

The Death Penalty and State-Sanctioned Violence

A confluence of recent events has led to the practice of capital punishment in America becoming a matter of greater public interest and debate for the first time in several decades. Foremost among these events is the trial and sentencing of the younger of two brothers responsible for the Boston Marathon bombing. Another is the undiminished zeal by some state authorities to execute men whose guilt or mental competence was less than firmly established, leading to grassroots protests and calls for clemency. Yet another development is the European boycott of lethal injection drug manufacture, leading some desperate states to resort to more traditional methods of execution such as hanging and the firing squad. In this essay I will lay out some reasons why I believe it is about time America followed in the footsteps of every other developed society on Earth and had this debate as well.

Despite Mark Twain's memorable quip against the usefulness of statistics, I will open my argument with a few well-chosen figures to put things into perspective. America is the only country in the western hemisphere to use capital punishment, and out of 34 industrialized democratic countries, America is one of three to still use the practice (along with Japan and Singapore); in fact, there are only 26 of 208 countries worldwide that actively practice capital punishment. America has executed 1408 people since 1976, when the Supreme Court's temporary moratorium was ended (The story of the first person executed after this 4-year hiatus was chronicled in Norman Mailer's *The Executioner's Song*). There are currently over 3000 people on death row; even though African-Americans make up only 12% of the total population, 41% of those on death row are African-American. To put the total prison population in

perspective, America has only 4% of the world's population but has a full 25% of the world's prisoners—well over 2 million, mostly for non-violent, especially drug-related offenses. 31 states and the Federal Government currently use capital punishment, and the average time spent on death row going through the appeals process and waiting for execution is around 15 years, all of which is passed by the prisoner locked away in a small concrete cell with virtually no human contact. The Federal Government has executed 3 people since 1976; the Oklahoma City bombing terrorist was one of them, and the surviving Boston Marathon bombing terrorist would presumably be the next one. Public opinion has generally been strongly in favor of the death penalty in America, but a 2010 poll showed that when people were asked to choose between capital punishment and life imprisonment without parole, the results were 49% versus 46% respectively. As more Americans become aware of the problems with capital punishment as it becomes more of a public issue, I have no doubt that those figures will begin to reverse (case in point: last month the Nebraska State Legislature overrode the governor's veto to end the practice of capital punishment in that state).

Dzhokhar Tsarnaev was a 19-year-old college student at the time he collaborated with his older brother in carrying out the Boston Marathon bombing. There is no question of his guilt and need to be punished harshly. The verdict of the death penalty, however, is highly questionable at best. Massachusetts is one of a minority of states which do not practice capital punishment and where the majority of citizens are opposed to it. As an act of domestic terrorism, Tsarnaev was not on trial by the state of Massachusetts; rather, he was tried by the Federal Government, which does follow the practice, even if very rarely.

Why, then, was the trial not moved outside of the jurisdiction of Massachusetts to anywhere else in the country, given the difficulty of an impartial jury in a state rocked by such a

traumatic and emotional event? Supporters of the death penalty argue that it brings closure and justice to the victims, but this case is far from over and this much-sought closure, however bloodthirsty and ultimately unsatisfying to the victim's family, could be decades away. Whereas a life sentence without parole is a cut-and-dry affair with little room for doubt that justice is being served, the death penalty almost always means that the full appeals process will be used, meaning that trials and sentencing can carry on for years and years with no resolution.

This is where Tsarnaev is heading, so even if you are someone who will feel better seeing him executed, you have a long wait ahead of you, as his lawyers will fight the death penalty to the very end. Would you not rather find justice was sufficiently served by putting him away for life in a maximum security prison with little to no human contact or sunlight for the rest of his life, and never think of him again? To me, both cases are barbaric, but only the death penalty gives the power of life and death to the state. This is a power we must ask ourselves if we are ready to give up.

Tsarnaev was by all accounts an intelligent and not abnormal 19-year-old university student who was radicalized by his older brother and the family and cultural circumstances he grew up in. I cannot imagine the horror of life behind bars in the type of maximum security prison I described above, but that is where he should go to live out whatever life he will have there. To my mind, this is the farthest step that the state can take in the pursuit of punishment and justice. The moral authority of handing out death penalties is not one that should have ever been in the hands of the state. Christians and Jews should remember that even the vengeful God of the Old Testament reserved the right to punishment: "Vengeance is mine, I will repay"—a decree repeated as the memorable epigraph to *Anna Karenina* by the notable pacifist author Tolstoy.

Tolstoy himself fought in the service of the Russian Empire against the Muslim Tatars and wrote about the violent wars between the Christians and Muslims in the Caucasus region that have continued for at least 200 years. Tsarnaev's family come from the Caucasus area of Chechnya which has been violently repressed for decades (centuries, in fact) by Russia. To understand is not to excuse, but every act of violence only perpetuates future violence. From such a background, it is not surprising that Tsarnaev could be convinced to continue the bankrupt path of jihad against real or perceived aggressors against his homeland or his religion; the tragedy is that this path was chosen over another one in which such a young man could have finished his studies and found a peaceful and prosperous way out of the maze of terror that he saw around him.

His execution by the U.S. Federal Government will do nothing to break the cycle of violence of such young men, and could in all likelihood further incite the hatred and search for vengeance for those poor, misguided young men around the world who see America and Western society as an evil target to be fought. In one sense, he would become one more martyr in an ongoing conflict in which there are already more than enough of these to fan the flames of extremism. Like I said before, the case is not closed and you will be seeing it in the news for years to come during the lengthy and likely controversial appeals process that will ultimately decide Tsarnaev's fate. If capital punishment were not an option (as would be the case if he were tried by the state of Massachusetts, for example), the case would already be over, he would be sent to languish in prison for the rest of his days, and few who weren't directly affected by his crimes would ever think of him again.

Furthermore to my thesis, even if we grant that the state or federal government has authority over life and death and can execute people whenever they see fit, there is then the question of where to draw the line in who is eligible for

execution and how it can be guaranteed that they are truly guilty. The issues this raises should give us just as much pause as whether or not capital punishment is valid at all. There could even exist a strong case for the use of capital punishment (though I disagree), but a situation in which it could not be used in practice because the legal and justice system lacks the ability to prove its worth. I doubt that anyone (with the possible exception of the former governor of Texas) will feel assured that justice is done in 100% of court cases; that is, no one contends that human error, whether by state-appointed lawyers, juries, or judges, never occurs.

We must also dismiss the possibility that racism or other forms of discrimination never take place in the trials and sentencing of millions of accused offenders per year in America. Intuitional and anecdotal evidence is more than enough to raise doubt that pure justice exists in America. If there is the chance that even a single innocent person is found guilty, surely others who share my idealistic and humanistic love of justice will feel that there is no way the death penalty can ever be a real punitive option in a just society.

The fact is that hundreds of convicts have been released after years or decades of imprisonment due to faulty charges, incompetent lawyers, or biased juries, and most likely thousands more sit pining away in dark cells for crimes that they did not commit. Their only hope is that friends, family, and seekers of justice will one day shine the light on their case and win them the freedom they deserve, along with a hefty financial reimbursement. To those who were put to death, no such recourse or reprieve exists, and it is more than likely that no one will ever even know that they may have been innocent. They will never have the chance to clear their name, since it is not in the state's interest to conduct or even allow inquiries into a case after the execution has been carried out. There are many notable cases in recent memory of

just such a thing, especially the 2004 execution of Cameron Willingham by the state of Texas and the 2011 execution of Troy Davis by the state of Georgia.

Such cases also shed light on the power wielded by states, in the form of the governor, whose word in these cases is law, and whose power to stay executions also means that they single-handedly hold the power over life and death. The callous disregard toward troubling death row cases expressed recently by the governors of Texas, Oklahoma, and Georgia, to name only three, should be more than enough to cast doubt not only on the state's moral authority to kill fellow humans, but that such authority will even be used with the highest respect, consideration, and humanity that it deserves. Instead, we witnessed then-Governor Rick Perry of Texas on the Republican Party debate stage in 2012 saying that he had zero doubt that any of the 278 executions he personally approved and oversaw while in office were less than fully just (despite the prominent case of Willingham mentioned above and the 2014 execution of severely mentally ill convict Scott Panetti). His successor as governor of that state, Greg Abbott, enthusiastically ignored the pleas of the U.S. Justice Department to grant even a temporary stay of execution to a Mexican citizen in 2014, one of over 50 cases in Texas where Mexican citizens have been punished or even executed without having been provided legal counsel by the Mexican consulate.

My final point is about the barbarity, and thus unconstitutionality, of the death penalty both in theory and practice. The Eighth Amendment to the Bill of Rights protects against cruel and unusual punishment, and I would argue that the death penalty is the ultimate cruel and unusual punishment and a violation of the enlightened idea of human rights. If we consider the specific details of how death penalties are actually carried out, there should be no remaining doubt about its illegitimacy as nothing less than state-sponsored murder.

The electric chair was—for almost a century—the dominant

method of execution in America. A long series of botched executions and malfunctioning equipment gradually led to the use of lethal injection, which has been favored by all states that practice the death penalty since the 1990s. This has typically been a three-drug cocktail that has the benefit of appearing painless and medically sound. It is neither, in fact. It is a method chosen by lawyers and politicians rather than doctors, who are actually sworn under the Hippocratic oath to not harm patients. Over 7% of lethal injections since 1990 have been botched, resulting in long and painful deaths. This was most notoriously seen in the case of the 2014 execution by the state of Oklahoma of Clayton Lockett. You can read the gruesome details of that case in this [goosebump-inducing exposé](#) in *The Atlantic*.

In 2010, the only American-based company that produced the third ingredient in the cocktail, sodium thiopental, was forced by the FDA to stop production due to contamination. States began to scour the globe for other pharmaceutical companies to meet their lethal needs, but were soon foiled when the companies and governments in question discovered the desired use of these exports. A company in Denmark that produced a drug for animals was the last hope of these states; when it was discovered that the drugs were destined for capital punishment in America, this company, too, stopped its distribution. Most states now have a small stockpile of the drugs needed to perform executions, but only enough to last a few years.

The employment of these substitute drugs has been brutal and horrific as well, as documented in the case of Clayton Lockett above. For better or for worse, states are starting to approve a “regression” (if such a term can mean going backwards from something already backwards) to earlier and more visual forms of execution such as the electric chair and the firing squad. To me, and most people who examine the evidence, there is no doubt that the death penalty is cruel and unusual punishment

in practice.

Let us now consider the psychological aspect. I mentioned above that the current average waiting time for death row inmates stands at about 15 years. Even if we were to grant the validity of the death penalty for capital crimes, murder and capital punishment are by no means the same thing. I'll refer to a quote by Albert Camus for an explanation of this: "But what is capital punishment if not the most premeditated of murders, to which no criminal act, no matter how calculated, can be compared? If there were to be a real equivalence, the death penalty would have to be pronounced upon a criminal who had forewarned his victim of the very moment he would put him to a horrible death, and who, from that time on, had kept him confined at his own discretion for a period of months. It is not in private life that one meets such monsters." If we substitute "a period of months" for "a period of decades", and also imagine that confinement means a total isolation in a small blind cell, we should conclude that this is quite obviously cruel and unusual punishment and most likely much worse than the original crime. We can argue about some of the conditions of punishment and incarceration while still stopping well short of state-sanctioned murder, which is all that capital punishment really is. Max Weber defined the state as "the rule of men over men based on the means of legitimate, that is allegedly legitimate, violence." This is most readily seen in the use of war or threat of war against other nations, and the use or threat of capital punishment in domestic cases. I would argue that the former is occasionally necessary to preserve world order, while the latter is beyond all authority of a state against its citizens.

Lex talionis has certainly been both the normative and the most intuitive system of justice in all human societies until the relatively recent development of due process based on "innocent until proven guilty" and variable incarceration. Further examination shows why retributive punishment can never

really be just. Although many people would argue that a murderer should be condemned to die himself, this will do nothing to bring back the victim. According to statistics of violence and imprisonment in America, it obviously does little to dissuade future murderers from carrying out future crimes. If punishment, the death penalty in this case, does not stop criminals from breaking the law, then one of the main justifications for such punishment holds no water. There is no study which has convincingly shown that the death penalty leads to less crime, so this utilitarian argument falls flat. In crimes other than murder, how will justice be perfectly administered so as to punish for specific crimes. An eye for an eye, or a life for a life has a certain grim logic (though I don't agree with it), but how can this logic be applied to non-lethal and non-violent crimes? What if there are mitigating circumstances, such as a criminal who is homeless or in extreme poverty, or was himself a victim of gross injustice? The fact is that retributive justice is a system which will only perpetuate a vengeful and bloodthirsty society rather than stop. America needs to open its eyes and see that we are better than this.