionists.

International Trends

Comprehensive data on the use of the death penalty for all countries is difficult to collect and verify. It is clear, however, that an increasing number of countries are either abolishing or placing further restrictions on its application, and that the United States is an exception to the norm with respect to Western democratic nations.

As of 2001, an estimated 108 countries had abolished the death penalty in law or in practice. This is a significant increase from 1980 at which time only 62 countries were so classified. Among the 108 nations, 75 have abolished it for all crimes while another 13 have done so for “ordinary crimes.” Twenty countries have the authority to carry out this sanction but have not done so. Of those that have retained its use, the death penalty is used with regularity in the Islamic nations, in most of Asia, many parts of Africa, and the United States (Death Penalty

<table>
<thead>
<tr>
<th>Country</th>
<th>N Rate*</th>
<th>Country</th>
<th>N Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>1,067</td>
<td>Jordan</td>
<td>9 1.9</td>
</tr>
<tr>
<td>Congo (DR)</td>
<td>100</td>
<td>Kuwait</td>
<td>6 3.22</td>
</tr>
<tr>
<td>USA</td>
<td>68</td>
<td>Japan</td>
<td>6 0.05</td>
</tr>
<tr>
<td>Iran</td>
<td>66</td>
<td>Nigeria</td>
<td>6 0.05</td>
</tr>
<tr>
<td>Egypt</td>
<td>48</td>
<td>Oman</td>
<td>6 0.26</td>
</tr>
<tr>
<td>Belarus</td>
<td>33</td>
<td>Cuba</td>
<td>5 0.45</td>
</tr>
<tr>
<td>Taiwan</td>
<td>32</td>
<td>Kyrgyzstan</td>
<td>4 0.83</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>29</td>
<td>Pakistan</td>
<td>4 0.03</td>
</tr>
<tr>
<td>Singapore</td>
<td>28</td>
<td>Zimbabwe</td>
<td>2 0.18</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>24</td>
<td>Palestinian Authority</td>
<td>2 0.69</td>
</tr>
</tbody>
</table>

TABLE 1
NUMBER OF EXECUTIONS IN 1998 WORLDWIDE
Rwanda 24 3.0 1.5% Lebanon 2 --- 0.1%
Vietnam 18 0.24 1.1% Bahamas 2 --- 0.1%
Yemen 17 --- 1.0% All others 7 --- 0.4%
Afghanistan 10 0.04 0.6% Total 1,625 --- 100.0%

*Rate is per million. Source of population statistics: www.xist.org.

Information Center 2001). The United States, Japan, and Kyrgyzstan (the former Soviet republic) are believed to be the only countries where the mentally retarded are put to death.

By far, the world’s leader in the use of the death penalty is China. In 1998, China reported over 1,000 executions, which represented two thirds of all executions worldwide (Table 1). China, along with the Congo, United States, Iran, and Egypt accounted for over 80 percent of all executions worldwide.

The use of the death penalty in the United States has increasingly isolated the country from European nations. Prior to the 1970s, the USA and its Western European counterparts allowed capital punishment in both law and practice. Since the 1970s the death penalty has been abolished throughout Western Europe. Currently the only advanced democratic nations using the death penalty are the United States and Japan. It is also noteworthy, that after the break up of the Soviet Union, a number of former allies and states abolished capital punishment. From 1987 to 1992, East Germany, Czechoslovakia, Hungary, and Romania abolished the death penalty, as well as all 12 of the Central European nations that had the death penalty during the Soviet era have now abolished it. The United States and Europe part company not only in the use of capital punishment but also in their philosophical orientations toward it:

The Europeans regard the question of a death penalty as a human rights issue, a test of the proper limits of governmental power, and a fundamental question rather than an isolated or incidental policy. In the United States, the question is regarded as an issue of criminal justice policy, a matter for provincial governments to determine rather than a basic question for the central government. So, it is not merely that the Europeans and the Americans reach different answers to the same question; there are profound differences as well on what the key issues are to be addressed (Zimring 2001).

U.S. Patterns and Trends

After World War II, executions were relatively frequent in the United States—averaging about 100 per year—but they decreased to fewer than 10 per year by the mid-1960s. In a landmark 1972 decision, Furman v. Georgia, the U.S. Supreme Court banned executions, ruling the application of the death penalty to be “arbitrary and capricious” and inhumane. Shortly thereafter, several states revised their death penalty statutes to meet the concerns of the Court. Subsequent Court rulings in 1976 in Gregg v. Georgia, Proffit v. Florida, and Jurek v. Texas allowed reinstatement of capital punishment (see Figure 1). The trend in the 1990s has
been the increasing use of executions: in 1990, 23 persons were put to death, which rose to 98 in 1999 (Bureau of Justice Statistics 2000).

FIGURE 1
U.S. EXECUTIONS BY YEAR

Approximately 3,500 prisoners currently sit on death row in the United States. All were convicted of murder; 55 percent are white and 43 percent black; 1.4 percent (N=54) are female; and 2 percent (N=65) received the death penalty for crimes committed as juveniles. Currently, 18 states and the U.S. federal government prohibit the execution of persons who are mentally retarded. The most common form of execution is now lethal injection (34 states).

Deterrence

There has been a great deal of research conducted by criminologists on the effectiveness of the death penalty in preventing future homicides and other acts of violence. While many of these studies find no deterrent effect there are other well designed research reports that reach the opposite conclusion.

Clear and Cole (2000) have examined more than 200 studies evaluating the effectiveness of the death penalty in deterring crime. Some studies compare murder rates in states that have and use the death penalty with (1) states that do not use it, although the law permits its use and (2) states that have abolished it. For example, Sellin (1980) compared homicide rates for 15 states over a number of decades. Some of these states had abolished the death penalty for the entire time period while the others has used it at varying rates. The states were grouped according to similarities in their geographic and demographic attributes. Sellin found that states that had abolished the death penalty had rates either similar to or below the active death penalty states. He also showed little if any association with increases in the use of the death penalty by certain states and later declines in their homicide rates.

Other studies are based on time-series or panel studies that seek to determine if there is an increase or decrease in the murder rate following changes in the use of the death penalty. Most of this research also concludes that the death penalty does not have a deterrent effect on homicides when compared to the threat of protracted imprisonment (Zeisel, 1982; Bailey and Peterson, 1989; Bailey, 1990; Peterson and Bailey, 1991).

However, there is a body of research - mostly conducted by economists - which argues that a deterrent effect can be found. The early and primary advocate of this perspective is Issac Ehrlich who used time series national data from 1933 -1969 and state level data from 1940-1950 to test the deterrent effect of the death penalty. His analysis and conclusions have been re-analyzed and held in question by others (Bowers and Pierce 1975; Yunker 1976; Passel and Taylor 1977; Brumm and Clonninger 1996).
Using county-level panel data, a recent study found that a significant deterrent effect is associated with the increased use of capital punishment since 1977 (Dezhbakhsh, Rubin and Shepherd, 2001). They suggest that each execution may prevent as many as 18 murders, but they also identified other factors that were associated with murder rates, including robbery and assault rates, per capita income in an area, and membership in the National Rifle Association.

The death penalty’s questionable efficacy as a deterrent can be linked to several factors. First, in order for any punishment to deter crime, the punishment must be certain and swift. This is clearly not the case in the U.S., as the vast majority of homicides do not result in a death sentence and, when they are imposed, it takes many years for the sentence to be carried out. In the U.S. in 1999, 271 prisoners were admitted to death row, while over 15,000 murders were reported to police (BJS 2000; FBI 2000). In the same year, 88 persons had their sentences either overturned or removed (BJS 2000). But as noted later on, making a death penalty sentence “certain and swift” would greatly increase the risk of violations of legal rights as well as potentially irreversible and deadly errors.

Furthermore, one must also assume that the types of criminal acts that can be so punished are rational and premeditated. In fact, the opposite is often the case – murder is often a crime of passion, crimes committed under the influence of alcohol or drugs, or criminal acts committed by individuals afflicted with a serious mental condition (Glaser, 1977). None of these crimes can be readily deterred. Interestingly, only a minority of the American public believes that the death penalty deters murder—43 percent subscribed to this view in a 2001 ABC News/Washington Post poll, whereas 52 percent believe it does not deter murder, up from 41 percent in 1991.

The NPC believes that the question of whether or the death penalty deters violent crime cannot be definitively answered by research. As noted by the Panel on Research on Deterrent and Incapacitative Effects, National Academy of Sciences report, in order to make such a conclusion would require “extreme standards of proof.” The Panel further stated that:

… non-experimental research, to which the study of the deterrent effects of capital punishment is necessarily limited, almost certainly will be unable to meet these standards of proof. [Therefore], research on this topic is not likely to produce findings that will or should have much influence on policy makers (Blumstein et al., 1978: 63).

Justice

Another problem concerns miscarriages of justice, which are uniquely worrisome where the punishment (execution) is irreversible. Such miscarriages are increasingly being reported, as a result of the growing use of DNA testing to prove that certain individuals have been wrongfully convicted after spending many years on death row. Since 1973, 96 people have been released from death row because it was determined that they had been wrongfully convicted, according to the Death Penalty Information Center. Some of these individuals were released just days before their execution date. And some research suggests that at least 25 innocent people were executed during the twentieth century (Radelet and Bedau 1998).
There is growing evidence that flaws in application of the death penalty, detected by the judicial review, have reached crisis proportions. A recent study by Liebman, Fagan, and West (2000) of 5,760 capital cases nationwide between 1973 and 1995 found “epidemic” error rates in the sentences imposed during this period. Appellate courts found serious errors in two-thirds of these cases. After new trials, in 75 percent of these cases the defendant was resentenced to a sentence less than death, 18 percent were resentenced to death, and 7 percent were exonerated. The most common errors were incompetent defense lawyers and police and prosecutors who suppressed evidence. In 37 percent of the trials, appeals courts ruled that defense attorneys performed so poorly that the defendant did not receive a proper defense, and in 16 percent of the cases, prosecutors suppressed mitigating or exculpatory evidence. The overall rate of prejudicial error in the American capital punishment system was estimated at 68 percent.

In other words, courts found serious reversible error in nearly seven of every ten of the thousands of capital sentences that were fully reviewed during the study period. After state courts threw out 47 percent of death sentences due to serious flaws, a later federal review found “serious error” – error undermining the reliability of the outcome – in 40 percent of the remaining sentences. Of the 2,370 death sentences thrown out due to serious error, 90 percent were overturned by state judges – many of who were the very judges who imposed the death sentence in the first place. Finally, the average time from the imposition of the death penalty to execution or reversal of the sentence is nine to ten years.

Geographical Variation

There has been a growing concern that the death penalty is applied unfairly. Departing from the principle of universalistic application of the law, the United States features (1) national variation in where the death penalty is permitted (i.e., states that have the penalty vs. those that do not), (2) differences between states that permit capital punishment (some use if frequently, some never), (3) variation within states by jurisdiction, and (4) variation within jurisdictions from case to case, including racial and class disparities.

Although the federal courts have played a significant role in death penalty reforms, state courts have carried out almost all of the death sentences and executions since 1976. There is considerable variation among the state use of the death penalty that seems to have little to do with crime rates. As of 2000, 38 states have death penalty statutes; 29 have actually used the death penalty and, among these states, only a handful is responsible for most of the executions. States that have conducted the most frequent number of executions tend to be southern states, lead by Texas (251).

Southern states have consistently and increasingly accounted for the vast majority of executions carried out by in the United States since the 1950s. Between 1977 and 2001, four states—Texas, Virginia, Florida, and Missouri—carried out the largest number of executions (www.deathpenaltyinfo.org). These four states, along with Louisiana and South Carolina, accounted for two-thirds of all executions during this 23-year period. In 2000, 76 of the 85 executions were in the South, even though that region accounts for about one-third of the U.S. population and about 40 percent of the American states that authorize a death penalty (see Table 2). Conversely, Michigan was the first state to abolish the death penalty for all crimes except
treason—more than a century before France and England enacted such a reform. Seven states that provide a death sentence in their statutes have not conducted any executions for over 25 years. South Dakota and New Hampshire have executed no one in over half a century. New Jersey passed a death penalty statute in 1980 but has not applied it thus far.

Racial and Class Disparities

An increasingly controversial issue is whether racial and class bias influences who receives a death sentence and who is executed. As noted above, very few persons convicted of murder actually receive the death penalty. This raises the important question of how decisions are reached by prosecutors to pursue the death penalty. A recent Justice Department study reported that in nearly 80 percent of the cases in which the prosecutor sought the death penalty the defendant was a member of a minority group. Baldus et al. (1983) and Bohm (1994) have conducted comprehensive analyses of death penalty cases in Georgia, where they found that both the race of the offender and especially the race of the victim were associated with death penalty outcomes. In particular, killers of whites were much more likely to receive the death penalty than killers of African Americans. Research on other states supports this race-of-victim pattern (Bowers and Pierce 1980; Gross and Mauro 1984). After reviewing 28 studies, the General Accounting Office (1990:5) concluded that in 23 of the studies “race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty.” The disparity may not be a result of conscious or intentional racial bias on the part of prosecutors and other court actors, but the outcomes nonetheless appear grossly discriminatory.

**TABLE 2**
PERCENT DISTRIBUTION OF EXECUTIONS IN THE UNITED STATES BY REGION FIVE-YEAR INTERVALS

<table>
<thead>
<tr>
<th>Year</th>
<th>Northeast</th>
<th>North Central</th>
<th>West</th>
<th>South</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950-1954</td>
<td>14</td>
<td>10</td>
<td>16</td>
<td>60</td>
<td>407</td>
</tr>
<tr>
<td>1955-1959</td>
<td>17</td>
<td>5</td>
<td>17</td>
<td>61</td>
<td>301</td>
</tr>
<tr>
<td>1960-1964</td>
<td>9</td>
<td>9</td>
<td>25</td>
<td>57</td>
<td>180</td>
</tr>
<tr>
<td>1980-1984</td>
<td>–</td>
<td>3</td>
<td>97</td>
<td>29</td>
<td>100%</td>
</tr>
<tr>
<td>1985-1989</td>
<td>–</td>
<td>2</td>
<td>6</td>
<td>92</td>
<td>100%</td>
</tr>
<tr>
<td>1990-1994</td>
<td>–</td>
<td>10</td>
<td>8</td>
<td>82</td>
<td>139</td>
</tr>
<tr>
<td>1995-1999</td>
<td>1</td>
<td>14</td>
<td>9</td>
<td>76</td>
<td>341</td>
</tr>
</tbody>
</table>


Public Opinion

There is widespread popular support for the death penalty in America, though this support has declined in recent years. A Washington Post poll in April 2001 found that 63 percent of
Americans favor the death penalty for persons convicted of murder, down from 77 percent in 1996, and other surveys report similar trends. However, general questions asking respondents whether they “favor” or “support” the death penalty mask important qualifications and concerns that are revealed in more specific questions. When respondents are given the alternative of a life-sentence-without-possibility-of-parole, support for the death penalty drops to about 50 percent. And if a majority of Americans support the death penalty in general, many are deeply concerned about the way in which it is applied: 50 percent believe that the death penalty is applied unequally to blacks and whites for the same crime (Gallup poll, 2001); 68 percent believe that poor people are more likely than people with greater income to receive the death penalty (Gallup poll, 2001); 63 percent believe capital punishment is unfair because of geographical differences in its use (ABC News/Washington Post poll, 2001); and fully 80 percent believe that an innocent person has been executed in the U.S. in the past five years (CNN/USA Today/Gallup poll, 2000).

Because of these concerns, a growing number of Americans now favor a moratorium on the death penalty until questions about its fairness can be resolved: 72 percent subscribed to this view in a March 2001 opinion poll (Peter Hart Research Associates, 2001). The same survey found that 91 percent favored mandatory access to DNA testing for all defendants in capital cases and 84 percent endorsed a requirement that court-appointed attorneys in capital cases have prior experience and be certified to try such cases by the local bar association. Another poll found that 82 percent believe that it should be easier for death row inmates to introduce new evidence that may prove their innocence, even if it might delay their execution date (Newsweek poll, 2000).

The Question of Reform

Given the evidence reviewed above, a number of prominent organizations have called for a moratorium on the death penalty until fundamental changes are made in the way it is applied. The American Bar Association, for instance, passed a resolution in 1997 (Resolution 107) that called for the suspension of executions until policies and procedures were implemented that would “minimize the risk” that innocent persons may be executed and to ensure that the penalty was “administered fairly and impartially, in accordance with due process.” Previous ABA resolutions had called for a ban on execution of mentally retarded persons and persons under 18 years of age, elimination of racial discrimination in capital sentencing, and improvements in the quality of counsel in capital cases. More recently, a bipartisan blue-ribbon commission, the Committee to Prevent Wrongful Executions (2001), issued a report urging federal and state legislatures to adopt a similar set of remedies.

In August 2001, The American Psychological Association officially adopted as policy a position to end the use of the death penalty until several deficiencies are resolved. The deficiencies they have identified include unfair and incompetent representation of individuals being tried in a majority of death penalty cases; the number of individuals DNA testing has shown have been wrongly convicted and sentenced to death; bias of jury selection that favors death penalty sentencing; racial disparities based on both the race of the victim and the race of the defendant; a lack of evidence that the death penalty has a deterrent effect; and research which show that the murder rate increases just after state-sanctioned executions.
There are also reforms occurring within certain states. A number of states have recently taken steps to restrict the use of the death penalty, including Illinois Governor Ryan (R), who has called for a moratorium of the death penalty and ongoing study of its use. In addition, North Carolina Governor Easley (D) recently signed into law a bill that forbids the execution of defendants who are found to be mentally retarded, making North Carolina the 18th state to ban the execution of the mentally retarded. Texas Governor Perry (R), on the other hand, vetoed a bill that would prohibit the execution of the mentally retarded on June 17. The bill would have prohibited the death penalty if jurors determine that the defendant is mentally retarded.

National Policy Committee Recommendations

While it is the policy of the American Society of Criminology not to take a position on criminal justice issues, reform of the death penalty in the United States seems worthy of consideration by ASC members. The NPC’s review of the scientific literature has observed little evidence that the death penalty has a deterrent effect on violent crimes. A comparison of homicide rates both pre- and post-death penalty eras have not shown a deterrent effect, either within a single state or between states. More troubling are studies showing that the application of the death penalty is not carried out in an equitable manner and is often based on non-lethal factors such as the defendant’s or victim’s race and socio-economic status. Finally, a number of well-publicized cases within the U.S. have shown wrongful convictions for persons sentenced to death due to improper prosecutorial and sentencing practices as well as inadequate defense counsel, and more than four-fifths of Americans believe that court-appointed attorneys in capital cases should be certified to try such cases by their local bar association.

The NPC does not believe that the problem of inequity can be solved so as to ensure that no wrongfully convicted person will be sentenced to the death penalty or that all similarly situated offenders will receive a death sentence. We also recognize that some states will continue to apply the death penalty for the foreseeable future. While the NPC views the abolition of the death penalty as the ultimate remedy to the problems documented in this report, we also recognize that this is unlikely to occur in the near future. Consequently, we are making the following recommendations to the ASC membership as well as our national, state and local policymakers.

1. Impose a moratorium on the death penalty for all cases

We urge all states to impose moratorium on the use of the death penalty until states can ensure that all of the procedural problems noted above are remedied to minimize the lack of justice and equity in its application to convicted offenders. As indicated above, three-quarters of the American population now support such a moratorium until questions about the fair application of the death penalty are resolved.

2. Abolish the death penalty for the mentally retarded.

The United States, Japan, and Kyrgyzstan are believed to be the only countries that execute mentally retarded persons. The mentally retarded have disabilities that affect their moral culpability, reasoning, impulse control, and cognitive functioning. They may be prone to confess
to crimes, unable to understand their rights, and have difficulty participating in their own defense. Approximately 15 percent of the persons on death row may be mentally retarded, and since 1976 at least 35 mentally retarded individuals have been executed in the U.S. (Human Rights Watch, 2001).

3. Abolish the death penalty for juveniles

As noted above, the United States is one of three nations that permit the imposition of the death penalty for persons under the age of 18 at the time the crime was committed. There is no scientific evidence that the imposition of such a penalty serves any public safety purposes or that juveniles can be deterred by the threat of such a severe sanction. While rarely used, the possible and occasional use of the death penalty in such controversial cases clearly goes against international trends.

4. Conduct on-going studies of the use of capital punishment to determine the degree of bias in its application.

For those jurisdictions that choose to use the death penalty, data should be collected and analysis conducted of each jurisdiction’s decision-making process to seek or not seek the death penalty. This data should allow one to analyze prosecutorial decisions to seek the death penalty, assignment of counsel for the defendant, and the appeal process and decisions. This data should be made readily available to social scientists and other interested parties to determine the extent of racial, gender, and class bias on its use. The U.S. Department of Justice’s National Institute of Justice should fund such studies.

5. Require Juries in All Capital Cases to consider Option of a Sentence of Life-without-the-possibility-of-parole.

This should always be an option to the counts in all capital punishment cases. Although most states do allow for juries to automatically consider this option, three states do not. And for states that already provide for such an option, we would encourage its use for capital cases.

6. Require DNA Testing of Evidence for All Capital Cases to Establish Guilt or Innocence. Nine out of ten Americans favor mandatory DNA testing for all defendants in capital cases. Biological samples should be preserved in all pending death penalty cases. Convicted defendants should be afforded the right to DNA testing not only where innocence is claimed but also where there is a possibility of an erroneous sentence (e.g., death as opposed to some lesser sentence). Such testing should be paid for by the state.

7. Poll the ASC Membership on the NPC Recommendations

Finally, we are recommending that the ASC Executive Board should poll its membership to vote “yes” or “no” on a resolution calling for a moratorium on executions until there is dependable and convincing evidence that the defects cited in this report have been eliminated. On purely ethical grounds, we also recommend that the ASC Board submit a second resolution to the membership calling for an end to executions of those who were juveniles when they committed
murder, the mentally retarded, and others with diminished mental capacity. We also are urging ASC members to continue to carry out research efforts on the use of capital punishment to determine the degree of fairness or bias in its application, which can be used as benchmarks to assess these issues.

References


