**UpFront Magazine**

**The Death Penalty Debate**

*The Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

The United States is one of the few industrialized nations that still uses capital punishment. Under increasing scrutiny by the courts, it continues to stir strong feelings on both sides.

*By Adam Liptak*

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| http://teacher.scholastic.com/scholasticnews/indepth/upfront/features/images/f020507a_SMALL.jpg |

Last October, the state of Florida executed a 52-year-old serial killer and rapist named Danny Rolling. In 1990, Rolling brutally murdered five female college students in Gainesville—decapitating one of them and putting her head on a bookshelf—during a three-day rampage that shocked and terrorized the city.

As is typical whenever the death penalty is carried out in the United States, two groups gathered outside the prison as Rolling was put to death by lethal injection. Some came to show respect for Rolling's victims and their families, and to applaud that justice was finally being served. Others, equally heartfelt, denounced the execution itself as state-sponsored murder.

Ada Larson, the mother of one of Rolling's victims, said afterwards that the execution finally allowed her a measure of peace. "Our pain will never go away," she said, "but this evil man has gone away now."

Deborah Michaud, who had grown up with two of the victims and was outside Florida State Prison that day, saw things differently. "I feel really helpless," she told the *Miami Herald*, with tears in her eyes. "I don't know what I can do to stop executions, and I also don't know what I can do to stop violence. But I feel this is not the answer."

Larson and Michaud typify the long-running debate in the U.S. over the death penalty and the intense feelings that it stirs. The U.S. is one of the few industrialized nations that still uses capital punishment. Eighty-six countries have outlawed it, including all of Europe (except Belarus), and many others that allow it in theory do not use it.

**Fewer Executions**

After years in which solid majorities of Americans supported capital punishment, a recent Gallup poll showed the nation about equally divided on the question when life without parole is offered as another option. Meanwhile, the number of executions each year in the U.S. has dropped by half since 1999, to 53 in 2006. The decrease has occurred as the death penalty has come under increasing attack on a variety of fronts.

Exonerations of death-row inmates, based on DNA and other evidence, have led to charges that the death penalty is too severe—and final—a punishment, given the possibility that innocent people could be executed. There have also been questions about whether current execution methods constitute "cruel and unusual punishment," which is prohibited by the Eighth Amendment to the Constitution.

Last year, executions were at least temporarily halted in eight states—Florida, California, Maryland, Arkansas, Delaware, Missouri, Ohio, and South Dakota—over concerns that supposedly humane lethal injections might actually produce intense pain. And in January, a commission appointed by the New Jersey Legislature recommended that the state abolish the death penalty. The commission found "no compelling evidence" that capital punishment serves a legitimate purpose and increasing evidence that it "is inconsistent with evolving standards of decency."

**'An Eye For An Eye'**

"We're in a period of national reconsideration of the death penalty," says Austin D. Darat, a professor of political science and law at Amherst College in Massachusetts.

Debate over the death penalty is nothing new. Many supporters of capital punishment point to the Old Testament and its philosophy of "an eye for an eye, a tooth for a tooth": Those who commit murder should meet the same fate, as retribution, or as a deterrent to other would-be killers. Opponents maintain that killing is wrong no matter who is doing it, including the government.

The death penalty in the U.S. goes back to colonial times, when European settlers brought capital punishment to the New World. Until about 1900, hanging was the most common method of execution, though firing squads were used occasionally. By the 1950s, most states used either electrocution or the gas chamber.

The 1960s brought the first of a half-century of legal challenges to the death penalty, with critics questioning whether it was humane and fairly applied: Juries often differed widely in imposing death sentences, and some criminal-justice experts have argued that race and other factors often play a role.

In 1972, the Supreme Court seemed on the verge of declaring capital punishment unconstitutional. But the Court instead imposed a moratorium on executions until the states developed better ways to ensure it was being reserved for only the worst offenders, and it was reinstituted in 1976. Since then, more than 1,050 people have been put to death, most by lethal injection, which in recent decades has all but supplanted other methods. (Only Nebraska still relies exclusively on electrocution.)

Today, 38 states and the federal government have capital punishment on the books, in most cases for murder, terrorism, or espionage. But the death penalty is seldom carried out. Most of the executions in 2006 were in the South, and 24, or almost half, were in Texas alone.

Although the Supreme Court has shown no indication that it might outlaw the death penalty, in the last two decades it has been limiting its application and strengthening legal protections for death-row inmates who challenge their convictions and sentences.

**Not For Juveniles**

In 2005, for example, the Court ruled that the death penalty was unconstitutional for juvenile offenders—those who committed their crimes before the age of 18. The case before the Court,*Roper v. Simmons*, involved Christopher Simmons, who was 17 in 1993 when he and a friend robbed, bound, and gagged a woman in Missouri and pushed her into a river, where she drowned. The Court ruled that minors shouldn't be held to the same standards of accountability as adults because they often don't have a fully developed sense of right and wrong.

"From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed," Justice Anthony M. Kennedy wrote in the opinion for the Court.

In 1986, the Court ruled that the Eighth Amendment barred the execution of the mentally ill, and in January, the Court agreed to revisit this issue to set a standard for determining when a mental illness is so severe that execution would be unconstitutional.

Observers predict the Court will soon take up the issue of lethal injection, specifically whether the three chemicals used to cause death are humane.

The protocol in almost all states calls for a short-acting barbiturate to put the inmate to sleep, followed by a paralyzing drug to still any movement, and then a chemical similar to road salt to stop the heart.

In the proper doses and administered competently, the chemicals should produce a painless and relatively quick death. But if the barbiturate is ineffective, the person could theoretically remain conscious but unable to breathe or scream out as the last chemical enters the veins, causing excruciating pain.

The other issue grabbing headlines concerns the exonerations of death row inmates. Opponents of the death penalty say there have been more than 120 death-row exonerations in the last 20 years.

Prosecutors insist that the number of exonerations is much smaller, offering an estimate of 20 or 30. Many prosecutors are still outraged that Governor George Ryan of Illinois commuted the death sentences of 167 inmates in 2003, emptying that state's death row.

"Our capital system is haunted by the demon of error: error in determining guilt and error in determining who among the guilty deserves to die," Ryan said at the time.

Prosecutors, many of whom argue that capital punishment is fitting for heinous crimes, say that the emphasis on the possibility of innocent people on death row represents a change in tactics by opponents of the death penalty.

"They can't win the debate on the straight moral issue," says Ward A. Campbell, a deputy attorney general in California. "They've refocused the debate by talking about innocence, and there is no denying that they've had an impact."

**Life Without Parole?**

Some critics of the death penalty say that life without parole would achieve the same goals as the death penalty, without the same problems. Almost 1 in 10 prisoners in the U.S., including many of the most violent juvenile offenders, are currently serving life terms. Some may be paroled, but in many states parole boards seldom grant prisoners freedom.

Life without parole raises its own set of issues. Some countries have concluded that taking away all hope of release is itself a human-rights violation. And while death-row inmates often receive vigorous legal representation, people sentenced to life can disappear without a trace.

"If you're truly innocent," says Alex Kozinski, a federal Appeals Court Judge in California, "the best thing that could happen to you is to be tried for capital murder because you get government-paid lawyers, investigative teams, psychiatrists—the resources you get to mount a defense become vastly greater.

"My concern is that we've got 2 million people in prison losing parts of their lives, some of whom I'm sure are innocent."