

Words Uncaged
Jeffery Hunter
Dr. Bidhan Roy
21 April 2019

The Death Penalty – Is it Necessary?

During my 15 years of serving in the U.S. Army, I remember being a proponent of the death penalty. I felt that it was our country's duty to dispense exact retribution for the most heinous of crimes. While I did not see myself as a "banner waving" advocate of the death penalty, the lives of the men and women who were behind bars waiting for their day, did not seem important to me. They did what they did, and now, they are getting what they deserved. I felt this way until May 8th, 1991, when I was arrested for the murder of my girlfriend's husband. There was a strong chance that at least one of my codefendants would be facing the death penalty, and now that the issue was at my doorstep, I realized how wrong my thinking was pertaining to the death penalty. After seeing the faces of some of the men facing the death penalty, and from my own experience of 28 years of incarceration, it is my intent to describe why my views on the death penalty have changed.

What is the purpose of the death penalty? If we are to suppose that the death penalty is a form of retribution and deterrent for other future criminals, I now feel that the correlation between the death penalty and deterrence has not been fulfilled because of the lack of executions that was actually committed in this State. Cesare Beccaria calls this the celerity (swiftness) distinction.

During my reading of *Crime, Justice, and Society* by Ronald Berger, I was intrigued by Beccaria who contributed to Berger's book. Beccaria hypothesizes that if the punishment is not meted swiftly, then the punishment becomes less just and useful (Berger, page 83-84). Furthermore, when the punishment is not administered swiftly, it does not make as strong of an impression on others as a deterrent from future crimes. So, if the death penalty is supposed to be a form of deterrence, then why do we not see more expedited executions? Furthermore, if the death penalty's purpose is a form of deterrence, then why is the crime rate, specifically murder, continuing to drop despite the absence of the so-called deterrence?

According to statistics contained in the World Almanac (2016), the violent crime rate from 1976-2013 has seen a rise in violent crime around 1990-1995, and then a drop to below the 1976 levels. However, Murder and non-negligent manslaughter, from 1976-2013 actually saw a steady **decrease** in its crime rate to now half of 1976 levels (Almanac, page 116). When you consider that as of 2013, California has 735 inmates on Death Row, and since 1977, 13 inmates were put to death by California (Almanac, page 119), yet the national crime rate has decreased by 14.5 percent (Almanac, page 116) in all major populated areas, including California. While the statistics presented here are a mixture of California data, and National data, the numbers are relative to show the idea of the death penalty, as a deterrent, does not support the rates provided. In other words, since there has been a lack of executions, it is subjective to say that the death penalty is a viable factor in deterring crime.

This leads to the question: Why does it take so long for an execution to take place in stark contrast to Beccaria's notion of celerity? I believe the criminal justice system is so fraught with wrongful convictions, tampering of evidence, over-reaching prosecution, and a distinct lack of common decency towards defendants, that the courts, and State and Federal governments, are actually afraid to proceed with celerity in some cases because they are not sure of their convictions. While in other cases, their hands of executing the punishment are tied by the appellate courts, because of legal

arguments, or in the case of lethal injections, trying to find the most humane way of killing another human being. I would like to think that part of the problem is the idea that this country, as well as California, has finally realized the hypocritical notion of trying to find a more humane way of killing someone. Are we trying to remove the brutality of the governments' actions? Or is the intent to simply clear the conscious of those who perform the executions since they did it in a "humane way"? When we euthanize a dog, does it make it alright if we use a needle with drugs in it instead of a bullet to the head? I say, killing is killing and there is no "humane way!"

As mentioned above, but worth expounding on, I believe that the death penalty is wrong because the criminal justice system has entirely too many wrongful convictions to ensure (without a reasonable doubt) the righteousness of an execution that was warranted by the truly_guilty. This belief is supported by our new Governor, Gavin Newsom. In January, 2019, Governor Newsom signed a moratorium pertaining to the death penalty due in large part to his, [inability to sleep at night because of concern with the probability that there are innocent people currently incarcerated on [his] death row] (paraphrasing from a recent news interview). I think that just one wrongful conviction is too many to allow the death penalty to continue, and this nation has seen numerous exonerations from Death Row that supports the idea that too many mistakes are being made by the trial courts. One of my codefendants was sent to death row. In August of 2017, he died suddenly from an apparent heart attack while playing basketball on the recreation yard. From the intimate knowledge of our case, I submit that his actions did not warrant the death penalty, primarily because of how his case was prosecuted, and the circumstantial scope of the evidence that was presented in his trial. If this country insists on embracing the death penalty, or Life Without Parole – for that matter, there needs to be more oversight concerning overreaching prosecutions, and appellate scrutiny of convictions.

Consider what South Africa's criminal justice system employs. When a person is convicted of a violent crime such as murder, the defendant's case is immediately presented to the Appellate Court for scrutiny by an en banc panel of judges. There are no state-appointed, or paid appellate lawyers (most of whom are sorely lacking in experience or legal procedures); the Appellate Court basically puts the Trial Court on trial to ensure the proceedings were fair and impartial for the defendant. The results of this review leaves no doubt of a person's guilt or innocence.

Additionally, our current habeas corpus system is, at best, dysfunctional. Several years ago I had a cellmate who spent his first sixteen years on death row. He was fortunate to receive an unbiased review on appeal, and the sentenced was modified to Life Without Parole because the evidence showed that his culpability of the crime did not rise to the level of a death penalty. How does California justify condemning a man whose crime does not warrant a death sentence? Furthermore, how does the courts justify trading a probable death sentence to a virtual death sentence (LWOP). The State nearly killed someone who did not deserve to die for his crime. Yet now, the State is satisfied with killing this man, just at a slower pace.

When a condemned prisoner, or any prisoner, submits a habeas corpus due to issues during the trial phase that were either biased or unfairly influenced the jury, the courts are supposed to consider the issues to determine if there is merit to the claim. Our current appellate system is just the opposite. From my own experience, the appellate courts in this State deliberately go out of their way to protect their buddies (trial judges) within their district by finding the least technical fault with the issue raised. One only needs to refer back to the countless appeals from Death Row, and other facilities, that were exonerated, some after 40 years of incarceration, to question what our Appeal Courts are doing.

Craig Cooley is a good case-in-point in this area. Craig was incarcerated for over 40 years for a

murder he did not commit, and he was a personal friend of mine for several years. The exculpatory evidence was so egregiously against the prosecution, the current District Attorney from his county filed a motion to Governor Brown to have Craig immediately pardoned, which is highly unusual. The unexplainable questions are: Why did it take so long to clear his name, and why did the Appellate courts continue to deny his claim for the last forty years? No one seems to be asking the courts these questions. Understandably, Mr. Cooley now has to focus on restarting his life, just as the countless others who have been exonerated, yet, the courts continue to function in the same manner, without any oversight.

I propose a solution to this problem would be that an appellate court would be prohibited from hearing a case that originated from within their own district. For example, a trial from San Bernardino should be appealed to a district court in San Marin County or somewhere other than San Bernardino/Riverside/Los Angeles/San Diego district. This would ensure an unbiased review of the writ. While there are laws, already on the books, that allows exactly what I propose, the language of the law conveniently gives the reviewing court the option to remand the appeal back to the original district, thereby, circumventing the spirit of the law.

One final aspect I would submit changed my way of thinking is the human and financial cost of our current prison system, and how the recent changes to the system fit with holding onto the death penalty. When I first began my sentence in 1993, it was estimated that it cost the State 60,000 dollars per year to house me and provide healthcare. Recent estimates have doubled that cost to 120,000 dollars per year. There are approximately 133,000 prisoners in the State of California. Many of these men and women are not as healthy as I am which means the estimated cost is dramatically higher. Death Row inmates cost the State considerably more due to common health and mental health issues, as well as extra staff needed for security purposes. It is not uncommon for condemned prisoners to spend decades incarcerated before their sentence is either commuted or their sentence is carried out. Doing the math would show just how much the death penalty is costing the taxpayers to house these prisoners.

The psychological cost of these men and women sitting in their cell for decades waiting for their day of judgment to come is unimaginable. As stated above, I have been incarcerated for 28 years now, serving what many have called “The Other Death Penalty” (Life Without Parole) as a non-perpetrator, and I can tell you from experience that, psychologically speaking, this has been brutal! I now firmly believe that both the traditional death penalty and the new “death penalty” (LWOP), should be considered cruel and unusual punishment and disbanded. When you consider most civilized countries in the world have abolished both forms of punishment, we, as one of the leading nations of the world, are hypocritical when we scorn other countries about their human rights violations while we maintain one of the most repressive penal systems known to man. And California is no better in the hypocrisy. Several years ago, this State revised its penal system’s name to California Department of Corrections and Rehabilitation, yet they still maintain both, the death penalty and life without parole, in stark contrast to their mission.

I believe that the death penalty, in all its forms (death penalty & LWOP), is unnecessary because the human and financial cost does not support the taking of life; the current system is so dysfunctional that it cannot ensure fair and impartiality for defendants during trial; holding on to the notion that the death penalty (and LWOP) is an effective form of deterrent for future crimes is not only unsupported by the facts, it is totally absurd; the appellate system is inadequate to ensure that innocent people are not being killed (or sentenced to die in prison) in the name of justice, or that the punishment is proportionate to the crime, and the brutality and methods of taking a persons’ life for a crime, does not make sense.

If we are to be a country of life, liberty, and happiness, then we should also be a country that embraces the idea of fair, impartial hearings, rehabilitation, and forgiveness. We should not consider ourselves as God to exact revenge, and we should do more by preventing the crimes that would rise to what our government considers deserving of the death penalty. It is cruel, it is brutal, and we would be a better, stronger country by abolishing this act, as well as Life Without Parole, once and for all.

Works Cited

Berger, Ronald, et. Alias. *Crime, Justice, and Society*. Lynne Rienner Publishers, Inc. Boulder, Colorado. 2009. Print.

The World Almanac – And Book of Facts -2016. Janssen, Sarah. Senior Editor. RR Donnelly, Crawfordsville, IN. 2015. Print.