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Abstract

This paper will examine the evolution of the death penalty throughout history and discuss the legal and moral implications of this thought-provoking topic. The death penalty can be traced back to the beginning of written history and still exists today. While much can be written on this topic, this paper will generally trace the history of the death penalty and specifically address discrepancies that exist in our world today regarding capital punishment and suggested improvements to be implemented through legislation in the United States. In addition, any discussion of the death penalty must include the ethical and moral issues presented by the termination of human life. This subject has historically been a widely debated political topic in the United States with strong opinions from both sides. On the one hand, there have been and continue to be efforts to banish the death penalty. On the other, there are many victim rights and other groups strongly advocating for its continuation. Another critical consideration regarding this issue involves inmates' life on "death row" and the impact on their families. Ultimately, a primary goal of this paper is to attempt to find a solution to a pressing issue in our world today while carefully weighing both sides, and reach a conclusion that may be supported by a majority of Americans.

Introduction

Capital Punishment is defined as: “the legally authorized killing of someone as a punishment for a crime.” As stated, the death penalty has been in existence since the beginning of time. In the ancient era, it was referred to as executions which were frequently used to set a public example to deter other citizens from committing certain acts. This practice proved to be an effective way of punishing those who committed unthinkable crimes. The first recorded time the death penalty was used in America was in Jamestown, Virginia in 1608. Obviously, given this early usage, the practice of the death penalty was derived from Europe and other countries where it was popular and seen as effective. In Jamestown, public executions were often done. An offense such as striking ones parents was punishable by death in those early years of America. One of the biggest fears of humans and members of society is to live a life of crime and end up in prison. For the most part, it is drilled into the minds of citizens that crime is abhorrent and those who commit crimes will pay the price and potentially wind up in jail. However, there remains a small minority of humans who, for some reason, do not fear those consequences and repeatedly commit crimes throughout their lives. Even those who are destined for a life of crime, however, typically fear the consequences of the death penalty. From the early implementation of Capital Punishment, citizens generally understand that committing an evil crime (such as murder) can result in death of oneself, otherwise known as the *death penalty*. When one hears the two words death penalty, it should instill fear. At its core, the death penalty is designed to frighten humans and deter others from committing the unthinkable crimes that the evil commit. Throughout the years however, it seems that the death penalty may not be effective enough in deterring crime. There are a number of factors that seem to have contributed to this reality.

It is well settled that: “Congress, as well as any state legislature, may prescribe the death penalty, also known as capital punishment, for capital offenses. The Supreme Court has ruled

that the death penalty does not violate the Eighth Amendment...” Clearly, the death penalty is widely regarded as the most horrific punishment that our legislature has approved. For many years, the death penalty stood undisturbed by courts. In 1972, however, in the case Furman v Georgia, the death penalty was voided for the first time since it was brought into existence in the eighteenth century. Following this decision, a domino effect began as more courts ruled that the death penalty violated the protections of the Eighth Amendment to the Constitution. Today, in many circles, the death penalty is seen as an afterthought and not viewed as a legitimate punishment because of its controversy. The current state of capital punishment has deviated from its original purpose to defend the safety and welfare of its citizens to a political debate topic that is permitted in 28 of 50 states, usually along political lines. Accordingly, its core purposes clearly need to be reevaluated to be for the benefit of the entire country.

Death Penalty Statistics

Although its prevalence has diminished a great deal over the past few decades, the death penalty still is being put to use today. The amount of death penalty sentences since 1999 have significantly dropped. In 1999, the total number of people sentenced to death was two hundred and seventy-nine. In 2020, the number was eighteen. And in that year, more than one-half of the executions were in the State of Texas alone. The south region has the highest murder rate of any region in the country, and because of this they have the highest number of prisoners on death row, and accordingly, the highest number of executions. As can be gleaned from this evidence, the state of Texas is the only state to invoke the death penalty on a consistent basis. In fact, without Texas, the death row numbers would be so low that it may be seen as insignificant due to

the rarity of death sentences throughout the country. A quick review of the financial implications is also telling. In Texas, the cost of a death penalty case is estimated at approximately \$2.3 million. This number is more than triple the cost of housing a prisoner in a cell for forty years without parole. In Florida, it costs roughly \$51 million to properly enforce the death penalty. Clearly, these figures illustrate that the death penalty is not economically advantageous on any level.

Efforts to Banish

As previously mentioned, twenty-two states have outlawed the death penalty. What was once a unified law that was followed by all states has turned into an arbitrary (and political) tool that is rarely used in the current day. Aside from its moral and ethical issues, the role of religion plays a significant factor in the support for scrapping capital punishment. Religion itself is quite a controversial topic and has been a constant place of disagreement among Americans. Samuel J. Levine, the author of the article: “Capital Punishment and Religious Arguments: An Intermediate Approach” explains the dynamic between the death penalty and religion. These topics have very strong believers on both sides of the issue. Levine’s take on these issues is “religious arguments should be employed to interpret and explain American legal thought when the need or proper situation arises.” (Levine 2000). It is evident that taking a religious stance against the death penalty would all but outlaw that form of punishment. This statement explains powerful alternatives that preach the fragility of life and that an individual’s life should not be left up to the court of law. When Levine says that religious arguments should be used within the law, he is in support of accommodating religious beliefs into the legislative and legal systems.

Currently, more than half of the states do not recognize Capital Punishment as a legitimate solution to any crime. Given that two-thirds of the country agree on this subject, the need for reform is quite evident. The need for reform of the death penalty has been in existence for quite some time. Many writings questioning Capital Punishment have been published dating back decades. In an article, David Brion Davis explains that efforts to reform the death penalty were at play long before anyone ever realized. He writes, “Interest in the history of American feminism, temperance, abolitionism, and utopianism has obscured the fact that for a generation before the Civil War the movement to abolish the death penalty was an important reform” (Davis 1957). This quote reveals the social underpinnings against the death penalty even in its earliest days. Davis goes on by saying, “Although seldom mentioned in the standard social and intellectual histories of the period, the anti-gallows movement won the support of prominent ministers, reformers, and men of letters for over thirty years was a subject of heated controversy in the legislature of many northern states.” This article confirms that even in Civil War era the death penalty was disfavored by many. As a nation, we have never been in full support of the death penalty at any time. The reason that this issue has not been addressed as expeditiously as other matters may be because our country was confronting more pressing matters over the last one hundred and fifty years such as wars, terrorists attacks, the Great Depression, and even the most recent pandemic that took over our lives. Because of all this, the death penalty has seen to take back seat to other societal issues. Another reason may be that following the Furman v. Georgia decision, many states on their own outlawed Capital Punishment. Thus, the issue has become one of priorities among states with the more progressive states taking affirmative steps to outlaw the death penalty. Even in states where the death penalty still exists, some individuals believe the death penalty and death row are quite counterintuitive. This is because those who are

placed on death row typically remain there for more than a decade and sometimes even longer. The appeals process is extraordinarily lengthy given all the Constitutional protections that are required in order to actually execute someone. In some cases, prisoners would prefer to be on death row than in a typical prison because the conditions of the institutions tend to be more favorable. Given all these reasons, there is strong argument for Capital Punishment to no longer exist in our society.

Pros of Capital Punishment

Although this is not currently a very popular stance, there remains an argument to keep Capital Punishment around as it has been for centuries. In the article cited above by David Brion Davis, he mentions a one why Capital Punishment has stayed around for as long as it has. He states, “Infliction of the death penalty for certain secular crimes, such as murder and robbery, was associated historically with the rise of the modern state, whose sovereign was both authorized and obligated to maintain peace... executions were frequently justified by the rational arguments that they prevented victims from committing further crimes and served as a deterrent to potential criminals” (Davis 1957). Although provocative, this statement does not make a whole lot of sense. While it is logical that the death penalty would criminals from committing future crimes, it does not follow that it would serve as a deterrent to other criminals. Looking at it from a psychological standpoint, many individuals who are good people would never consider committing crimes, and therefore, would not be afraid of the death penalty in any way. For the remaining small percentage of humans who commit crimes, the death penalty would not seem to be on their minds, and even if it was, would not seem to prevent them from committing crime. The way criminals’ minds are wired, there are very few things that seem to stop them from committing crimes and the death penalty does not seem to be one of them. In other words,

vicious crimes are still committed and there is not a big enough fear of Capital Punishment for those who commit them.

A recent study found on the official Death Penalty website explains that there are fundamental flaws in the penalty as a function to act as a deterrent. It says, "According to a survey of the former and present presidents of the country's top academic criminological societies, 88% of these experts rejected the notion that the death penalty acts as a deterrent to murder." This quote confirms the theory that was stated above and that those who look to commit crimes, do not have Capital Punishment on their mind. In the article, *Public support for the death penalty: Retribution as just deserts or retribution as revenge?* James O. Finckenauer explains the perspective that sees Capital Punishment as an effective way to deal with the worst type of criminals. "According to the Court, the public's desire for retribution is an appropriate basis for determining that the death penalty is an acceptable criminal sanction." The degree of public support for the death penalty varies on each individual view of the proper punishment for the worst types of crimes. The article explains some of motives for the death penalty with one of them being revenge. For a crime such as murder, some people view the only proper punishment to be the crime they committed, death. In the article, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, John Donahue raises the important topic saying, "Does the death penalty save lives? A surge of recent interest in this question has yielded a series of papers purporting to show robust and precise estimates of a substantial deterrent effect of capital punishment." Although it is difficult to measure the factors that impact the death penalty as a deterrent, it should be known that it does in fact instill fear in a significant number of citizens. The feelings are without a doubt different based on the victims and observers. It should be known that there are definite

reasons that the death penalty has that it can stay in existence. As a unified country it is imperative that we share the same interests in serious matters like the Death Penalty.

Stigma of the Death Penalty

The way the death penalty is viewed of course varies based on a variety of factors, including religion, political affiliation, and morals. As time has progressed, many have become vocal critics against it. The life for prisoners on death row is not as terrible as one may believe. Usually when a criminal is sent to death row, they will be there for a significant amount of time. The appeals process takes extremely long so the term “death sentence” is not as instant as one may be led to believe. In fact, in some cases, the appeals process will work for those who were once placed on death row. In the state of Indiana, “the disciplinary records of 39 Indiana death row inmates who were transferred to the general prison population following modification of their sentence from death to capital life between 1972 and 1999 were retrospectively reviewed. Overall prevalence for the entire period of incarceration indicated that 14 inmates (35.9%) were involved in 24 violent acts. Twenty-six percent were involved in these violent acts while on death row and 20.5% in the general prison population. Fewer than one-third of these violent acts resulted in serious injury” (Reidy 2001). This article shows that the main attempt to keep prisoners on death row and proceed with executions are not always successful and sometimes the criminals receive a harsher penalty than they deserved. The article goes further in saying, “History of violence in the community did not differentiate inmates who exhibited serious institutional violence. The majority of these former death row inmates were not a significant management problem in the general prison population.” This quote shows the misconception with the death penalty and that those who are placed on death row might not even be the most harmful prisoners in jails. As indicated previously, the number of executions per year have

steadily declined. In fact, the number of executions so far in 2021 is three. The peak since 1972 in the number of executions was ninety-seven in 1997. Moreover, life on death row is something that also needs to be looked into. Generally, a prisoner will spend twenty-three hours per day in solitary confinement with maximum security. Many inmates suffer from mental illness as well as physical disabilities because they use their bodies so infrequently. Some inmates actually prefer being on death row than general prisons because of the isolation and limited interaction with other prisoners. In some instances, this makes inmates feel safer because they have minimal risk of being hurt by gangs and groups within jails. Some critics see this as wrong because the prisons are keeping the worst criminals the safest. Nevertheless, this practice of keeping the most dangerous criminals in the most supervised areas appears sound to guard against the chance of an escape.

Is the Death Penalty Ethical?

One of the most significant issues surrounding Capital Punishment is the ethics of taking a human life. The issue of whether the taking of human life should be in the hands of lawmakers, judges and the government is one that has plagued scholars, the clergy and thought leaders for a very long time. Some view this as very unethical and contrary to the government's fundamental values to protect life and liberty. In the article *Capital Punishment and Anatomy: History and Ethics of an Ongoing Association* the main focus is on how the death penalty and anatomical science has been affected by it. The article includes an interesting quote, "Socialist regime is an example for the insidious slide from an ethical use of human bodies in dissection to an unethical one" (Hildebrandt 2007). This quote is interesting because it highlights the shift in thinking with the death penalty. Over time we have come to realize the death penalty is not the solution that we once viewed it as. As previously mentioned, there are very strong opinions on

this issue from those with certain religious beliefs. Taking one's life under any circumstance is strongly forbidden in Christianity, which regards human life as a gift that can only be taken by God. In a 2010 poll conducted by *deathpenaltyinfo*, a website dedicated to providing the media and public with information regarding the death penalty, 61% of people surveyed would choose any other punishment over the death penalty. The current state of capital punishment has deviated from its original purpose to defend the safety and welfare of its citizens to a political debate topic that is only permitted in 28 out of the 50 states. Based on the statistics referenced in this paper, it would appear that the tolerance for the death penalty in this country is fading.

Conclusion

Through this research, it is suggested that the death penalty needs to be reevaluated to permit a more uniform approach in the country. There appear to be two possible solutions. The first would be to rewrite legislations and develop guidelines and protections that legalize the death penalty in all fifty states. The second option would be to completely outlaw the death penalty. Even though individual states have the right to implement their own criminal laws, the issue of Capital Punishment is derived from the Eighth Amendment to the Constitution. And because of that, in my opinion there should be a single consensus on this issue.

After thorough research and weighing both sides, my conclusion is that we as a country should move away from the death penalty as many states have already done. Based on the information gathered, it is concluded that the death penalty is not a proper way to punish criminals, even considering that these criminals have committed the most vicious crimes known to man. There are several reasons for this concluding. First, in my opinion, no individual should be able to use the law and legislation to decide whether another person will die. This is a moral

and religious issue, but also a legal one. Second, it is clear that the death penalty is no longer capable of achieving its intended purpose. It serves as neither appropriate punishment nor a deterrent. We as a country should escape from old, barbaric traditions of public executions and shift to a modern and rational way of carrying out punishment. For criminals who have committed unthinkable and horrific crimes, the more suitable punishment is life without parole. The trending and more popular opinion is that criminals should pay for their wrongdoings by remaining in prison for life. A sentence of life imprisonment without parole is a more appropriate punishment for the criminal and in some cases a more meaningful sentence for the sake of the victims. Third, the economics of the death penalty do not make sense. As stated, the costs of imposing the death penalty far exceed the cost of life imprisonment. Indeed, society should not be further burdened by having to provide all the Constitutional protections to someone on death row. Over the years, we have many more effective ways to deal with crime and punishments in our legal system. We need solutions that align with our moral and ethical values in the modern world. To summarize, the death penalty is extremely outdated for our world today and is no longer an acceptable way to deal with capital crimes.

Works Cited

- Appleton, Catherine, and Bent Grøver. "The pros and cons of life without parole." *The British Journal of Criminology* 47.4 (2007): 597-615.
- Davis, David Brion. "The movement to abolish capital punishment in America, 1787-1861." *The American Historical Review* 63.1 (1957): 23-46.
- Greenberg, Jack. "Capital punishment as a system." *Yale LJ* 91 (1981): 908.
- Levine, Samuel J. "Capital Punishment and Religious Arguments: An Intermediate Approach." *Wm. & Mary Bill Rts. J.* 9 (2000): 179.
- Rankin, Joseph H. "Changing attitudes toward capital punishment." *Social Forces* 58.1 (1979): 194-211.
- Reidy, Thomas J., Mark D. Cunningham, and Jon R. Sorensen. "From death to life: Prison behavior of former death row inmates in Indiana." *Criminal Justice and Behavior* 28.1 (2001): 62-82.
- Sellin, Thorsten. *The penalty of death*. Beverly Hills, California: Sage Publications, 1980.
- Van Dellen, Richard G. "Ethics of capital punishment." *Mayo Clinic Proceedings*. Vol. 83. No. 1. Elsevier, 2008.