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Critical Evaluation of the Death Penalty

The morality, ethics, and constitutionality of the death penalty are commonly questioned by citizens and lawmakers alike as the United States remains to be one of the few developed nations in the world that still federally permits this highly controversial practice. Just three days ago on July 2, 2020, an Argus Leader article revealed that prosecutors of a recent homicide case are seeking the death penalty on the perpetrator.

While some view the death penalty as a reasonable action of justice, others view it as a violation of an individual's civil liberties, defined as the basic rights and freedoms granted to each citizen guaranteed by the Bill of Rights, statutes, or court precedent. The specific Bill of Rights amendments that opponents argue the death penalty violates are the Fifth, allowing citizens "due process of law," the Eighth, protecting citizens from "cruel and unusual punishments," and the Equal Protection Clause in the Fourteenth.

To prove whether or not the death penalty violates due process, the Equal Protection clause, and counts as a cruel and unusual punishment, it is first necessary to explore the ways in which it is imposed as well as the negative implications it has for certain criminals beyond just death. Furthermore, though more ambiguous, the concept of morality and ethics also plays an important role in any discussion surrounding the topic of the death penalty. After all -- once you strip away the context of it, it is willfully taking the life of another human being. Proponents of

the death penalty primarily argue that it serves as proper retribution and an effective deterrence for potential homicide offenders. If someone is guilty, they deserve to be punished, and the severity of the punishment should be in proportion to the severity of the crime. However, after taking closer look at how the death penalty actually disproportionately harms certain demographics of people as well as its actual effectiveness in deterring crime, it is much more clear as how it actually imposes on someone's civil liberties.

Data suggests that the death penalty itself is racist, classist, generally discriminatory. The institutional and systemic reasoning behind this, other than implicit or blatant racism, can be explained with the *Gregg v. Georgia* decision. The solution from that trial was that the conviction was to be separated from the sentencing stage in order to allow juries to consider and weigh in potential aggravating and mitigating circumstances of the crime. This opportunity for discretion unintentionally but directly leads to the opportunity for discrimination. A study done by the University of Pennsylvania's Monica Lynch and Craig Haney concluded that a juror was much more likely to sentence a Black defendant to the death penalty than a white defendant (Bowers et. al. 2001). The American Civil Liberties Union provides ample evidence to support this finding as well. They cite a racial discrimination case in Georgia that revealed "the average odds of receiving a death sentence among all indicted cases were 4.3 times higher in cases with white victims." (David C. Baldus et al., *Equal Justice and the Death Penalty* 1990). Furthermore, based on a synthesis done of 28 studies, the U.S. General Accounting Office concluded they show "a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision" and that "race of victim influence was found at all stages of the criminal justice system process." The American Civil Liberties Union

clearly establishes why this discriminatory factor highly prevalent in the death penalty sentencing process constitutionally violates an individual's civil liberties: "Constitutional due process and elementary justice both require that the judicial functions of trial and sentencing be conducted with fundamental fairness, especially where the irreversible sanction of the death penalty is involved." Given the rampant presence of racial bias, many Black defendants are wrongly convicted and sentenced to the death penalty. Even the textbook *The Logic of American Politics* cites evidence that further supports these findings. There has been an abundance of quantitative research that indicates racial bias, thereby violating the Fourteenth Amendment's "equal protection" as well as due process. Black people who murdered whites were "far more likely to receive the death penalty than were whites convicted of the same crime" (Kernell et. al. 2020).

In regards to determining if capital punishment is a cruel and unusual punishment, lawmakers must look beyond just the actual act of the execution. Instead, it is worthy to take into consideration the unbelievably long wait times many death row inmates endure during their time on death row. An effective example of this is Louisiana. According to The Balance, Louisiana had 69 inmates awaiting on death row in 2018, and over one-third of them had been serving for more than 20 years. The average amount of years on death row was 16.3. The wait time in California has been shown to be as high as 20 years. These figures are incredibly crucial in evaluating why the death row is a cruel and unusual punishment, as putting them alongside what the criminal is being punished with reveals that sentencing someone to death is not just an isolated punishment of death -- but the extensive wait time must be factored in too. In fact, this argument was even already argued in *Lackey v. Texas* in 1995 when Clarence Allen Lackey had

spent seventeen years on death row. The wait time *in addition* to the death sentence is not a proportionate punishment to the crime they committed. Instead it adds a severity of psychological suffering of the criminal beyond just the act of depriving someone of life.

Perhaps one of the most common argument of those for the death penalty is that it acts as a deterrence for potential homicide offenders, moreso than imprisonment. However, both the ACLU and numerous other sources statistically prove that this is false. The ACLU definitively concludes “the state that practices the death penalty does not always show a consistently lower rate of criminal homicide.” They state that two states that did not impose the death penalty, Iowa and Wisconsin, had half as many homicide rates than Illinois, a state that did impose the death penalty, between 1990 and 1994. States that did use the death penalty had 25-45% higher rates of crime between 2000-2010 than states that didn't use the death penalty.

Regardless of whether or not someone morally/ethically agrees or disagrees with the death penalty, it can be factually and statistically proven that the ways in which it is imposed and the effects it has on individuals of color inherently violate not one but three amendments in the Constitution. There exists dozens more logistical arguments pointing out the flaws of the death penalty, like the unreasonable high cost of maintaining the entire system compared to regular imprisonment, but it is first necessary to reflect upon the ways in which individuals' civil liberties are compromised.

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