

A Media Analysis:

The Socially Constructed Perception of Capital Punishment in the United States

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Introduction

Marquis de Sade (1740-1814) is quoted in the controversial *Philosophy in the Bedroom* (1795: 101), saying, “The law which attempts a man's life is impractical, unjust, inadmissible.... It has never repressed crime; for a second crime is every day committed at the foot of the scaffold.” de Sade was imprisoned as a lunatic and published as a philosopher of extreme freedom. His comments on capital punishment could be easily dismissed by proponents of the practice as ramblings of lunacy, as they most definitely were at the time of his writing. However, I believe they have meaning beyond the context in which they were written, and are relevant to the ongoing public debate over the death penalty. In this analysis I will examine the publicized thoughts and opinions of prominent editorials, the rhetoric used by recent news publications, and recent polls that address capital punishment and the public sentiment tied to this topic.

Topic

In recent months the practice of the death penalty has come under stronger scrutiny from the media, and consequently, the public. These stories have made headlines in the country's most prominent news publications including, *The Washington Post*, *The New York Times*, *The Los Angeles Times* and *The Philadelphia Inquirer*. In December of 2007, the New Jersey legislature approved the abolition of the death penalty (McCoy 2007). In February of this year, the Nebraska Supreme Court banned the use of the electric chair (Barnes 2008). The U.S. Supreme Court is now addressing the issues of lethal injection and child rape as they pertain to the death penalty (Totenberg 2008).

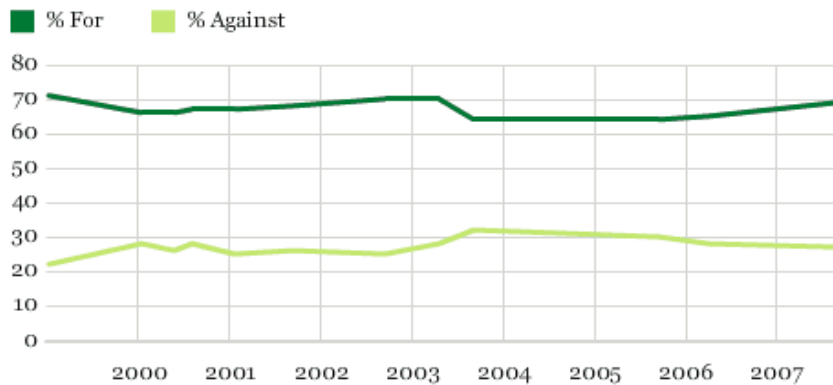
Public support for the death penalty has strengthened and waned over the last 40 years, usually keeping pace with the high or low profile of cases reported by the media. Since the surge

of support in the early 90's, death penalty proponents have lost a small amount of ground (See Exhibit 1.1 and 1.2), but there is still substantial backing – Gallup reports 69% – for capital punishment throughout the country (Newport 2007). The most recent poll found on capital punishment was a Harris Poll conducted between February 5th and 11th of this year. The Harris Poll concluded that 63% of Americans support the death penalty, but over half believe that it is not a deterrent for people who may or have committed murder (Harris Interactive 2008). Either the media has caught wind of this sentiment, or it has directly influenced it, as the current reporting of capital punishment cases is strongly bent in disfavor of the practice.

Exhibits 1.1 and 1.2 (Gallup Poll)

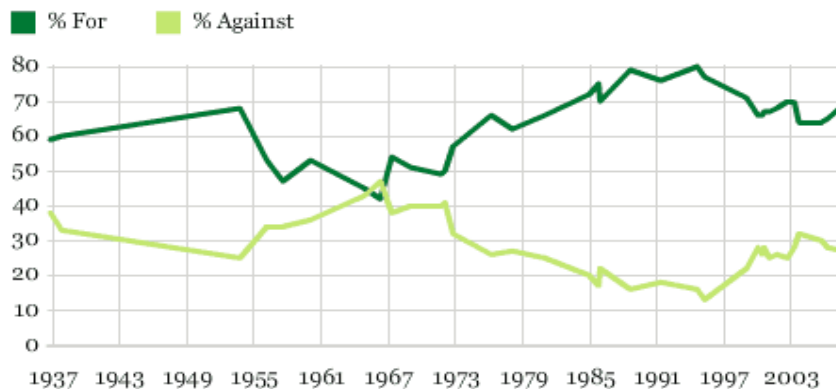
Are you in favor of the death penalty for a person convicted of murder?

(Selected Trend: 1999-2007)



Are you in favor of the death penalty for a person convicted of murder?

(Full Trend)



On the 16th of April, 2008, *The New York Times* editorial was released under the headline, “The Limits of the Death Penalty.” This article is in reference to the Louisiana court that sentenced a child rapist to the death penalty. Louisiana has sentenced the only two death row inmates in the country for a crime other than murder, both under the child rape statute (Barnes 2008). This article takes the position that the Supreme Court should stand against this case in support of their past rulings that only murder may receive a sentence of capital punishment. They attest that “the growing number of cases of innocent people being freed from death row is turning popular opinion against capital punishment” (“Limits” 2008: no pg#). Based on the Gallup and Harris polls, this statement seems to be misinformed (See Exhibits 1.1 through 1.4).

Exhibit 1.3– Harris Poll

TABLE 2

IS CAPITAL PUNISHMENT A DETERRENT?

"Do you feel that executing people who commit murder deters others from committing murder, or do you think such executions don't have much effect?"

Base: All Adults

	1976	1983	1997	1999	2000	2001	2003	2008
	%	%	%	%	%	%	%	%
Deters others	59	63	49	47	44	42	41	42
Not much effect	34	32	49	49	50	52	53	52
Not sure/Refused	7	5	2	4	7	7	6	6

Other high volume readership publications have also been jumping onto this bandwagon opposing capital punishment. In January, *The Los Angeles Times* printed an article claiming the death penalty to be on “life support” (Beiser 2008: 15). This article referenced the spike in

disfavor of the death penalty in 1968 saying that the sentiment was not forced by the Supreme Court, but that “we as a nation had decided it was a bad idea” and that now, “in practice, we’re even more reluctant to impose it [the death penalty]” (Beiser 2008: 15). As much as I desire to agree with these statements, I have to wonder if, perhaps, they were made in the attempt to influence the public.

Exhibit 1.4– Harris Poll

TABLE 5

WHAT PERCENT OF PEOPLE CONVICTED OF MURDER ARE INNOCENT?

"For every one hundred people convicted of murder, how many would you guess are actually innocent?"

Base: Believe innocent people sometimes convicted of murder (95%)

	1999	2000	2001	2003	2008
	%	%	%	%	%
All Adults	11	13	12	11	12
Sex					
Men	8	10	9	10	10
Women	13	15	14	13	14
Race/Ethnicity					
White	10	11	10	9	9
African-American	18	22	22	23	25
Hispanic	11	12	15	16	12
Education					
High school or less	13	14	14	13	14
Some college	9	12	10	11	11
College graduate	6	9	10	7	10
Post graduate	7	10	8	10	8
Party					
Republican	7	10	9	6	6
Democrat	12	13	15	12	15
Independent	8	12	11	13	12

Dahlia Lithwick (2007) of *The Washington Post* writes a slightly more moderate, if not

impassioned column that emphasizes the difference between an argument for capital punishment and an argument for life sentence without parole. I believe Lithwick's arguments are the sometimes over emphasized basis for the claim that the death penalty is on its way out. She says that "more people preferred the life prison term (48 percent) to capital punishment (47 percent) for the first time in 20 years" (Lithwick 2007: B02). I believe the media is able to make claims such as these more recently, whether or not they are true, because of three recent and aforementioned court cases.

In February of this year, the Nebraska Supreme Court determined that the electric chair, the state's only method of execution, was unconstitutional (Mears 2008). There have only been three executions in Nebraska since 1976. Executive Director of the Death Penalty Information Center, Richard Dieter was quoted saying that the decision "will send a message to other states that capital punishment in general will be undergoing greater judicial scrutiny by state and federal courts" (Mears 2008: no pg #).

In December of 2007, the New Jersey Legislature gave approval to abolish the state's death penalty. The decision drew support from many bipartisan allies, the New Jersey Catholic Conference and the Death Penalty Information Center (McCoy 2007). New Jersey will be the 14th state to repeal capital punishment.

There has also been much speculation over the forthcoming Supreme Court ruling regarding lethal injection. Lethal injection has been argued by many anti-capital punishment groups as "cruel or unusual punishment" and in violation of the 8th Amendment. A piece by Nina Totenberg was aired on *National Public Radio* on January 7th, 2008. One of the strongest and brief arguments that Totenberg (2008) presents is that the American Veterinary Association discontinued the use of the same drug combination as "it was deemed unnecessarily cruel." The

Supreme Court has blocked all executions until it is able to make a decision on this issue.

Together, I believe that these cases do represent a shift in attitude surrounding capital punishment, but not to the extent that the media suggests, and not necessarily a shift in public opinion. Consequently, I do believe, that with the right emphasis and publicity, these cases and the articles surrounding them could make a significant difference in the public opinion of capital punishment.

Avis Thomas-Lester (2008), a *Washington Post* writer, published a column on March 20th entitled, "Death Penalty Remains Issue of Debate." The article briefly explores execution in the state of Maryland. Maryland lawmakers will be voting on two measures regarding the death penalty. One measure proposes that capital punishment be abolished. The second is a proposal to study the racial disparities and economic effects of capital punishment (Thomas-Lester 2008). Proponents of capital punishment have argued that these measures are simply stalling tools and will not be passed, but opponents believe that "the death penalty is expensive and applied unfairly" (Thomas-Lester 2008: PG02). The conflict in Maryland is the perfect case study of the direction capital punishment laws are taking, and the internal, ethical battle of the public. The aforementioned Harris poll concluded that while the White demographic believed that about 9 percent of people convicted of murder were innocent, the Black demographic believed that 25 percent were actually innocent (Harris 2008). One of the oft raised arguments against the death penalty is that murder convictions are being overturned at an alarming rate with the advent of DNA testing. The majority of these overturned cases involve a convict of minority status. I believe that the Harris poll reflects the personal understanding of the Black community of the prejudices that lie within the criminal justice system.

Conclusion

I have found it difficult to readily distinguish between what the media called the “public influence on the court” and what I believe to be an “attempted media influence over the public.” What makes this difficult to differentiate is the ingrained hope that the news media is unbiased; even when the bias is slanted in favor of my own beliefs and opinions, as is the case here. The media is required to report factually and clearly. I believe the media also carries the responsibility of keeping the public informed of the injustices that plague our government and society. The media appears to have decided that the practice of capital punishment is unjust, and is now attempting to convince the public. Even with the recognition that reporting is slanted in disfavor of capital punishment, I must side with the journalists and editorialists. I believe they are carrying out their job by practicing a form of civil disobedience; the contestation of an unjust law.

While this media analysis has not changed my opinion of capital punishment, it has changed the way I perceive the editorials I read and the news providers I currently follow. The reputation of a world renowned news publication is only as good as the writing they publish on the back page of the last section.

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