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GOVT 2302

8 March 2013

The Death Penalty: A Texas Capital Punishment Review

Mahatma Gandhi has been credited with the common phrase “an eye for an eye leaves the whole world blind”, but is this saying true? Is it right to deliver a punishment onto someone equal to their own crimes? This is a question that has been asked throughout history, all over the world. Not only has it been debated if it is even legal to do, but it has also been debated in the ethical and religious realms as well. From ages past to the world of today, the question of if it is ever right to kill another human has been asked. In recent years, Texas has been an example for the nation in its use of capital punishment. Through a combination of Texas state law and Supreme Court rulings, it can be seen that the death penalty should not be abolished, as it is perfectly within the confines of the law. With this though, there are some things that are sub-standard in the Texas Justice system that could be changed in order to improve it.

In the entire United States, there are only twelve states in which capital punishment is outlawed. Hawaii, Michigan, Minnesota, Iowa, Alaska, Maine, Rhode Island, Vermont, Massachusetts, Wisconsin, North Dakota, West Virginia, and in addition Washington D.C. have all outlawed the practice. Out of the states that allow the punishment, Texas, Virginia, and Oklahoma are the only states with over 100 executions since 1976. And going even further, out of those three, Texas has by far the most executions at 493, almost five times as many as the runner up, Virginia, at 110 (Number).

The main question that many turn to when dealing with capital punishment is the legality of the act. According to one Supreme Court case, Gregg v. Georgia in 1976, the death penalty is completely legal and constitutional. The case stated that the death penalty does not fall under the category of “cruel or unusual punishment”. However, it was stated that it only would not fall under that category if “guided discretion” was used (Almonte 7). This decision overturned a previous court case Furman v. Georgia that was decided in 1972. Gregg v. Georgia held that the wording within the constitution allows for the legality of capital punishment. Specifically in the Fifth Amendment, it states that “no person shall be held to answer for a... crime... nor be deprived of life... without due process of law” (Stewart 21). The important part here is “without due process of law”. The court decided that this means that as long as due process of law is upheld, than capital punishment is completely legal. It is only unconstitutional if criteria is not met, such as if the convicted were to be killed on the spot, with no trial. This same ideal is parroted in the fourteenth amendment, where it states that no state shall “deprive any person of life, liberty, or property without due process” (Steward 22). Once again the idea of “without due process” is what allows capital punishment to be used.

Before understanding the current Texas laws on the death penalty, it is important to first go over the history of the act. Modern capital punishment was first legalized statewide in Texas in 1923, when it was decided that they would no longer use hangings and instead use the electric chair. Before 1923, it was up to the county that the crime was committed in to administer the punishment. In addition, lynching was very common in Texas after slavery was abolished. This new capital punishment law helped greatly reduce the number of lynching’s that were going on at the time (Bright 1). On the first day the new law took effect five inmates were executed in the first 2 hours, coined as the “harvest of death” (Marquart 19).

The current capital punishment system in Texas works on a three step system. The first phase is called the “trial phase”. It is during this phase that the trial takes place. A capital trial is made of two phases in Texas, the guilt-innocence phase, and the punishment phase. The guilt-innocence phase works the exact same as a non-capital punishment case, while the punishment phase afterwards to decide the fate of the convicted. There are many rules and regulations in the punishment phase to decide if one is to be sent to death, or sentenced for life, or any other punishment as the court sees fit. After the trial phase, the convicted can do a Habeas Corpus appeal, and if the appeal is not successful, than the convict can try to do subsequent appeals, within reason. However, if the new appeal has claims that have already appeared in a previous appeal, it can be called an “abuse of the writ”. After this step, the defendant may also appeal to the Texas Board of Pardons and Paroles, which will be discussed later.

One of the arguments against the death penalty is the fact that the same crime may not beget the same punishment, and that there is discrimination with gender, race, location, and even wealth which decides who is executed and who is not. It is believed that many more African Americans than Caucasians have been the target of executions in not only Texas, but in many other states. In the Supreme Court case of McCleskey v. Kemp, Warren McCleskey was an African American who was convicted of shooting and killing a white police officer. The case was on the grounds that Georgia’s capital punishment laws were discriminatory, and he argued that because he was a black man who killed a white man, he was more likely to be given the death penalty than a white man killing a white man, or a white man killing a black man. He lost the case, and the court ruled that the death penalty does not discriminate, and that anybody who is to ask for the death penalty, as in McCleskey’s case, were not doing so on the basis of racial discrimination. Even with the court ruling though, it’s practically impossible to actually prove if one is attempting to discriminate purposely (Almonte 25).

When looking at the numbers and percentiles in the people executed in Texas, it is actually shown that there is not enough evidence to say that there is a racial motivation for capital punishment. Between 1974 and 1988, a little under half of the convicts were from the major metropolitan areas of the state. Over half of total convicted were from ages twenty to twenty-nine during their arrest, while the oldest one was fifty-five. The convicted were also almost evenly split between white and non-white males, with thirty-six percent of them being African-American, and fourteen percent of them being Hispanic. The death row inmates were mostly unskilled laborers with less than a high school education. Over half of them had also been sentenced once before for other offenses. Murder in the course of a robbery was the most common offense, with rape/murder as a runner up (Marquart 135-137). With the varied statistics available, it can be seen that, through the numbers, there is not any immediately noticeable discrimination of any kind occurring.

A big issue with the capital punishment is that, according to the Chicago Tribune, who did a study of 145 executions, in forty of the cases there was no real defense made from the defense attorneys, and many of the accused were convicted under unreliable evidence. One such example of this use of unreliable evidence is in the story of one eighteen year old named Gary Gram. Gram was convicted of murdering one Bobby Grand Lambert while in the parking lot of a Safeway. After only two days, he was found guilty. No murder weapon was found at the scene, and as well there were no DNA matches, fingerprints, blood, or anything of the sort found. The only evidence used against him was the fact that a woman identified him in a second chance line-up. In both line-ups, Gram was the only male (Black 1).

In line with the previous issue of poor defense in capital punishment cases, the choosing of court-appointed councils has also been called into question in Texas. Using the previous case as another example, Gram’s appointed attorney, Ron Mock, had been previously disciplined for unprofessional conduct four times prior. He had never won a murder case (Black 1). In Texas, there is no statewide public defender system, so it is up to the local judges to appoint the defense attorneys to the defendants. From previous records, these local appointed lawyers are, at most times, not completely qualified to be defending someone else’s life. For example, there was one such case that a lawyer even slept through an entire trial. In one case, the lawyer actually slept through the trial, to which the judge replied that “the Constitution doesn’t say the lawyer has to be awake.” The Texas legislature had voted for a public defenders system in the past, but Bush, who was the governor at the time, vetoed the bill (Hanks 1). It is sometimes believed that in Texas and other southern states, that the people want to see death penalty convictions, whether or not they are just. This could be a reason as to why judges assign non-qualified lawyers, as it may help them stay in office. Some people simply want to see actions taken and thing getting done, even if those actions are not the most just. Having many executions could be misinterpreted as “getting things done” to some potential voters. (Bright 3).

There are some positives to the Texas capital punishment system though. For one, because of the harshness of the system, it has been said to help deter criminals from acting. There was research done that concluded, using statistics from the 1930’s to the 1970’s, that approximately for every one execution done, seven or eight people would be detered from A very conclusive report was filed by researcher Isaac Enrlich, who found that based on statistics from 1933 to 1969, each execution prevented about eighteen people from committing murder. There were further studies done that showed a margin of error of around 10. This means that as many as 28 victims could be saved per execution, but no less than 8 (Espejo 11). Only 38 percent of all murder cases in the United States actually results in a conviction, and of those convicted, only .1 percent are actually executed (Guernsey 67-68). Not every case will stop someone from committing the crime, but if the death penalty means anything to them, then there is a high percentage chance that the very idea of the harsh punishment will stop them from going through with their plans. In Texas, the odds of being handed the death penalty are high, so it would cause one to have to think before committing a murder. Just as well, it’s very unlikely that a sentence would be commuted in Texas, so it is most likely that one would get the chair.

Although the Supreme Court can overturn a death penalty using the Writs of Habeas Corpus, which states that a person under arrest must be brought before a judge or into court to stop unlawful detention, it is very unlikely that the Supreme Court will see many cases due to the steps that must be taken before a case can be reviewed. First of all, one must file a federal habeas corpus petition within one year of sentencing, due to the Antiterrorism and Effective Death Penalty Act, as signed by Clinton in 1996 (Bright 3). Even if one were to fill out the form, there is a very large possibility that many other delays will incur. Successive petitions to district courts, delays in those courts, repetitive appeals to the court of appeals, all things that take up more time and cause delays to the Habeas Corpus hearing. These many delays harm the idea of using capital punishment as a deterrent by making the process of actually convicting someone very long and arduous. It is apparent that capital punishment is better served by full hearings, not by many procedures with defeat the substantive benefits of capital punishment (Schonebaum 21).

Another main issue that many opponents of capital punishment have is the ideas that all death row inmates are treated unfairly and inhumanely, violating their constitutional rights. It has been argued that, while on death row, the convicts are not treated fairly and humanely, therefore violating their constitutional rights. While one death row, inmates are not allowed to be near other inmates. They are completely separated physically from virtually all form of contact. Usually they are kept as far as possible from the other inmates, on the opposite end of the prison. This is intentional, as death row is made to be a sort of “prison within a prison”. Within death row, security is the highest in comparison to the rest of the prison. It is required that guards follow very detailed and strict guidelines and procedures whenever they are transporting death row inmates. A federal court case Ruiz v. Estelle, helped to change some of the death row conditions for the better. It was a landmark prisoner’s rights case that allowed prison officials to group death row inmates as either “death row work capable”, or “death row segregation”, as it said in the 1985 “Death Row Activity Plan.” Thanks to the case, now certain death row inmates are allowed to be outside of their cell 5 times a week, helping to make death row at least a little more humane (Marquart 139).

Another hot topic for debate in the capital punishment argument is about the execution of females. The topic comes as a sort of surprise, as the laws in Texas that have to do with capital punishment say nothing of gender at all. It may be that some see the execution of females that commit crimes that would lead men to the death sentence. However, this line of thought is discriminatory because, as stated before, the idea of capital punishment should not discriminate on any basis, as it lessens the impact of the act as a punishment. Until 1998, no woman had ever been officially executed since 1863, with the execution of Karla Faye Tucker (Karla). Before the death penalty was reinstated in 1976, Texas governors commuted every execution set for a woman. This shows the hidden prejudice towards women in the field of capital punishment in the form of the longstanding ideals and tradition of “protecting” women. However, after the death penalty was reinstated in 1976, specifically in 1983, a constitutional amendment was created in which limitations were placed on what governors could and could not do, and a process was created to commute a sentence. Now, before a governor can choose to commute a sentence, it must first be decided on a board of 18 people to recommend commuting the sentence, in which two thirds must vote for it. Only after that may a governor choose to commute the sentence. Without the two thirds vote, all a governor can do is provide a 30-day stay of execution (Curtis 3).

Why does Texas lead in executions in the country? There are several reasons for this, some already discussed previous include the lack of a public defender system and the lack of looking at, or for, evidence. However, another large reason for the amount of executions is the fact that Texas, unlike other states, has worked out the system of procedures in cases and appeals, allowing them to cut down on the time between when a criminal is convicted, and when that criminal is executed. In other words, Texas has gotten increasingly more efficient at capital punishment due to the large amount of cases that occur. This increase in efficiency leads to more executions, which leads to a more efficient system. In a way, Texas is “training” itself to execute more people quicker. Texas doesn’t exactly sentence more people than other states, but they do end up executing more because other states have not worked out their procedures. Whether this is good or bad is an issue. The efficiency of the Texas capital punishment system is leading to more executions, so is it better to be less efficient? Or is it beneficial to have a more efficient system at the cost of more human lives? In addition to this, the 5th Circuit of the Federal Court of Appeals is very much pro-death. This Circuit resides over all of Texas, and, due to their pro-death nature, they place very few roadblocks on the road to execution in comparison to other circuits (Walpin).

Does an eye for an eye make the whole world blind? No, capital punishment is constitutionally allowed and completely legal. The idea of a death penalty can be a just punishment for someone convicted of a murder, and completely within the bounds of both the constitution and federal law. As long as the inmates on death row are treated humanely, and allowed Habeas Corpus before being executed, than the death sentence is a proper punishment. Although, through some simple reform the Texas laws regarding capital punishment could be improved, and some controversy about the number of executions performed could be curbed.

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