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Should Capital Punishment Receive A Death Sentence?

Capital punishment is one of the most controversial and polarizing topics that exists in society today. Discussing the death penalty, much the same as issues of abortion and gay rights, might be the easiest way one could create a serious rift in a relationship, friendship, or workplace. Apathy about this topic is uncommon, with most people harboring a strong emotionally charged opinion. This charge can be fueled by religious, ethical, or familial beliefs. As many of these sources are unlikely to change much in a person's life, it is not hard to understand why these opinions are often so resistant to change. Even the most rational and factually supported argument can ultimately be rebuffed by the occasionally irrational faith in the source of one's personal beliefs. All that said, the writing that follows will serve as a factual and grounded argument in support of capital punishment. The case law and facts will show that the death penalty does not inherently violate the constitution and that the courts have diligently evaluated when the application of this punishment is constitutionally appropriate, therefore the death penalty should remain in effect.

The origin of American capital punishment can be traced back to english common law. Currently 32 states are able to enter the sentence of death and the American form is applied much more sparingly than its predecessor. The logical starting point for any good legal debate is the issue of constitutionality, mainly because the

United States constitution is the supreme law of the land. Although it is the place to begin the conversation, it is still a document written over 200 years ago and therefore requires some interpretation regarding contemporary issues. This interpretive discretion is bestowed upon the court system, with the highest authority and ability to issue opinions that become legal precedent residing in the U.S. Supreme court. The country's highest court has been called upon many times over the years to develop a definitive collection of case precedent that will lay the foundation for future capital murder cases.

The Supreme court established the general constitutionality of the death penalty in Gregg v. Georgia. The Gregg court ruled "that the death penalty is not a form of punishment that may never be imposed, regardless of the circumstances of the offense, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it"[1]. While this case does provide judicial flexibility and support for the application of the death penalty, other cases have established limitations on when it no longer is constitutional. One example of such a limitation is Coker v. Georgia. In Coker we find the common eighth amendment issue of cruel and unusual punishment. This will be discussed in further detail later on but for the purpose of this argument, Coker followed the Gregg standard to determine the constitutionality of the death sentence for a rape conviction in which death was not the intended or actual outcome. The Gregg standard as explained in Coker is "a punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime"[2]. These principles are the building blocks of nearly every precedent setting case

discussed in this essay. Both the Gregg and Coker cases serve as a foundation for the constitutional limitations of the death penalty. In more recent years the Supreme Court has further developed the laws surrounding capital punishment in both general as well as specific issues.

The Eighth Amendment of the United States Constitution is often the focal point of capital punishment litigation. This amendment was ratified in 1791 as part of the Bill of Rights and it reads as follows, “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”[4]. The interpretation of the phrase “cruel and unusual punishment” is without question the most contested element of the amendment in cases that involve the death penalty. The American version of the Eighth Amendment is an adaptation from the English Bill of Rights that were established in 1689. In order to properly interpret and apply any law to a case, it is critical to understand the legislative intent behind the creation of that law. The importance of this concept is even more paramount in highly contested matters. The original intent of the English version is as follows, “the ‘cruel and unusual punishments’ clause was a limitation on the discretion of judges, and required judges to adhere to precedent”[4].

While the American courts still do maintain a fair amount of discretion in sentencing hearings, over the years the Supreme Court has established precedent specifically relating to the constitutionality of certain forms of execution. Over the last 150 years the U.S. court system has gradually ruled many of the traditional forms of execution as unconstitutional. Gone are the days of death by firing squad, gas chamber, public hanging, and electrocution. This is evidence of the law evolving with the advances in medical knowledge, technology, and society as a whole. The most common

method of execution in contemporary law is lethal injection. This is a three drug procedure by which the inmate is sequentially rendered unconscious, paralyzed, and finally the heart is stopped. Proponents describe this method as entirely pain free when properly administered, while detractors believe that it is in violation of the “cruel and unusual punishment” clause of the Eighth Amendment. In 2007, the U.S. Supreme Court accepted a case that would ultimately give clarity to that exact issue. Baze v. Rees accomplished this by developing the standard of “substantial risk”. The court opined that “simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of ‘objectively intolerable risk of harm’ that qualifies as cruel and unusual”[6]. In order now for a court to find a method of execution to be in violation of the Eighth Amendment, the petitioner must prove that the method carries with it a substantial risk of pain to the inmate. In the Baze case, the petitioner was neither able to meet this burden nor able to provide a method that provided a substantially lower risk.

Now that the constitutionality of capital punishment has been established, another supportive argument can be presented. Some will say that a lack of judicial restraint may exist; however, case law has established sufficient limitations on cases in which a death sentence is inappropriate. The issue of crime and mental illness is becoming increasingly recognized as a serious one. There is no question that every individual must obey the laws of the land. It is when a law is broken that the mental capacity of said individual should be a determining factor in the court’s deliberation regarding punishment. Pulling from the previously discussed case of Gregg v. Georgia which “identified ‘retribution and deterrence of capital crimes by prospective offenders’

as the social purposes served by the death penalty”[7], the court in Atkins v. Virginia concluded that “unless the imposition of the death penalty on a mentally retarded person measurably contributes to one or both of these goals, it `is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment”[7]. Although the intent of this precedent established by Atkins is clear, it did explain that it is a discretionary standard stating "we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences"[7]. This case by case discretion is imperative as the standard clearly can not be based on the difference in one IQ point, but rather must be a gross evaluation of the *mens rea* or “guilty mind”. The Atkins court developed the ruling in this case by merging the Eighth Amendment with our “evolving standards of decency”[7]. This exemplifies the sufficient evolution of the law surrounding the death penalty in contemporary society.

Leaning on the Atkins’ interpretation of the Eighth Amendment, the court in Roper v. Simmons settled the issue of age and capital punishment. The Roper court begins on the grounds that “capital punishment must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them the most deserving of execution”[8]. From there the court expounds on the three fundamental reasons that “render suspect any conclusion that a juvenile falls among the worst offenders”[8]. These reasons are summarized as follows: in general a minor (1) is lacking in maturity and sense of responsibility, (2) is more susceptible to negative external and peer pressure, and (3) lacks the the full character development that is expected of an adult. Just as in Atkins, the Roper court found that levying such a severe

penalty upon a minor would not advance the societal goals that are intended by capital punishment. “Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults”[8]. One noteworthy difference between Atkins and Roper regarding discretion stands out in the two otherwise very similar judgments. As previously mentioned the mental capacity evaluation is not a strict standard, whereas disqualifying by minority age is a strict line at the eighteenth year. While the court recognized that this rigidity itself is not perfect, ultimately any other choice provided too great a risk to a group that is universally afforded special protection in all areas of the law. This case illustrates the ability of our judicial system to regulate itself over time.

One huge fear of those looking to remove capital punishment is that the wrongly accused could pay the ultimate price for a flaw in our justice system. While this is a valid argument, it is now more than ever losing steam. Advancements in technology have increased the ability of law enforcement to gather more accurate evidence. Harvesting fingerprints, autopsy results, and of course DNA matching are great examples of the advancements that have enhanced the criminal investigation process. This growth will inevitably push our maturing justice system to its most accurate and efficient stage in history. Achieving perfection is a goal yet to be attained by nearly all facets of our government, should they then all be scrapped entirely as a result? The answer clearly is no, as it should be in this instance as well. If purpose and potential still exist, just let the path to optimal performance proceed.

Now this all supports the continuing application of the death penalty, but what of those already in receipt of the death sentence awaiting execution? Persuasive case law

has emerged regarding the ability to reopen cases for evidentiary purposes when post conviction innocence becomes apparent. In Schlup v. Delo we are presented with an extensive discussion outlining the judicial standard for use in future *habeas corpus* claims. The great lengths that this court went to with its meticulous analysis of the two previously predominant standards of review in this area can not be overstated. Further building on the foundation established in Schlup, the court in House v. Bell succinctly summarized the grounds for review established by Schlup in the following statement. “It held that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, ‘it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.’ This formulation, Schlup explains, ‘ensures that petitioner's case is truly extraordinary, while still providing petitioner a meaningful avenue by which to avoid a manifest injustice’."[9] Given the fact that any judicial confusion in this matter would result in the courts becoming inundated with petitions from inmates with nothing to lose, it quickly becomes evident why the Schlup court provided such an extensive explanation of its precedent setting opinion.

Although the House case is a good supplement in the understanding of Schlup, it is a landmark case in its own right. Over 20 years ago Paul House was convicted of murder and consequently sentenced to death. His conviction was greatly influenced by the assumption presented to the jury that bodily fluid stains directly linked him to the crime. In 2006, Mr. House was able to satisfy the Schlup standard and thus petitioned the Supreme Court for relief under *habeas corpus*. "In a capital case a truly persuasive demonstration of `actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal *habeas* relief if there were no state

avenue open to process such a claim"[9]. This time, in contrast with the original determination, the results of the DNA tests on the bodily fluid stains established a conclusive link not to House but rather the victim's husband. The House court concluded that this new information eroded the central theme of the prosecution's case and most certainly would have affected the jury's deliberations. "The central forensic proof connecting House to the crime—the blood and the semen—has been called into question, and House has put forward substantial evidence pointing to a different suspect. Accordingly, and although the issue is close, we conclude that this is the rare case where—had the jury heard all the conflicting testimony—it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt"[9]. Ultimately the court reversed and remanded the case providing a perfect example of the proper application of the Schlup standard, and establishing the framework for future righteous claims.

The above discussion only scratches the surface of the debate regarding capital punishment, the issue will certainly continue to garner headlines and remain vehemently litigated for many years to come. Support for the death penalty is waning over the years and those in opposition assert a variety of reasons. Whether it be religious beliefs, morality, ethical conflict, etc., the common theme is that these are all deeply ingrained sources of belief. The formidable challenge of effecting change in an individual's core values is nearly impossible to accomplish. That being said, the most persuasive argument against those beliefs is evidence that the actual authority on the matter adequately managing it. The Supreme Court is the highest authority available to interpret the constitution and it does so with meticulous focus even in the face of

critically important issues. The cases mentioned above attest to the great care taken to ensure that the sentence of death is only issued in circumstances that are entirely constitutionally supported. The following statement by the court is a perfect summation of this point, “The prohibition against cruel and unusual punishments, like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework we have established the propriety and affirmed the necessity of referring to ‘the evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual”[8]. In the simplest possible terms “the punishment of death does not invariably violate the Constitution”[1], therefore the death penalty should remain in effect.

References

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10. Schlup v. Delo, 513 US 298 - Supreme Court 1995

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