ON CAPITAL PUNISHMENT

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In his philosophy, Immanuel Kant states that a principle of legal justice should be put into practice so that the degree of punishment for an unjust act can be easily determined. He calls it the principle of equality, claiming that a man’s life is no more valuable than another (Mappes and Zembaty, p.134). The harm one inflicts on another should therefore also be inflicted upon himself, thus making the punishment equal to the crime committed. Similarly, in the old testament of the Bible, we read that Moses speaks of the judgments of unjust acts, “And if any mischief follow, then thou shalt give a life for a life, Eye for an eye, tooth for a tooth, hand for a hand, foot for a foot, Burning for a burning, wound for a wound, stripe for a stripe.”

In both instances we find that the value of life is infinite, there can be no measure that can calculate the worth of one man. Therefore, any harm done to one man should be equally paid for by the offender. It is only through this equal punishment that one can truly pay for disrupting a life which entails a dignity beyond price.

The death penalty still persists in two remaining democracies, the United States and Japan. As two-thirds of the American public approve the death penalty (Always an eye, p.2), I suppose that it is this philosophy of retribution which has preserved the death penalty in the U.S. and Japan along with China, Iran, and Saudi Arabia (EU urges end, p.1-2). However, it is important to note that annually since 1990, an average of three countries a year have dismissed the practice of capital punishment, and within our 50 states, about a quarter have banned this form of punishment (Smith, p.1). However, a total of 22 states still allow juveniles to be executed, and we find that is not uncommon to allow the executions of the mentally retarded (Valentine, p.1; Berlow, p.2).

During President Bush’s six years as governor of Texas, he permitted a record breaking 152 executions. Among these executions was Terry Washington, a mentally retarded African American who was accused of stabbing a twenty-nine year-old restaurant manager 85 times. Although he was guilty, the report that was given to Bush included all white eyewitnesses. In his autobiography, Bush states that “I review every death penalty case thoroughly . . . [and] review all the arguments made by the prosecution and the defense, raise any doubts or problems, or questions . . . [thus] ensuring due process and certainty of guilt” (Berlow). However, despite Bush’s claim, many of the clemency appeals were not read over before authorizing executions. When asked if Bush ever read any of the petitions of death-row inmates, his legal council, Alberto R. Gonzales states that, “I wouldn’t say that was done in every case, but . . . he did look from time to time at what had been filed.” (Berlow, p.3)

This example is one of many which give legitimate evidence that our judicial system is inconsistent and flawed. Prosecutor discretion, ineffective assistance of counsel and procedural bars, venue and jury selection, and racism by jurors are the reasons that discrimination in our capital sentencing exists. I will go further into detail of these flaws, but first I want to note that the poor, people of color, and those who victimize whites are more likely to receive the death penalty than the rich, Caucasian, and those who victimize people of color (Valentine, p.2). This disproportionate application of the death penalty is the cause for such controversy, and it is for this reason capital punishment should be abolished.

Many homicides which involve felonies allow the prosecution much discretion when determining whether or not the death penalty is a deserved punishment. Statistics show that attorneys within the United States recommend the death penalty twice as often for black defendants who victimize whites, than when blacks kill other blacks (Gross, p.2). Out of 3,000-4,000 murders a year in California, 20 percent are committed with a felony, thus leaving 600-800 possible death penalty charges. Statistics have shown that prosecutors in California usually seek 25 death penalty sentences a year (Tabak, p.3). Out of these 25, most are middle range murders, meaning that they are not the worst cases, but are also not the least terrible cases. Studies have shown that within this middle range, most prosecutors, along with their juries, tend to seek the death penalty when the victim is white. Thus, the race of the victim greatly influences the outcome of the punishment. (Tabak, p.3)

The representation often provided for defendants can be very poor in quality. In addition, not much can be done to prove an ineffective counsel because it is too difficult when following the Supreme Court’s standard. An example of ineffective assistance of counsel that was denied by the Supreme Court’s standard was found in the case of Wiley Dobbs, an African American whose lawyer failed to present important evidence of his innocence and during the trial made several racist comments about his client and other African Americans. He stated that “if you hire a black person, things will get stolen from you” and that “blacks are less educated than whites”. In another case, Johnny Lee Gates’ lawyer found himself and his client in front of an all white jury in a community that was 30 percent black. Yet in response to an all white jury, he did not object to the jury selection and also failed to present vital evidence for his client’s defense. Unfortunately the lawyers of both cases were not found ineffective and Gates and Dobbs were sentenced to death (Tabak, p.3).

Racial disparities in the death penalty can also result from the way in which juries are selected. In Los Angeles very frequently we find that when the defendant is black, the county can predetermine all-white juries by choosing jury representatives from white geographical areas.
Whites are more likely to support the death penalty than blacks. When African Americans are being selected for jury, many prosecutors discriminate by asking for a dismissal through the explanation that the juror reminds him of the defendant (who is African American), and that he/she doesn’t look up to speed on things. Unfortunately, these explanations often get upheld by the judge. (Tabak, p.3)

Lastly, a flaw that we find in our judicial system is racism by the jurors. Even through pre-trial jury screening, prejudiced attitudes can go undetected as potential jurors give politically correct responses to questions about racism. Here racial discrimination of jurors decides the fate of the defendant, who in turn often becomes the victim of injustice. (Tabak, p.4)

There are two alternative arguments that are believed to limit racial disparities in capital punishment. The first is to have a proportionality review. This requires the appellate court to compare similar cases to the current case to decide whether or not the death penalty is appropriate. This alternative allows each defendant’s case to be compared with similar ones so that discrimination will less likely occur. In 1979 this process was required by the Supreme court, yet only a few years later, the Court held that it was not constitutionally required. And now, no states practice this review.

The second alternative to limiting racial disparities is executive clemency (Tabak, p.4). Here an executive such as governor Bush receives a summary of a defendant’s trial along with other specifics that may suggest an error in trial. Hours before the defendant’s execution, the executive determines whether or not the death penalty is appropriate. As demonstrated earlier, errors in this process can very possibly occur as the executive fails to thoroughly review the clemency, or he/she is persuaded by the public to execute the defendant.

In conclusion, there are no safeguards against racial disparity in capital punishment. Each year, in the United States about half of all murder victims are black. Yet of those executed for murder, 85 percent killed a white person, while only 11 percent put to death killed a black person (Mappes, p.151). It has previously been demonstrated that racial disparity does in fact exist. But the factor that I find so puzzling is that the judicial system, with its practice of retribution, seems to favor the lives of whites over blacks. This, however, presents a contradiction. Whereas Kant saw retribution as the only form of punishment that was equal to the crime, he also saw that the punishment should be the same for everyone who commits the same crime, thus making every life equal to the next; the murderer of a white person requires the same punishment of death as the murderer of a black person.

Aside from racial discrimination and unfair trials, we find that globally across the boundaries of race, the evidence to protect one’s innocence just does not always exist. And for the innocent, whether they be black or white, the price of death is a high price to pay. Supreme Court Justice, Sandra Day O’Connor, admits that “the system may very well be allowing innocent defendants to be executed” (Always an eye, p.2). Although DNA evidence has recently released 100 people from death row, we can only imagine how many other innocent people have paid the high price of death (Always an eye, p.2).

If you were put on death row without the proper representation, without an unbiased jury, or without the important evidence to prove your innocence, you too might feel strongly about changing the current death penalty policy. We must create a new policy for protection from our own prejudiced society. There is no doubt that for the crime of murder the only punishment equal to the crime is death. However, let us lessen the punishment of death to life in prison without parole. We must remember that for the very reason we see murder of a non-aggressor as wrong, we too should serve with the interest of preserving possible innocent lives. The only way in which our society can preserve innocent lives is to allow the accused to live leaving the possibility of proof of their innocence to be brought forward.

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References


