

Death by State? The Country Discusses Abolition of Capital Punishment

By Rachel Robison-Greene - Feb 25, 2019



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Many Netflix viewers in recent weeks have familiarized themselves with the details of a set of notorious crimes committed by a criminal executed by the state of Florida in the 1980's. *The Ted Bundy Tapes* tells the story of the life and crimes of Theodore Robert Bundy, a depraved serial killer who raped, tortured, and killed women and engaged in necrophilic acts with their bodies. A case like Bundy's is just the kind of case that motivates supporters of the death penalty in their arguments for the claim that capital punishment is a moral necessity.

The series includes footage of the day Bundy was executed. Thousands of people celebrated outside of Florida State Prison. Street vendors sold electric chair lapel pins and t-shirts that read "Burn Bundy burn!"—a phrase that the crowds chanted at fever pitch while setting off fireworks nearby. Spectators held signs scrawled upon with phrases like "Toast Ted!" and "Crank up Old Sparky!" When asked about the spectacle, Bundy replied, "They're crazy! They think I'm crazy, listen to all of them!" The scene was not unlike the one that Charles Dickens described witnessing at the execution of François Courvoisier in 1840: "No sorrow, no salutary terror, no abhorrence, no seriousness; nothing but ribaldry, debauchery, drunkenness, and flaunting vice in fifty other shapes ... It was so loathsome, pitiful and vile a sight, that the law appeared to be as bad as he, or worse."

These cases motivate reflection on the role that emotion plays in this most severe of punishments. Emotions spike in response to acts of senseless violence and depravity. If this happens at the level of community spectators, might there also be intense emotion in place at other stages of the criminal proceedings? What level of emotion is appropriate? What *kind* of emotion is appropriate, and directed toward *whom*? It may be that moral judgments *always* involve a certain amount of sentiment. Indeed, some moral philosophers have argued that moral judgments *are nothing more than* expressions of sentiment. On the other hand, it is uncontroversial that emotions sometimes cloud our better judgment. What's more, not all emotions are created equal, and empathy may well count for much more than anger.

Public support for the death penalty has diminished significantly over the years, with rates of approval dropping from 80 percent in the 90's to 56 percent as reported by Gallup in 2018. In the past year, several states have considered repeal of the death penalty. In 2018, abolition was **considered** by Washington, Utah, New Hampshire, and Louisiana. In 2014, the governor of Washington, Jay Inslee, imposed a **moratorium** on the death penalty in the state, claiming

that its inconsistent and unequal application made retaining the form of punishment morally and legally indefensible. In October of 2018, the Washington Supreme Court **ruled** that the death penalty, as applied in the state of Washington is arbitrary and capricious and racially biased, and that as such it is inconsistent with Article I, section 14 of the Washington State Constitution. The court made use of a study produced by researchers at The University of Washington titled “**The Role of Race in Washington State Capital Sentencing 1981-2014**”. The study concluded that “black defendants were four and a half times more likely to be sentenced to death than similarly situated white defendants.” Earlier this month, the Washington State Senate reinforced the reasoning of the court when they passed a **measure** to repeal the death penalty. The bill now advances to the House. On February 14 of this year, the proposed repeal of the death penalty in Wyoming **failed** in the Senate.

The United States has been engaged in a conversation about issues related to state-sanctioned killing as punishment for as long as the nation has existed. Recently, arguments for repeal have focused on racial bias, cost, the proper relationship between the government and its citizens, and the possibility of executing innocent people. Since the reinstatement of the death penalty after a national moratorium in 1973, **165** death row inmates have been exonerated.

One of the central arguments in support of the death penalty has to do with retributive justice—a moral commitment to make sure that a criminal “gets what they deserve.” According to this argument, some crimes—like those that Bundy committed—are so heinous that the perpetrators deserve to lose their lives as punishment. On this view, the death penalty is a basic requirement of justice. One of the primary moral obligations of a state’s criminal justice system is to achieve justice for victims and their loved ones. If this is the case, the state is not merely *permitted* to execute perpetrators of the most heinous crimes, they are *morally obligated* to do so. Those that hold this view would likely argue, for example, that if the state of Florida failed to execute Ted Bundy, that failure would count as a serious miscarriage of justice and dereliction of duty.

This argument raises a series of questions, many of which focus on the idea that imposition of the death penalty is not merely permitted, but is actually required. This claim seems to rest on the idea that the obligation that the state owes to victims of crimes is unique and morally privileged. There are considerations that speak in favor of this idea. Many philosophers argue that the feature that makes persons distinct from non-persons is their capacity to make autonomous decisions. When people commit crimes, those crimes almost always involve violations of autonomy. In the most heinous cases—like cases of murder—the crimes involve the *annihilation* of the person and the autonomy that makes them one. If autonomy is highly valued by our society, as it should be, then perhaps it makes sense to place justice for victims and their families high on the list of moral priorities. Add to this the pain and suffering experienced by the loved ones that the victims left behind, and we are left with a powerful argument for giving special moral consideration to victims. These considerations are paired with a perceived (and possibly real) obligation arising from intuitions both common and strong—it is unfair when bad things happen to good people, and when those bad things are freely caused by a bad person, bad things should happen to that person. One might think that this is an issue of fairness.

Even if the state’s obligations to victims and their families is important, it is worth asking whether those obligations override the State’s other important obligations. Death penalty cases are exceptionally expensive. In earlier discussions of repealing the death penalty, Washington legislators considered the fact that capital cases cost the state at least **\$1 million dollars** more than non-capital cases. Presumably, these funds could be used for other crucial state expenses. Even if we concede that the death penalty achieves justice for the families of victims, does the state’s obligation to achieve that justice really supersede other state obligations? Given that the offender has already been apprehended and faces life in prison, would the money be better spent on schools, roads, or health care?

Another crucial question to resolve is exactly what should count as evidence against the permissibility of the death penalty. Washington made use of research indicating racial bias within the state. Should other states with similar or identical policies and practices take that same study as evidence that *their* policy is susceptible to racial bias? Or is *any* policy *potentially* subject to racial bias and does the moral permissibility of the policy turn on the demographics and attitudes of the particular area in question? Are all states morally obligated to be proactive in conducting research about their own communities?

Should evidence that a single person on death row is innocent count as evidence of the inevitably error-prone nature

of the system, and should that evidence suggest that we should abolish the death penalty? How many errors are we willing to let slide?

Lack of agreement on these initial framing questions may explain why the national conversations about this issue have been prolonged and frequently unproductive.

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