The Death Penalty: Principle and Practice
June 5, 2001

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Across the nation the once politically untouchable death penalty has come under increasing attack. How this has happened makes an interesting story. Why it has happened is an even more interesting story.

It all started innocuously enough. Last year Illinois Republican Governor, George Ryan, issued a moratorium on the death penalty in his state after evidence turned up exculpating thirteen prisoners. Other states began tentative steps to examine their own death penalty system. Then in dramatic fashion, we had a national debate over the public execution of Timothy McVeigh – now at least temporarily stayed thanks to FBI bungling of trial materials. Meanwhile, death rows have filled up around the country, while governors, legislators, and the courts have been reluctant to execute convicted murders. Within the past year, twelve states have new bills pending in state legislators to abolish capital punishment.

In Pennsylvania, the trends are starkly revealed by the official statistics. Tom Ridge has signed 214 death warrants during his first six years as governor, but only three executions have been carried out.

Historically, support for the death penalty correlates with high crime rates—and during the early 1990’s crime levels were at historic highs. Little wonder that political candidates tripped over each other in 1992 and 1994 with tough crime penalty proposals. Even liberals who once opposed the death penalty came to the realization that favoring it was a political necessity, which was the case with Bill Clinton, Al Gore, Joe Lieberman, and Hillary Clinton, just to mention a few.

No race epitomizes the tough law and order stance needed to win election in the 90’s than the 1994 Pennsylvania governor’s race. The Democratic nominee, Mark Singel, and the Republican candidate, Tom Ridge, outdid each other with “hang em high, hang em often” rhetoric. Ridge promised, if elected, to call the Pennsylvania legislature into special session. He won, and he did as promised. The legislature passed three dozen or so tough crime fighting bills of somewhat dubious value. The high mark of the campaign was the arrest of Reginald McFadden in New York who was charged with rape and murder. Several months earlier, McFadden had been released from the Pennsylvania prison system upon a positive recommendation of the state’s Pardons Board, headed by Mark Singel. Singel could not recover from the barrage of Ridge ads accusing him of being soft on crime.

By 1995, crime had become the most important issue in the state for the first time in modern history, and almost every major politician in the state was in favor of the death penalty. Privately many felt that they had to be.

But that was then and now is now – and it’s a very different now. True, the death penalty is still good politics in a state in which a sizable majority of people still support it – and fear of violent crime is still high despite falling crime rates. But public support for the death penalty is down sharply. Recent national polls tell us that only about two thirds of Americans support the death penalty for persons convicted of murder – down from 80% in 1994.
Here in Pennsylvania a recent private statewide survey, conducted for Pennsylvania Abolitionists United Against the Death Penalty, illustrates the evolving complexity of attitudes toward capital punishment.

· Most Pennsylvanians support the death penalty, but few believe that it serves as a deterrent to crime. Typically supporters say the death penalty is necessary to ensure that justice prevails, or it is justified by the nature of the crime.

· Pennsylvanians are clearly concerned about the fairness of the death penalty. Almost as many believe it is fairly applied (39%) as believe it is not fairly applied (34%).

· A large majority of Pennsylvanians want the death penalty suspended until questions of its fairness can be studied. Even a majority of those who favor the death penalty support suspension.

What has brought about these changes in public opinion? Clearly one difference is the priority given to crime. No longer is crime as relevant to citizens as it was in the mid-90s. Declining crime rates, especially violent crimes, have pushed concern well below education, the economy, and health care, as issues politicians must deal with. As crime diminished as a major issue, support for the death penalty has also declined.

But, there is much more here than cyclical fluctuations in public opinion. The citizens of Pennsylvania have made an important distinction. They support the death penalty in principle, but oppose it in practice. At first blush this seems contradictory – even bizarre, but in fact it makes a lot of sense. The death penalty does seem fair in principle to many people.

There are two main reasons for this: One is that the death penalty fits our prevailing views about penology: we hardly believe in rehabilitation today. To many, first-degree murderers, especially those whose acts are grotesque or egregious, are not salvageable human beings. A second reason the death penalty seems right is that it meshes well with our moral sense of justice and compassion for victims – murder is morally repugnant and murderers are beyond the pale; society has no more fundamental right or responsibility than to protect itself.

But while the death penalty seems fair in principle, in practice it rarely is fair. In practice, evidence is accumulating that it doesn’t work as we expect it to. First, there are the startling statistics from academic studies documenting the high proportion of death penalty cases in which trial judges commit reversible error. Possibly less than half of those convicted and sentenced to death receive a fair trial.

Then there is the problem of racial and ethnic fairness. The evidence is overwhelming that the death penalty is applied disproportionately to minorities, to those with diminished mental capacities, and to the poor. Few middle class whites are ever executed in America. In practice, we usually end up executing the poor, the deranged, or the suicidal.

Finally, and most troubling of all, there is disturbing new evidence from DNA that some people convicted of murder are factually innocent. The implication is chilling: we may have executed some innocent people – and we may execute more if we don’t find out what wrong with the present system.
So, supporting the death penalty in principle, but opposing it in practice does make sense. It may be a good idea, but it's not working. It’s not necessary to believe the death penalty is morally wrong to be deeply troubled by it. Even if you believe the death penalty is morally permissible, many are disturbed by the way it is carried out.

Pennsylvanians seem far ahead of their elected officials. Public support for a death penalty moratorium runs high – about 75% support it. But so far the Pennsylvania legislature has shown no real interest in passing legislation. This may be that rare case in Pennsylvania politics of too much principle getting in the way of good public policy.

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