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Roundtable: Facing the Challenge of Alternatives to the death Penalty

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The question of whether the death penalty acts as a method of crime prevention has been a subject of debate for hundreds of years. Cesare Beccaria and Jeremy Bentham are responsible for some of the earliest formulations of criminal deterrence theory. Bentham was convinced that crime rose from conscious, rational considerations of the individual. Accordingly, a person contemplating the commission of a crime would undertake a cost – benefit analysis and would carry out the plan only if potential benefits outweighed the expected costs. Although these early “criminologists” certainly deserve attention and respect for attempting to understand the underlying reasons why people commit crimes, the overwhelming conclusion from years of deterrence studies is that the death penalty is, at best, no more of a deterrent than a sentence of life in prison. At worst, one researcher has noted, the death penalty has the opposite effect: that is, society is brutalized by the use of the death penalty, and this increases the likelihood of more murders being committed. It is important to note that both Beccaria and Bentham included in their writings a consideration of conditions that today’s the deterrence- minded supporters may have forgotten: both Beccaria and Bentham were equally concerned and troubled by the arbitrary imposition of punishments which were characterized as “social violence”, and Beccaria actually argued against the use of the death penalty, characterizing it as “excessive punishment”. Thus, a well intentioned rational based approach to the repression of crime actually included elements of calculated restraint and deliberation rather than excessive responses based on reactive vengeance.

Today, retentionists argue that society has always used punishment to discourage would-be criminals from unlawful action, and that since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder, and that punishment is the death penalty. They believe that if murderers are sentenced to death and executed, potential murderers will think twice before killing for fear of losing their own life. Moreover, they claim, even if some studies regarding deterrence are inconclusive, that is only because the death penalty is rarely used and takes years before an execution is actually carried out. They claim that punishments which are swift and sure, axioms argued by Beccaria, are the best deterrent. They admit that even though statistical demonstrations on the effectiveness of the death penalty are not conclusive, and perhaps cannot be, capital punishment is likely to deter more than other punishments because people fear death more than anything else.

There is considerable evidence to suggest that these deterrence-based arguments are fundamentally flawed, because they do not take into consideration a number of other factors and conditions which must be considered in order to explain more precisely the variables that influence the commission of crimes. As attractive as rational choice theory might appear, the reliance on rational choice as a justification for deterrence-based crime policy requires further examination. The assumption that people always carefully weigh the consequences of their criminal conduct beforehand can easily be refuted by the observations that many crimes are spontaneous acts and highly emotional in character. These “expressive” crime are crimes that are committed in the heat of passion, compounded by the presence of drug and/or alcohol use, emotional rage, physical and/or emotional trauma, mental illness, and mental retardation. A person

possessing a strong emotional commitment to the perpetration of a particular offense is not likely to be deterred from committing it, regardless of potential sanctions which may be imposed. It should come as no surprise from interviews conducted after a murder has occurred, that the presence of at least one of the factors just noted is usually present. In those few instances where the crime is “instrumental”, or for material gain, the fear of a potential penalty is nonexistent, due to the rational belief that the perpetrator will successfully commit the crime without apprehension. Similarly, terrorists are not discouraged by the fear of execution, by virtue of the fact that their possible apprehension and conviction (or execution) provides them with a larger platform to further pontificate their self-perceived noble causes. These abolitionist arguments are frequently met with further, less rational responses from retentionists, who claim that societal responses to murder via execution must be carried in a more timely fashion primarily through the elimination and/or the limiting the number of appeals in the court system. It seems to matter little that, for example, in the United States, where murder convictions receive allegedly scrupulous mandated and voluntary reviews by higher courts, we have experienced over 150 reversals of death sentences due to a combination of both procedural and factual errors. In essence, “we got the wrong guy”, and sentenced them to death. There is little doubt that Beccaria would have agreed with the theory that in order for punishment to be effective, it must be swiftly carried out. But he most certainly would not have agreed that swiftness of punishment mandates that the ultimate penalty, the death penalty, should be swiftly carried out. There is simply no parole for an execution.

In the United States, even among those states that hold fast to maintaining capital punishment as the ultimate punishment available, the fact is that a sentence of life in prison without the possibility of parole is increasingly becoming the sentence of choice for murder. The myriad of problems which states are facing in attempting to successfully carry out executions are in the forefront of political and judicial debates. Lethal injection, touted as a “painless method of execution”, has been determined to be anything but painless, and fraught with procedural problems and complications. American drug manufacturers have responded to the problems which have been uncovered by refusing to sell drugs to states if they are to be used in executions. In many respects, the “wheels are falling off the cart” regarding the process of capital punishment in the United States. 7 states in the last 10 years have abolished capital punishment altogether, and at least 4 more are seriously considering abolition, with many more having halted executions until procedural problems receive further scrutiny. The myths surrounding the administration of capital punishment in the United States are slowly being revealed. Even those most fiscally conservative, are realizing that the costs of a capital trial leading up to and including an execution are exorbitant. Law enforcement administration officials, among those who previously most steadfastly supported capital punishment, are learning that the precious resources available for crime prevention are being wasted through the use of capital punishment. In 2 successive studies carried out 5 years apart recently, law enforcement executives have put capital punishment at the very bottom of their list when asked to rank those tools which are most effective in effectively fighting the problem of crime in their jurisdictions.

It is for this reason that I, as a law enforcement officer, believe that it is important for me to actively dispel and speak out against the myths which surround capital punishment and to encourage the use of less expensive, theoretically sound alternative punishment strategies that will provide us with the resources necessary to make us a safer society. States that have abolished capital punishment have realized true cost savings in their criminal justice system, but our work is not yet done. Funds from cost savings can be diverted to strategies designed to build communities where they are being savagely destroyed. More education is needed to foster and implement policies to further reduce crime, and to involve policymakers in understanding evidence-based strategies which can be effective in fight the problem of crime.