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## UNITED STATES OF AMERICA

### Still a lethal lottery

#### The death penalty 25 years after *Gregg v Georgia*

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According to the National Center for Health Statistics, 76 people were killed by lightning in the United States in 1995. In the following five years, in contrast, an annual average of 74 people were put to death in the country's execution chambers.

When the US Supreme Court halted executions in 1972 because of the arbitrary way in which death sentences were being handed out, one of the Justices famously compared this arbitrariness to the "freakishness" of being struck by lightning. Four years later, the barometer of opinion had swung away from abolition. In *Gregg v Georgia*, the Court ruled that newly-enacted capital laws would now cure the system of its capricious tendencies, and gave the green light for executions to resume. On 2 July 2001, it will be 25 years since that decision.

Since 2 July 1976, some 720 men and women have been shot, hanged, gassed, electrocuted and lethally injected in 31 states – 600 since 1990. In recent weeks, the US Government itself has renewed its own relationship with the executioner, with the first judicial killing of federal prisoners since 1963. More than 3,700 inmates await execution around the country.

Advocates of this policy may claim that a little over 700 executions from some 500,000 murders in the same period is a sign, not of a lightning-like lottery, but of a system successfully winnowing out the "worst of the worst". Amnesty International profoundly disagrees. The capital justice system is riddled with error - as nearly 100 wrongfully convicted individuals released from death row since 1973 can testify - as well as arbitrariness and discrimination. For example, studies have consistently shown race to be a factor in capital sentencing, particularly in relation to race of the murder victim. More than 80 per cent of US executions since 1977 were for crimes involving white victims, even though blacks and whites are the victims of murder in about equal numbers.

Take the case of Jerome Mallett. He is scheduled to be put to death in Missouri on 11 July, a quarter of a century and nine days after *Gregg v Georgia* supposedly ushered in an era of evenhanded capital justice. In what one of the many appellate judges to dissent in the case has described as an "impulsive" crime, Jerome Mallett shot and killed a police officer who had pulled him over for speeding. The defence requested a change of trial venue because of prejudicial pretrial publicity, at the same time asking that the county chosen be one in which at least some African Americans lived, so that there would be a possibility that blacks would serve on the jury – Jerome Mallett is black, state trooper James Froemsdorf was white. All the counties proposed by the defence and prosecution had some African Americans among their population. The judge ignored the suggestions and selected a county without a single black resident. Earlier he had presented a plaque to the State Highway Patrol bearing a message he had composed in memory of the dead officer. The judge refused withdraw from the trial; the all-white jury sentenced Jerome Mallett to death.

David Tate, in contrast, avoided the death penalty for killing a Missouri trooper about a month after James Froemsdorf was shot. A white supremacist involved in an incipient armed anti-government rebellion, David Tate had been stopped in a van transporting automatic weapons and hand grenades. He shot the trooper multiple times and seriously wounded another officer. He is serving a life sentence.

On 2 July 1976, *Gregg v Georgia* took the position that the death penalty did not offend “the evolving standards of decency which mark the progress of a maturing society”. Just short of 25 years later, on 14 June 2001, Jay Scott was killed in the Ohio death chamber. In the previous two months he had twice come within minutes of execution. On one occasion, catheters had already been inserted in his arms in preparation for the injection. Almost exactly a year before that, on 21 June 2000, Thomas Provenzano was put to death in Florida. Twenty-four hours earlier, he had been strapped down with the lethal injection needles in his arms when the execution was stopped. Both Scott and Provenzano suffered from serious mental illness, including schizophrenia. Their treatment by the state surely offends commonly held “standards of decency”.

*Gregg v Georgia* also spoke of the would-be goals of the death penalty: “Retribution and the possibility of deterrence of capital crimes by prospective offenders are not impermissible considerations for a legislature to weigh in determining whether the death penalty should be imposed”. In recent years, with the deterrence argument largely discredited, politicians have taken to suggesting that an execution can bring “closure” to the relatives of the murder victim. Given that only a tiny percentage of the country’s murders result in an execution, does this mean that this disturbing theory of “restorative justice” is being denied to the vast majority of murder victims’ families? And what of the loved ones of the condemned prisoner? How is their state-created suffering to be justified? How will the State of Texas, for example, provide “closure” to the family of Napoleon Beazley if it kills him, as it intends to do on 15 August?

Napoleon Beazley, a black teenager convicted by 12 white jurors – one of whom has since been found to harbour severe prejudice against African Americans – was 17 at the time of the murder of John Luttig, who was white. The jury decided that the youth would always be a danger to society and should be executed. As his mother said to Amnesty International recently: “People change. You know, to take somebody’s life at 17 - you can’t hold a 17-year-old by the same standards as you do me or you... I’ve made poor decisions, everybody does. But experience - you know, life - life is a teacher, and I know even today Napoleon is much better now than he was then.” Almost every country outside the USA agrees with this sentiment, and recognizes that a child’s immaturity and potential for rehabilitation must exempt them from capital punishment.

Since *Gregg v Georgia*, more than 60 countries have abolished the death penalty *against anyone* because of its cruelty, fallibility, and the fact that it diverts resources from genuine efforts to combat crime and assist its victims. With 109 countries now abolitionist in law or practice, every execution in the USA increases its isolation on this fundamental human rights issue, and drains credibility from its attempts to portray itself as global human rights champion.

Although precautions can be taken against the possibility of being struck by lightning, there can be no guarantees of absolute protection from its threat to life. Capital punishment, on the other hand, is not a natural phenomenon. It is a human choice. The harm that the death penalty inflicts upon individuals and society is easy to avoid. Abolish it.

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