

Time to Question Sanity of Death Penalty

Philip Holloway Sun July 26, 2015

The verdict is in, and James Holmes has been found guilty of first-degree murder for killing 12 people in a movie theater in July 2012. The Colorado jury predictably rejected his insanity defense, but that is not the end of the story. That same jury will now begin determining whether he should be executed or serve the rest of his life in prison. And, as a result, America once again finds itself in a virtually unique discussion among rich nations on whether capital punishment should apply to one of its citizens.

As a former law enforcement officer, former prosecutor, criminal lawyer, and continuing real-world "student" of criminology, I've seen up close the evidence suggesting that the United States should not be having this conversation anymore, because it may be time to put an end to capital punishment completely.

This is not because I have any moral objection to executing the worst of the worst -- those who murder innocent victims, sometimes in the most horrific ways imaginable. It is hard to see capital punishment as particularly "cruel" or "unusual" when the victims will often have died much worse deaths than the killer will be subjected to. But the fact is that there are several practical reasons why the death penalty just doesn't make sense any longer, if it ever really did in the first place.

1. Executions are actually less punitive than life without parole. I've never been to prison, but having dealt regularly with prisoners, it's clear that prison life is hard -- very hard. And you don't have to take my word for it. Recently executed murderer David Zink had this to say about it just before his death by lethal injection in Missouri:

"For those who remain on death row, understand that everyone is going to die. ... Statistically speaking, we have a much easier death than most, so I encourage you to embrace it and celebrate our true liberation before society figures it out and condemns us to life without parole and we too will die a lingering death."

This point of view is not surprising when you look at the Supermax prison in Colorado, which some have described as a fate worse than death. There, inmates typically spend 23 hours a day locked inside a cell, with little communication with other inmates or the outside world. There are also state versions of these facilities, which the New York City Bar Association has labeled as cruel and unusual punishment, likening imprisonment in one as torture under international law.

2. Death penalty litigation makes no financial sense. Numerous studies have found that death penalty criminal litigation costs taxpayers far more than prosecutions seeking life without parole. For example, in Colorado, where the Holmes jury now has to spend the next several weeks hearing evidence, the state will shell out approximately \$3.5 million, as opposed to an average of \$150,000 if the state had not sought the death penalty, according to the American Civil Liberties Union.

Why? Because the average length of the initial prosecution for a death penalty case -- not including lengthy appeals -- means more than a thousand extra days of courtroom resources are being used. Judges, prosecutors, public defenders, court reporters, jurors, bailiffs and other courtroom staff are all needed just to conduct a trial, and that means spending a lot of money from state coffers that could have been used elsewhere. In Colorado's case specifically, the state has executed exactly one person

since 1976, when the Supreme Court of the United States lifted the moratorium on capital punishment in the landmark ruling of *Gregg v. Georgia*. So is this punishment phase of the Holmes trial really necessary? Only time will tell, but the fact remains that Colorado has historically been hesitant, to say the least, to execute murderers.

3. Death penalty litigation is harder on families of murder victims. Death penalty cases on average take 25 years or so to reach ultimate resolution, whether it be the imposition of the death sentence, a reversal or otherwise. As such, family members and loved ones of murder victims often find themselves entangled in the justice system for a very long time. In fact, in Colorado, the trial portion of the process alone is six times longer than if the state were seeking life without parole.

4. The death penalty is not evenly applied. For starters, only 31 of the 50 U.S. states employ capital punishment. And even in states where it is an option, prosecutors can decide against pursuing a death sentence. This is the case in the "hot car death" in Cobb County, Georgia, involving Justin Ross Harris, who is accused of murdering his young son by leaving him strapped in a car seat to bake to death. With the death penalty off the table, any conviction and appeals process would be much shorter than in a capital case.

Wise use of prosecutorial discretion should therefore be welcomed, not least because prosecutors know their cases better than anyone. Also, prosecutorial discretion can mean that a case costs much less, eliminates many appellate issues, shortens the trial and ultimately brings the matter to a conclusion much sooner than if it were a death penalty trial.

5. Despite safeguards, innocent people do wind up on death row. The fact is that innocent people are convicted and sometimes end up on death row. I have plenty of heartbreaking stories of clients who, in my opinion, were convicted of crimes they did not commit. And I am far from alone -- there have been 154 verified cases of death row exonerations since 1973.

Meanwhile, a study last year found that, at a conservative estimate, "more than 4 percent of inmates sentenced to death in the United States are probably innocent." Indeed, there have been 330 exonerations based on DNA alone, with 20 of those defendants having served time on death row since the advent of DNA technology. A case from North Carolina underscores this point. There, Henry McCollum was released last year after spending some 30 years on death row for the murder of an 11-year-old girl that DNA evidence suggested he did not commit. With cases such as this, it defies all reason to believe that no innocent person has been executed in the United States.

The bottom line is this: While the death penalty is neither "cruel," when taking into account the cruelty so often inflicted on the victim, nor "unusual," in that it has been around for millennia, there are simply too many practical reasons for states to curtail or abandon their use of the death penalty. Our criminal justice system -- and those caught up in it, including the families of victims -- would be the biggest beneficiaries should we choose to end capital punishment in the United States.

Of course, the debate over capital punishment is a longstanding one, and there is no end to it in sight. But it is hard not to question the rationality -- indeed the sanity -- of continuing to follow a system that does not deter violent crime for determined individuals.

One example of such a determined individual is admitted cop killer, Jamie Hood, who was recently convicted of the murder of Athens, Georgia Police officer Buddy Christian. Bizarrely, Hood represented

himself and beat almost half of the 70 count indictment and also "won" the sentencing phase of the trial when a jury, after deliberating only about an hour and a half, returned a verdict of life without parole -- a sentence which Hood offered to accept on a guilty plea. This further illustrates that capital punishment does not deter individuals who are intent on murder.

Just ask Chattanooga or Charleston.

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<https://www.cnn.com/2015/07/17/opinions/holloway-death-penalty-future/index.html>