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Policy Brief: The Death Penalty

By: Benjamin John

Executive Summary

Between the dates of April 17th and April 27th 2017 the State of Arkansas carried out the executions of eight men on death row. Bruce Ward, Marcel Williams, Jason McGehee, Kenneth Williams, Stacey Johnson, Ledell Lee, Don Davis, and Jack Jones. Due to the decline in support for the death penalty it has become increasingly more difficult to acquire the drugs used for lethal injections from drug producers Arkansas itself hadn't conducted an execution in twelve years prior to the April 2017 executions. The reasoning for the executions was because the supply of lethal injections expirations was soon to be overdue, and so the state of Arkansas moved to use the supply before the lethal injections had expired. The sudden and promptly conducted executions have rekindled debated over the rationality of the death penalty in the modern day. In the heart of this debate lies on of the oldest and most perplexing question mankind has yet to answer: what is justice, and who is responsible for providing it?

Background

The death penalty has existed for as long as history has recorded societal governance. This is because in any given society there is no authority higher than the government and the United

States in not an exception. In 1775 all of the 13 colonies made use of the death penalty. Offenses rating capital punishment included crimes such as counterfeiting, piracy, murder, treason. It is only to be expected that in 1787 the founding fathers would right the constitution so that it explicitly gives the government authority over the death penalty, giving the possibility for capital punishment policy to exist for both the federal and state level. In the 5th amendment it states that citizens would not be “...deprived of life liberty or property without due process of the law.” With the statement, “without due process of the law” the constitution gives the right for the government (the judicial system) to determine whether or not an individual’s crime is deserving of the death penalty. The first federal death penalty that would occur would be in 1790 with the introduction of the punishment of crimes act. This gave the federal government the authority to sentence death for crimes of treason, murder, robbery, counterfeiting, and disfigurement. At this time the Punishment of Crimes Act also gave judges the right to sentence the offenders’ corpse dissection.

However, during this time the death penalty was normalized, and the public was rather supportive of capital punishment. It was so well supported that often times it would be a public event. Men and women of all ages would go to witness executions as if it were a sporting event. There would be eating and drinking to the point where riots would sometimes occur. This led to a change in the way executions would be conducted. In the 1830s legislation was passed that would make all executions of offenders private.

This is the point where debate on the death penalty would begin. In 1843, John O’Sullivan and George Cheever engaged in the first national debates over the death penalty, and whether or not it was still an appropriate punishment for the modern day. The debate was centered on policy outcome, and whether or not the action of the death penalty actually yielded the results by which

it intended. The policy goal of discussion is deterrent of crime. The arguments in support of the death penalty believed that the fear of death was the most effective way to prevent individuals from committing crime. While opponents of the death penalty argued that life imprisonment was a more effective method for deterring people from committing crime. Although it was not the first time that the effectiveness of the death penalty was brought into question. In 1764, *Essays of Crime and Punishment* by Beccarian provide the first major study of the criminal justice system. When addressing capital punishment Beccarian had two primary contentions. The first was the death penalty did not actually prevent crimes from occurring. The evidence was in the rate of crime that occurred, despite the fact that you could be executed for it, including crimes as frivolous as petty theft. The second point was one of morals, particularly whether or not the government should have the authority to decide to take the life of a person no matter how terrible the crime may have been.

Support of the death penalty increased to some degree in the 1880s when Thomas Edison's direct current electricity was used in a demonstration, electrocuting animals. This led to a new method of execution, with the electric chair. The demonstration on animals showed people that the electric chair was a quick and painless way perform an execution, and was viewed as a humane way to carry out the death penalty. However, since that time the support for the death penalty began to gradually decline, and with that, policy over the death penalty gradually softened in parallel.

From the 1950s and through to the 70s there was a growing movement for the abolishment of the death penalty. Since states have autonomy over capital punishment the movement to abolish the death penalty would have to be taken state by state and during this period of time several states rid themselves of the death penalty. While others limited their capital punishment sentences to

more serious offenses such as murder. In 1972 the anti-death penalty community scored a victory when the Supreme Court overturned over 600 death sentences, ruling them unconstitutional. The argument was that the sentences were random, and that the application of the death penalty was discriminatory.

In the 1980s legislation was passed that made the execution of an insane person unconstitutional. During this time modern investigative techniques such as forensics and DNA evidence led to the discovery of 350 executions that were carried out on individuals who were wrongfully convicted, and many other inmates who were on death row were released because they were found to be innocent. Despite these discoveries support for the death penalty would still reach its peak, at 80% going into the 1990s.

In 1994, the government passed the Crime Bill Act. This act outlined the criteria for crimes that warranted the death penalty, and also the mitigating factors for individual facing the death penalty. In Title VI s.3591 it states that the death penalty could be warranted if the offender, “Intentionally killed the victim, intentionally inflicted bodily injury which resulted in the death of the victim, and intentionally engaged in an act...with reckless disregard to human life and the victim died as a direct result of the act.” The Crime Bill Act also defined the mitigating factors for those facing the death penalty, which include but is not limited to; impaired capacity (of their actions) extreme duress, victims consent, and no prior criminal record. This legislation made it more difficult for the judicial system to be able to give a death sentence.

There were also non-political forces at play in opposition to the death penalty. In 1996 the film *Dead Man Walking* was released. The film illustrated the psychological anguish for those who are on death row, and reignited public discourse over the morality of the death penalty. However,

despite the growing social opposition, the death penalty became more inscribed into the United States legislation. In the same year, the Anti-terrorism and Effective Death Penalty Act restricted the ability for the judicial system to reverse death row sentences. If you were on death row, it became all the more difficult to have the sentence repealed.

Another significant moment in the death penalty debate came at the turn of the millennium. In 2000, Gov. George Ryan of Illinois and Gov. George W. Bush of Texas became the two faces of death penalty debate. The former granting clemency to 167 death row inmates, while the latter led the nation (by state) in executions. Although applauded by those against the death penalty, advocates for the death penalty viewed Gov. Ryan's actions as an "abuse of power." Since this time, support of the death penalty has been in slow decline.

In 2009 controversy over the death penalty resurfaced again when the guilt of an executed prisoner was under question. However, before the investigation could determine the innocents of the deceased Gov. Rick Perry removed 4 members of the commission. This action has led many to believe that an innocent man had been executed, which further diminished the public's support for the death penalty. By 2013 support had reached 60% an all-time low of support in the previous 40 years.

Pro and Anti-death Penalty arguments

The first argument in favor of the death penalty, briefly mentioned earlier, relates to the policy outcome. That outcome being deterrence for potential violent criminals to commit crimes that would warrant the death penalty. In the 1990s there was an increase in the number of executions being carried out, accompanied by some decrease in crime. This leads advocates of the death penalty to give credit to the death penalty for deterring crime. However, it is not that simple

to attribute this decrease in crime to the execution of the death penalty. The relationship does not necessarily prove that the death penalty was the cause for the decrease in crime. The anti-death penalty community would point out that in most states that had abolished the death penalty reported lower murder rates than states that have the death penalty, and would argue that life imprisonment is a better deterrent of crime than the loss of life. Nevertheless, advocates of the death penalty would also dispute that assertion on the premise that the majority of death sentences do not end in execution. Rather, the offenders more often die in prison from natural causes. This is due in part to the extended amount of time it takes for the courts to work through appeals.

The second point in support of the death penalty is simply the permanent removal of a violent criminal from the rest of society. Even in prison a violent offender could still be a danger for guards or other inmates. By carrying out executions it will automatically make the lives of guards and inmates safer. The death penalty also makes the lives of all citizens safer in the event that a violent criminal would make an escape or be released back into society. The Bureau of Justice Statistics found in a 2005 study that 29% of released violent offenders are re-arrested for the same or similar crimes. The counter argument to this would be that the death penalty steals away the potential for effective rehabilitation. There is also the risk of wrongful executions taking place, and there being no possible way to repay for the miscalculation of justice. Although, with state of the art investigative techniques, such as DNA analysis, it is becoming increasingly more rare for wrongful convictions to take place.

Another gray area in the death penalty debate is related to the costs of carrying out, or not carrying out, death penalty policy. It costs on average 30-35,000 dollars per year to house one inmate. Over a 30 year span that equates to between 900,000 – over 1,000,000 dollars to house

one inmate, not including the health care costs for an inmate as they enter old age. Many advocates of the death penalty are so because they believe that money would be better spent on other government programs, rather than going toward convicted murderers. But death penalties are not necessarily as inexpensive as one might expect. Because of repeals, and the failure to administer the death penalty in an efficient manner the costs of death sentencing can also be steep, roughly 3-4 million a year. Although, pro-death penalty supporters would argue that most of this costs is due to the prolonged appeals process, and not to the executions itself.

The last factor of debate is a philosophical one. What is justice? Advocates of the death penalty view it as retribution. An eye-for-an-eye approach. In some states the loved ones of victims are permitted to witness the execution, as a means of closure. On the other hand, opposition to the death penalty argues that the government has no authority to take the lives of its citizens. They would also argue that the death penalty is inhumane because of the psychological anguish that death row inmates must face when awaiting their own death.

Recommended Action

The debate promoting the abolition of the death penalty is primarily structured around morality, and the psychological effects that a death sentence has on the individual. However, it also states that life imprisonment is a sufficient punishment, and a more effective way to deter crime. This line of argument doesn't take into account the psychological anguish that may also result in a life confined permanently to prison. There is no concrete evidence to suggest that the death penalty would be more or less distressful as life imprisonment, as the effects of either sentence would likely vary from individual to individual, rendering that argument moot. The cost of the death penalty vs. the cost of life imprisonment is also not entirely clear. Although the number

of life imprisonments that would exist in replacement of the death penalty would cost the government millions of more dollars in housing, food, and medical costs of inmates, which has been steadily increasing. Lastly, the strongest argument against the death penalty would have to be the possibility of innocent lives being lost as a result of wrongful convictions. However, this would not be to say that the death penalty is outdated, but rather that society has reached a level of advancement that actually makes the government better suited to have the death penalty. This is due to technology advancing to the point where the likelihood of a wrongful conviction is decreasing, and will only continue to become more improbable.

The state has authority over the use of violence within its given territory. Giving it the right to strip individuals of life after due process of the law. Taking into account the cost of life imprisonment, and the reliability of forensic investigations, the recommend course of action would be for the federal government to continue to allow individual states to determine their own policies on the use of the death penalty. However, a death sentence should only be applicable when there is overwhelming evidence that the offender is guilty beyond all reasonable doubt, and the implementation of a death sentence must be carried out in an expedient manner.

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