

## **Witherspoon v. Illinois**

### **Introduction**

Typically, Americans have dealt with their complex feelings about capital punishment by one of those intricate compromises with which our culture manages conflict too powerful to resolve. Though the morality and effectiveness of execution was the subject of long and often bitter controversy, before the early 1960's no one questioned the legality of the premeditated killing of human beings by government. More than ever before in American history, state constitutions are being used to decide cases. Before the 1970s, scant attention was paid to documents often considered obscure, rarely examined, and seldom studied or relied upon in the law courts. As for the records, it cannot be denied that the roles of the judges are the hardest of the judicial system. The death penalty is a highly controversial and much debated issue, especially in the industrialized and democratized world. This fact, notwithstanding, the reader who expects to find arguments either for or against the death penalty within the frames of the constitutional rights of every person, are still questioning of proper determination has been made. Ever since humanity developed the capacity to think, the relation between the individual and the society has occupied the minds of philosophers. In every society where rules are formulated, the rights of the individual must be related to the rights of the society. Logically, these rights are in a state of opposition; the more rights the individual has, the smaller the sphere of rights confined to the society and vice versa. Since the list of authors that throughout the centuries have pondered upon the relation between the individual and the society is impressive. It is of course an understatement to say that the literature that covers the field is abundant. With all the evidence at hand it is fair to ask what we have learnt about this relation.

## **Body**

That it is an issue which is widely debated in many parts of the world. Although the literature on capital punishment is abundant, the curious reader is struck by the fact that the bulk of it is colored by arguments either for or against the use of the death penalty. A general trend is that opponents of the death penalty use philosophical, moral or religious arguments when attacking "governments which kill their citizens", whereas proponents often legitimate the use of capital punishment by either referring to the expected coercive effect of the death penalty, or to the victim's "right to revenge". It is not venturesome to state that one rarely runs across a work where this issue is treated in a neutral analytical manner. Perhaps this is only natural since we are, literally, dealing with a matter of life and death. However, within the framework of the present study, there will be a diversion in following this tradition. On the contrary, it shall avoid all kinds of philosophical discussions of whether or not an entity, in this case the state, has the right to take the life of a human being. In many countries, the constitution provides for the use of capital punishment both under normal and special circumstances. It is therefore relevant to distinguish between cases where death sentences are carried out and where death sentences are not enforced. The distinction can, in principle, be made separately for countries that make use of capital punishment under special circumstances only and countries that make use of it under normal circumstances. A few remarks should be made about the category that consists of states that allow capital punishment under special circumstances only. In theory, it is possible to make a distinction between states that carry out death sentences and states that do not carry out death sentences in practice.

However, this distinction can only be made theoretically, since there is not enough empirical evidence on how states act under special circumstances. In order to be able to make this distinction, one needs to have evidence for how each state treats the question of the death penalty "under special circumstances", such as in times of war. states can forbid the use of the death penalty in all its forms; states can allow the use of the death penalty under special circumstances; states can allow the use of the death penalty, but in practice abstain from implementing death penalties; and states can make active use of the death penalty. States that do not allow the use of the death penalty under any circumstances are given the lowest value, whereas states that allow and make use of the death penalty are given the highest value. The two intermediate categories are more difficult to rank. Should we consider a state that allows the death penalty but where death sentences are never carried out as more or less willing to kill its citizens than a state that allows the use of the death penalty under special circumstances only? Hence, it cannot be denied that in the above case, the roles of the judges are hard since they need to prove that they are not impartial when it comes to deciding whether or not they will impose the death penalty (Giliker, 2010).

## **Conclusion**

But then again, it can be seen that the problem with the situation is that all those who lost their cases think that the judges are impartial when in fact it is but right to make sure the judges are all able and capable to render the death penalty or else a true impartiality in the decision will be made. In this regard, there should be a cautious application of the laws.

## **Reference**

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