If the death penalty is outlawed

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On Oct. 25, 2006, University of Florida students Allison Kirkpatrick, 22, left, and Ashley Richardson, 23, center, gather with a crowd of people the day of Danny Rolling's execution at the Florida State Prison. The UF students were trying to get the signs closer to the road for families to see. Rolling was executed for the murders of five young people in what has become known as the Gainesville student murders.
enlarge

The Supreme Court will hear arguments next term in a momentous lethal injection case.

While it's widely expected that executions will resume in some form following that case, the moment gives Americans a chance to contemplate what would change if they stopped for good.

Start with some modest consequences.

Florida citizens would no longer have the chance to earn $150 by serving as executioner.

Texas, by far the death-penalty leader, would save the $86.06 cost of drugs used in each lethal injection.

And Arizona's Corrections Department would have no further updates on its special Web site that features photographs, profiles and last-meal requests of its executed inmates. (The most recent menu: Robert Comer's order of fried okra, buns and banana bread before his death in May).

There would be weightier consequences as well.

States with many death-penalty cases would save millions of dollars now spent on legal costs in long-running appeals.

Additional savings would result in some states which now spend far more per inmate for Death Row facilities than other maximum-security inmates.

Abroad, notably in Europe and Canada, America's image would improve in countries that abolished capital punishment decades ago and now wonder why America remains one of only a handful of prosperous democracies that continue with executions.

Among the American public, reaction would be deeply divided.

Death penalty supporters would decry the loss of what they consider a valuable crime deterrent as well as the ultimate form of justice for victims and their families.

Foes of execution would welcome the end of what they have deemed a barbaric national tradition.

"Texas would be a better place," said David Atwood, founder of the Texas Coalition to Abolish the Death Penalty. "I know people who've traveled abroad, and when they say where they're from, the response is, 'Oh, that's the state that executes all those people.' "

By contrast, Rusty Hubbarth, vice president of the pro-death penalty Texas group Justice for All, sees the consequences of abolition as all bad.

His prediction: "More murders."

Texas was the venue for the nation's most recent execution.

Murderer Michael Richard died by lethal injection there on Sept. 25.

Since then, executions in Texas and other states have been put on hold pending a Supreme Court decision - expected no sooner than June - on whether the standard lethal injection procedure can cause pain severe enough to violate the constitutional ban on cruel and unusual punishment.

Advocates on both sides of the debate say it's likely the high court will offer some pathway for states to resume executions.

But the lull coincides with other developments reflecting an unprecedented level of doubt about capital punishment.

Even before the Supreme Court intervention, several states had suspended executions and the American Bar Association urged a nationwide freeze.

New Jersey's Legislature is voting this week on whether to abolish capital punishment; by doing so it would join 12 other states with no death penalty law.

This isn't the first hiatus for executions.

The Supreme Court declared capital punishment unconstitutional in 1972, but four years later cleared the way for executions to resume.

There have been 1,099 executions nationwide since then, with a peak of 98 in 1999.

The numbers have ebbed in recent years - there have been 42 this year - while more than 3,300 inmates populate Death Row units across the country.

For those inmates, the psychological impact of abolition presumably would be greater in Texas - where executions have been frequent - than in a state such as Pennsylvania, which has executed only three people since 1978.

For other Americans, the impact would be varied - and argued over.

Economics

The biggest savings, by far, would come from reduced legal costs.

Because of drawn-out appeals, a typical death penalty case can cost from $1 million to $3 million, well above the typical cost of a lengthy life imprisonment.

On average, it costs roughly $25,000 to house an inmate for a year, though maximum-security confinement can be more expensive.

A government-appointed commission in New Jersey said abolition of the death penalty would save the public defender's office $1.46 million per year in legal costs and enable Death Row inmates to be confined elsewhere at roughly half the current cost.

The Ohio public defender's office has 20 attorneys in its death penalty division, with a budget for 2008-09 totaling $4.6 million.

Studies in other states have suggested potential savings of many millions of dollars annually if the death penalty were replaced by life sentences.

A Duke University study, for example, concluded that the death penalty costs North Carolina $2.16 million more per execution than a non-death penalty murder case with a sentence of life imprisonment.

California is a case unto itself, with 666 inmates on Death Row - far more than any other state.

The average wait for execution is 17 years, and since 1978 there have been more suicides on Death Row (14) than executions (13).

If executions ceased, the state could abandon proposals to build a new Death Row for more than $300 million to replace antiquated facilities at San Quentin, which opened in 1852.

Texas also has a big Death Row - 371 inmates. Because the state has conducted two-dozen or three-dozen executions annually in recent years, it arguably would have to

spend more on long-term confinement if the death penalty were abolished - but those extra costs would likely be outweighed by less spending on legal fees.

Death penalty opponents say the savings nationwide could shift to programs that would curb violent crime - more police on streets, more drug rehabilitation and mental health services to address problems that affect many criminals, better child-protection services to curtail the abuse that many killers experienced in their youth.

"Most Americans are under illusion that the death penalty is less costly than keeping someone in prison for life," said Sue Gunawardena-Vaughn, director of Amnesty International's campaign against the death penalty. "But it's not a good use of resources. The money saved could be used for better criminal justice."

Kent Scheidegger, legal director of the pro-death penalty Criminal Justice Legal Foundation, acknowledged that capital punishment cases generally do cost more than other cases because of the lengthy legal reviews.

It's worth it for the sake of justice, he said.

"Whatever we need to spend on a death penalty case, there's no moral justification for spending less," he said.

Emotion

One of the most bitterly disputed aspects of the death penalty is whether it deters violent crime.

Opponents insist it does not, noting that most states without the death penalty - as well as many U.S. allies abroad - have lower crime rates than the states which conduct the most executions.

Opponents also cite the recent exonerations of scores of Death Row inmates, based on DNA tests, and say abolition is the only sure way to avoid executing innocent people.

Death penalty supporters have their own favored statistics, including several recent studies by economists suggesting that each execution prevents multiple murders.

"If those findings are right, capital punishment has a strong claim to being not merely morally permissible, but morally obligatory - above all from the standpoint of those who wish to protect life," wrote law professors Cass Sunstein of the University of Chicago and Adrian Vermeule of Harvard in the Stanford Law Review last year.

Even harder to measure than deterrence is the impact of executions on relatives and close friends of murder victims.

Some relatives campaign against the death penalty; others, like John Rizzotti of Los Angeles, support capital punishment and believe abolition would create an unjust void.

Rizzotti, whose 78-year-old great-grandmother, Leah Schendel, was sexually assaulted and fatally beaten in 1980, said he and other family members found some relief in the execution of her killer, Manuel Babbitt, in 1999.

The long legal process between conviction and execution was frustrating, Rizzotti said, but he believes families of other murder victims nonetheless have a right to see such killers put to death.

"What he did and how he did it was so unbelievably gruesome that there was no reason for him to have a life," said Rizzotti, who witnessed Babbitt's lethal injection. "It was very cathartic, very calm and peaceful for us. . . . After all that time, he finally got what he deserved."

However, skeptics of capital punishment note that death sentences are issued in less than 1 percent of all homicides, and suggest that victims' relatives in places without the death penalty come to terms with its absence.

"The very availability of the death penalty makes it something that victims have to want," said Steven Shatz, who teaches at the University of San Francisco Law School. "If you love the person who died, and the defendant is treated less harshly than another defendant, it means society values your loved one less. But if it weren't available, you wouldn't miss it."

Image

Abolition of the death penalty would improve America's image in the majority of nations that already have forsaken it.

In some cases, countries without capital punishment have balked at extraditing people to America who might face execution.

The issue has provoked passionate protests in Europe.

The Council of Europe, whose 47 member nations have either abolished or declared moratoriums on the death penalty, is on record as supporting worldwide abolition and has leveled stinging criticism at the United States.

"Europeans are increasingly asking whether they share core values with the United States," said Reed Brody of Human Rights Watch.

The Council of Europe's secretary general, Terry Davis, has taken note of the Supreme Court's decision to review lethal injection and expressed hope that the procedure would be banned.

"It should help the United States of America to catch up with the majority of civilized and democratic countries in the world," he said.

According to Amnesty International, the United States was the only Western Hemisphere nation to conduct executions in 2006, and its 53 executions were exceeded only by five countries lacking strong credentials as democracies - China, Iran, Pakistan, Iraq and Sudan.

"We definitely have image problems with this issue," said Deborah Denno, a Fordham University law professor. "People here think it makes us look tough. I think it makes us look cowardly."