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Death Penalty as State Crime: Examining the Physical and Mental Health Concerns with Capital Punishment in the U.S.

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Abstract

This paper begins with a review of the relevant literature on state crime. It then focuses on the physical health concerns related to the methods used to execute individuals in the U.S. Lethal injection is the primary method used today, yet there are a host of issues related to the chemicals used in lethal injections, how states are obtaining them illegally, and the protocol for lethal injections. In addition, while there has been some case law on executing those with intellectual disabilities or those who struggle with mental health, there is no categorical prohibition on executing people who suffer from severe mental illness. This not only violates international human rights laws but because these mental health issues are well-known to those who oversee executions and the legislative and judicial bodies that

authorize them, they can also be seen as crimes of the state. The paper concludes with a review of how abolitionist groups should proceed.

Introduction

Although the remainder of the global North, or “developed,” countries have abolished the death penalty, much of the U.S. still allows the antiquated practice. Yet the death penalty is rife with problems and has been since its inception (Amherst College, 2012). State and national lawmakers and courts have repeatedly admitted that these problems exist, yet capital punishment remains legal at the federal level and in 27 states. This form of punishment is not only inhumane but it is in stark contrast to several international human rights treaties to which the U.S. is party. As such, retention of the death penalty can be seen as a form of crime by the state. While arguments can be made about the death penalty as a whole, the focus here is on two specific issues: the continued use of torturous methods and the execution of people whose mental illness prevents them from fully understanding their actions, the courtroom processes, and the nature of their punishment. The state knowingly does both, in contravention of human rights.

This paper begins with a review of the relevant literature on state crime. It then focuses on the physical health concerns related to the methods used to execute individuals in the U.S. Lethal injection is the primary method used today, yet there are a host of issues related to the chemicals used in lethal injections, how states are obtaining them illegally, and the protocol for lethal injections. In addition, while there has been some case law on executing those with intellectual disabilities or who struggle with mental health, there is no categorical prohibition on executing people who suffer from severe mental illness. This not only violates international human rights laws but because these mental health issues are well-known to those who oversee executions and the legislative and judicial bodies that authorize them, they can also be seen as crimes of the state. The chapter concludes with a review of how abolitionist groups should proceed.

State Crime

According to Rothe and Kauzlarich (2016), state crime is

“an act or omission of an action by actors within the state that results in violations of domestic and international law, human rights, or systematic or institutionalized harm of its or another state’s population, done in the name of the state regardless whether there is or is not self-motivation or interests at play” (p. 102).

Others use the term state-produced-harm rather than state crime, in recognition that there are certain policies and practices that may not be overtly illegal but perhaps should be, given the degree to which they are injurious (Tombs, 2018; Carlson, 2020). This is because it is the state itself that gets to determine what is illegal. As White (2008: 36) noted, “The authority vested in the State means that it has an intrinsic capacity to do harm.” Faust and Kauzlarich (2008) applied this lens to explain harms committed, via action or omission, in the local, state and national response to Hurricane Katrina. Many others have reviewed state crime in terms of injurious policies and practices, for instance, the handling of domestic violence (Finley, 2017), sexual assault (Collins, 2015), and the use of torture (Hamm, 2007; Collard, 2018). A zemiological or harms focus helps highlight how leaders enact and maintain problematic practices (Rothe, 2020), as is the case with the US death penalty. Michalowski (2010) observed that state crime often causes outcomes that are analogous to those prohibited by criminal law. Murder is illegal; executions are murder, just those deemed justified by the state. But, as Iadicola and Shupe (1998) reminded us, violence is violence whether it is justified or unjustified, and who gets to determine which types of violence are justified and under what circumstances matters tremendously.

Ward (2014) observes that state crime is slow violence, in that it may occur out of sight or at least in ways that are rarely publicly acknowledged. Nixon (2011) explains that slow violence is “a violence of delayed destruction ... dispersed across time and space, an attritional violence that is typically not viewed as violence at all” (p. 2). This failure to recognize slow violence is accomplished through demonization of those it largely effects, inadequate education, and misinformation. Pain (2019) observes that “Central to the argument is that slow violence is often invisible, yet the scale of its brutality towards humanity is as great or greater than sudden and spectacular events such as natural hazards. This invisibility is both a manifestation of capitalism and in capitalism’s interest, being difficult to identify and mobilize against” (p. 387). In the case of the death penalty, those most affected are the poor, people of color, and the mentally ill, as those are the groups most likely to land on death row (Long, 2020). These groups are already marginalized, and it is all too easy for people and politicians to support executions for these “criminals.” Further, because executions are not public, the average citizen has no idea when one is occurring, the nature of the alleged offense, and the protocols of the actual death procedure. Many have no idea that other punishments are less costly, more effective as deterrents, less racially biased, and less likely to kill someone who was actually innocent. Many are unaware of court decisions that have determined specific issues related to the death penalty to be unconstitutional, even though the Supreme Court has not deemed it in itself to be so (only issuing a moratorium in 1973 due to the arbitrariness of the process of death sentences being assigned). As such, despite some strong movements toward abolition and continued

support for it, much of the public still supports the death penalty over life without parole for the same offenders.

Most Americans are unfamiliar with the international human rights treaties that address the death penalty, despite the U.S. being party to them. Green and Ward argue that state crime should be defined as ‘state organisational deviance involving the violation of human rights’ (2000: 101), which is clearly the case in regard to the death penalty. The U.S. signed and ratified the International Convention on Civil and Political Rights. It has also signed and ratified the Convention Against Torture. Both of these, as written, call for serious limitations on the use of the death penalty, allowing only for executions in the most severe cases and in spirit, promoting abolition.

Much has been written about issues with the death penalty, including cost, deterrence, access to counsel, race, innocence and more. The next section focuses on two specific issues that demonstrate the willful ignorance of state leadership and the courts in maintaining the death penalty. First, that the primary method of execution being used today, lethal injection, is inhumane and illegal. Second, executions of people with severe mental illness are entirely inappropriate and deeply injurious, therefore are examples of state crime.

Methods of Execution

One issue the state is entirely aware of with the death penalty is the problems with the methods used to execute. Lethal injection remains the most common method used and is listed as the primary means in every U.S. jurisdiction, yet it is the most fraught with error. A 2012 study by Amherst College Professor Austin Sarat and students reviewing 9,000 executions between 1900 and 2012 found that 3% had been botched. The study found that lethal injections were botched in 7.12% of cases, compared to 5.4% involving lethal gas, 3.12% hanging, and 1.92% electrocution. Sarat cited the case of Romell Broom in Ohio in September of 2009 as one recent example of a botched execution. Efforts to find a suitable vein through which prison officials could inject a lethal dose of drugs were terminated after more than two hours of trying. Broom repeatedly grimaced in pain throughout the excruciating process and even attempted, at points, to help his executioners find a vein. Finally, Ohio Governor Ted Strickland put a halt to the execution and ordered a one-week reprieve (Amherst College, 2012).

States are increasingly struggling to obtain the chemicals required for lethal injection. Since every country in Europe except Belarus has banned the death penalty, the European Union prohibits the export of products, including medicines, used for torture or in executions. The EU was a primary source for lethal injection drugs used in the U.S. Many U.S.-based pharmaceutical companies no longer wish

to provide them for the purpose of execution. Since the early 2000s, Abbott Laboratories, which manufactures the barbiturate anesthetic thiopental (then the first substance used in the three-drug protocol), has objected to its use for lethal injections. While some have done so due to corporate policies regarding ethics and human rights, others are more inspired by the bad public relations that might result if people knew that their products were used for the death penalty. Major professional associations including the International Academy of Compounding Pharmacies and the American Pharmacists Association have adopted policies aimed at the discouragement of using drugs for lethal injection, as have many major medical bodies (Berger, 2020). As a result, states are turning to dubious sources or practices to obtain the drugs.

Some states have begun using compound pharmacies, which mix small batches of drugs for special order. This type of pharmacy has often been found to escape FDA evaluations for effectiveness and safety, meaning they are more likely to produce substances that could be dangerous or ineffective. For example, in 2015, the FDA and Oklahoma Board of Pharmacy found that an Oklahoma compounding pharmacy that had supplied execution drugs for Missouri had violated nearly two thousand state guidelines. Still other states have gone beyond compound pharmacies to obtain chemicals from overseas. Arizona, California, Georgia, South Carolina, Arkansas, and others purchased or tried to purchase thiopental from Dream Pharma, a sketchy vendor named Mehdi Alavi who ran Dream Pharma, which was operating out of a driving school in London. Nebraska attempted to purchase drugs from Harris Pharma, a salesman without a pharmaceutical background operating near Kolkata, India. The State even sent \$54,400 to this salesperson, even though the drugs were illegal to import and were never received. Nebraska had also ordered from a Mumbai, Kayem Pharmaceuticals, as did South Carolina (Stern, 2015). Another tactic was to switch to entirely different protocols for lethal injection. In Oklahoma, with sodium thiopental increasingly difficult to get and an execution scheduled for December 2010, officials decided they could no longer avoid finding a substitute. They settled on another powerful barbiturate that was more easily available: a short-term therapy for insomnia called pentobarbital, made in the U.S. by a Copenhagen-based company called Lundbeck. According to state officials, pentobarbital was ideal “for humane euthanasia in animals.” This was just before the DEA began raiding prisons, as these illegal purchases essentially made them drug smugglers. It seized sodium thiopental from prisons in Georgia, Tennessee, Kentucky, South Carolina and Alabama (Stern, 2015). These different chemicals and protocols often resulted in botched executions. In 2014 alone, Arizona, Ohio, and Oklahoma badly botched executions using new protocols, and shortly thereafter these states halted executions (Berger, 2020).

Other states are being duplicitous with how and where they obtain their lethal injection drugs. Nebraska executed Carey Dean Moore in 2018 using drugs it obtained that violated the distribution policies of the company Fresenius Kabi. Before Moore's execution the company had sued Nebraska in federal court, alleging that the state had obtained its drugs through "improper or illegal means." Upon finding out that their products were being used for executions, Hikma Pharmaceuticals and Pfizer Inc also demanded that their drugs be returned. The state refused and despite a trial court decision requiring Nebraska disclose the records about its purchase, the state stalled until after Moore was executed. Scott Frakes, Director of Corrections for Nebraska, has asked the state to pass legislation permitting the information about execution drugs to be concealed, but the state has not done so and in fact, passed a bill in 2020 requiring greater transparency. Governor Ricketts vetoed the bill (Death Penalty Information Center, 2021b). Florida recently passed such a bill, which begs the question: What is going on that the public cannot know the source of your execution drugs? Despite deep budgetary woes and crumbling infrastructure, Arizona spent \$1.5 million in 2020 for 1,000 vials of the barbiturate pentobarbital from an unknown source. The invoice, which was heavily redacted when it was obtained by *The Guardian*, documents that the state ordered four to eight "unlabeled jars" to be shipped in "unmarked" packages to a location to be determined. Deborah Denno, a professor at Fordham University, explained, "States have switched from one drug to another, crossed state lines to get drugs, paid cash and failed to record the payments to keep the purchases secret. All of those actions are violations of state or federal laws, and all of them have ended up jacking up the price of the drugs." This was the third time Arizona had been found attempting to import lethal injection drugs from dubious overseas suppliers. Missouri obtained lethal-injection drugs illegally from an Oklahoma pharmacy, The Apothecary Shoppe, that was not licensed to practice in the state. To hide the state's business with the pharmacy, a Missouri corrections official traveled to Oklahoma at night with an envelope containing \$11,000 in cash to purchase the drugs. Later investigations by *BuzzFeed News* found that The Apothecary Shoppe had admitted to nearly 1,900 violations of state pharmacy regulations. Another pharmacy Missouri used to supply execution drugs had been deemed "high risk" by the FDA because of numerous safety violations (Death Penalty Information Center, 2021a).

In addition to difficulties with obtaining the drugs that are required to "humanely" execute someone by lethal injection, many states are struggling to assemble competent execution teams. Some have little medical expertise and have struggled to properly administer the drugs into someone's veins (Berger, 2020). This also increases the likelihood of botched executions.

“What many people don’t realize, however, is that choosing the specific drugs and doses involves as much guesswork as expertise. In many cases, the person responsible for selecting the drugs has no medical training. Sometimes that person is a lawyer—a state attorney general or an attorney for the prison. These officials base their confidence that a certain drug will work largely on the fact that it has seemed to work in the past. So naturally, they prefer not to experiment with new drugs. In recent years, however, they have been forced to do so” (Stern, 2015).

The case of Clayton Lockett is illustrative of the problem when administrators experiment with lethal injection drugs and utilize undertrained personnel. It also highlights the fact that officials are aware there could be problems and tend to proceed, regardless. Two months prior to Lockett’s execution, Oklahoma officials had planned to get pentobarbital from a compounding pharmacy. The supplier backed out after compounding pharmacies came under pressure to stop selling the drug for lethal injections, so Oklahoma Department of Corrections officials had to scramble to find a substitute. Leading the efforts was Mike Oakley, the general counsel for the Oklahoma Department of Corrections, who had no medical training no expertise in the area. Oakley found it difficult to get people to advise him, eventually turning to Florida. Florida had used a sedative called midazolam to execute William Happ in October 2013. Happ remained alert far deeper into his execution than those who were given sodium thiopental or pentobarbital, although it was unclear he was in pain. However, Ohio used the same drug a few months later to execute Dennis McGuire, who witnesses said “snorted, heaved, clenched one of his fists, and gasped for air.”

Oakley decided Oklahoma would use midazolam as officials in Ohio convinced him that McGuire’s struggles were sensationalized by the media and because it was easy to obtain, not because he had evidence that it was effective. Oakley retired shortly after, before Lockett’s execution. Lockett’s attorneys tried to appeal to the Supreme Court, arguing that Oklahoma’s secrecy law denied Lockett and Michael Lee Wilson access to the courts and as such was unconstitutional. The court declined to hear the case. The case bounced around other courts and in the interim, Lockett and Wilson got temporary stays while the state scrambled to get the drugs. Meanwhile, one judge ruled that Oklahoma’s secrecy law was unconstitutional, which the state appealed. The Oklahoma Supreme Court issued a stay. Eventually, Governor Mary Fallon announced that she did not recognize the state Supreme Court’s stay and proclaimed that both Lockett and Wilson would be executed on the same day, April 29, 2014 (Stern, 2015).

On the execution day, the paramedic who oversaw the process had never administered midazolam. Other things were wrong as well: the saline was packed

in bags, not syringes, the tubing for the IV was the wrong kind. She had also never executed two people in one night, although most no one has. She forgot to tape down the IV, so it slipped out and she had to readjust it, which made Lockett's arm bleed. When she did so it did not work, so she tried another vein with no success. She knew that protocol was if you could not find a vein in three tries you had to ask for help, so she contacted Johnny Zellmer, who was a last-minute substitute who had only previously been involved in one execution and that was to check his consciousness and pronounced the time of death. Zellmer struggled with the more active participation required of him in this case. When the paramedic noted a bulging vein in Lockett's neck, she requested that Zellmer give her needle for the jugular. This is atypical, as IVs in the neck are painful and difficult to place. Indeed, Zellmer struggled to insert the IV in Lockett's neck while the paramedic proceeded to try to stick him three more times in the arm to no avail. When the needle did go into Lockett's neck it appeared to go all the way through the vein, so Zellmer tried subclavian line, in a vein running beneath Lockett's collarbone while the paramedic jabbed him twice in the right foot. Still without success, they decided to try to insert the IV into Lockett's femoral vein in his groin. He had now been stuck more than a dozen times and was clearly in pain. They did not have a long enough needle for insertion into the far deeper femoral vein, so decided to use an IO infusion needle, which is, "in effect, a power drill, used to bore a hole through bone and into the marrow, and therefore doesn't require finding a vein." But they did not even have that, so Zellmer determined that they'd make it work with a shorter needle and now, thirty minutes later, finally had the IV inserted. Saline should have been flowing through it regularly but only did so when the IV was propped up, a sign to re-start that the paramedic ignored. Although two IVs are usually used for a lethal injection, given their troubles so far the pair decided to use just one (Stern, 2015).

When they dislodged the midazolam, the IV dislodged and the sedative was pumped not into his vein but directly into his tissue. Some would go into his bloodstream but not as much as should be, making it less effective as a sedative. Lockett was alert and looking around after five minutes, so they waited another two when Zellmer said he was unconscious and the paralytic vecuronium bromide was administered. This is intended to block the signals the nervous system sends to the muscles, including the message to breathe. "An incompletely sedated person under a paralytic might look serene, because his face muscles are paralyzed. But he's suffocating: when he tries to expand his chest and draw breath, nothing happens. The Animal Welfare Act has banned the use of paralytics without anesthesia in the euthanasia of animals." Noting that the plunger was hard to depress, one of Lockett's executioners pushed harder. They then administered the third drug, potassium chloride, which was supposed to stop his heart. It did not. Lockett was witnessed moving, kicking his right leg, and breathing heavily. He clenched his

teeth, his head rolled back, and he tried to speak. Lockett lurched violently against the restraints, writhing as if to free himself (Stern, 2015).

Zellmer finally decided it was enough and removed the sheet that was on top of Lockett's body, only to find a tennis ball size protrusion on his groin. There was also blood and other liquids pooled around his groin. Zellmer jammed another IV in Lockett's left femoral and blood squirted all over, including on the doctor. He had hit an artery. Lockett continued to moan. While the warden and others scrambled to figure out what to do, Lockett lay there slowly and agonizingly dying (Stern, 2015). Despite the scandalous and inhumane way that Lockett died, Arizona proceeded to use midazolam to execute an inmate months later. Joseph Wood took nearly two hours to die and was gasping throughout the process (Stern, 2015). Thus, the state was fully aware that they could be torturing another person and elected to do so.

The Supreme Court has set a standard for what is an "acceptable" level of pain that someone can endure during an execution for it to be constitutional. That threshold is not consistent with international law and allows the state to torture inmates under legal cover. In Missouri, Russell Bucklew, had a rare medical condition, cavernous hemangioma, which causes blood-filled tumors to grow throughout his head, neck, and throat. They were too fragile to remove through surgery and thus his attorneys argued that executing him using nitrogen hypoxia would mean they could erupt and die and Bucklew might drown in his own blood. Bucklew filed a lawsuit in 2015 to ask Missouri to execute him using a different method. The five conservative justices on the court ruled that he hadn't met their high threshold for challenging execution methods. Justice Neil Gorsuch wrote the opinion for the court, stating that the Eighth Amendment "does not guarantee a prisoner a painless death—something that, of course, isn't guaranteed to many people, including most victims of capital crimes." The Court's four liberal justices dissented and accused their colleagues of denying Bucklew's constitutional rights. Justice Sonia Sotomayor wrote, "There are higher values than ensuring that executions run on time. If a death sentence or the manner in which it is carried out violates the Constitution, that stain can never come out." Justice Stephen Breyer added, "Bucklew has provided evidence of a serious risk that his execution will be excruciating and grotesque. The majority holds that the State may execute him anyway" (Ford, 2019). Ford (2019) wrote, "In deciding that Bucklew had no right to an alternative method of execution, the majority does what it increasingly feels like it must do: mangle facts and precedent to keep the machinery of state-sanctioned death rolling."

Another approach to address the limited supply of lethal injection drugs is to use other methods of execution. Arizona announced it would be conducting executions by lethal gas and as of late May 2021, had already spent several thousand dollars to purchase hydrogen cyanide. This is the same gas, under the trade name Zyklon B, that was used at the Nazi concentration camp Auschwitz and others to kill more than one million people. Arizona officials claim they have “refurbished” their gas chamber. Besides sounding like it’s a rental property, this pronouncement sanitizes what happened the last time the state used this method of execution. Walter LaGrand, a German national, was sentenced to death for a 1982 bungled armed bank robbery in which a man was killed. An eyewitness account, published in the *Tucson Citizen* in 1999, said he displayed “agonizing choking and gagging” and took 18 minutes to die. “The witness room fell silent as a mist of gas rose, much like steam in a shower, and Walter LaGrand became enveloped in a cloud of cyanide vapor. He began coughing violently – three or four loud hacks – and made a gagging sound before falling forward.” Of course, the other choice for an inmate in Arizona facing execution is lethal injection, and the last of those involved Joseph Wood, who took nearly two hours to die after an experimental cocktail of drugs (Pilkington, 2021). Similarly, Alabama is looking to employ nitrogen gas and South Carolina passed a law authorizing the firing squad as an alternative to lethal injection, given the shortages of drugs for executions.

In the early 2000s, anesthesiologists began suspecting that some inmates were awake but paralyzed during their execution. David Lubarsky, an anesthesiologist at the University of Miami, reviewed the postmortem records of 49 executed patients and determined that almost half of them may have been conscious during lethal injection. It is likely, then, that they were in excruciating pain as the final drug was administered (Sanburn, 2014). Despite such research, states have persisted in lethal injections. Justice John Paul Stevens, in his dissent in *Roper v. Simmons* (2005), acknowledged the culpability of the state.

“[O]ur experience during the past three decades has demonstrated that delays in state-sponsored killings are inescapable and that executing defendants after such delays is unacceptably cruel. This inevitable cruelty, coupled with the diminished justification for carrying out an execution after the lapse of so much time, reinforces my opinion that contemporary decisions ‘to retain the death penalty as a part of our law are the product of habit and inattention rather than an acceptable deliberative process’ (Death Penalty Information Center, N.D.)

Executing the Severely Mentally Ill

While the U.S Supreme Court has said that mental illness makes a defendant less morally culpable and that it must be considered in determining whether a death sentence is appropriate, it has yet to categorically prohibit the practice for those with severe mental illness. This is despite the recommendation by major medical bodies, including the American Psychiatric Association and the American Bar Association, among others. Mental illness affects the individual's understanding of the court procedure, their ability to cooperate with their attorney or to represent themselves, and jury members' perception of their threat to society. While the Supreme Court has determined that mentally incompetent people cannot be tried, it is rare that a defendant facing a death sentence is actually considered mentally incompetent. Further, while a person who has become incompetent while on death row is not to be executed, per Supreme Court precedent, this has happened many times. The following cases are illustrative that the state has been aware that they will be executing someone who is obviously incapable of participating or understanding and chose to do it any way.

Cecil Clayton was executed on March 17, 2015, in Missouri. He had an IQ of just 71, which makes him only one point above what is deemed mentally retarded. That one point would have spared his life, as the Supreme Court ruled in *Atkins v. Virginia* (2002) that it was unconstitutional to execute persons who are mentally retarded. In addition, Clayton suffered from dementia and was missing approximately 20% of his frontal lobe due to an accident. That part of the brain affects impulse control, problem-solving and social behavior and it was after the accident that Clayton began acting violently. He developed severe paranoia and checked himself into a mental hospital, and Dr. Douglas Stevens, the psychiatrist who examined Clayton in 1983 concluded, "There is presently no way that this man could be expected to function in the world of work. Were he pushed to do so he would become a danger both to himself and to others. He has had both suicidal and homicidal impulses, so far controlled, though under pressure they would be expected to exacerbate." Six other psychiatrists determined that Clayton did not understand that he would be executed or the reasons for it. Despite this, he was denied a competency hearing before a judge (Williams, 2015).

Florida executed John Ferguson on August 5, 2013. Ferguson had well-documented mental illness going back to 1965, when he first suffered from visual hallucinations. He was admitted to several mental institutions and had been diagnosed as paranoid schizophrenic, delusional and aggressive. When he was 21, Ferguson was shot in the head by a police officer. Like Clayton, a psychiatrist said in 1975 that he was “dangerous and cannot be released under any circumstances.” He was, however, released less than a year later. Ferguson had no understanding of what was going to happen to him, repeatedly stating that he believed he was the “Prince of God” and was being executed so he could save the world. He had previously been found not guilty of crimes by reason of insanity (Lush, 2013).

Perhaps the most obvious case in which the state was well aware that an individual’s mental illness prevented him from understanding what was happening yet sentenced him to death any way is that of Scott Pannetti. Pannetti was diagnosed as having schizophrenia and had been hospitalized fourteen times in mental health facilities for it and for severe bipolar disorder. His first wife divorced him because he was obsessed with the idea that the devil lived in their home and was having hallucinations. There is evidence that at the time he shot his parents-in-law to death in 1992 Pannetti was psychotic. He was likely not competent to stand trial when he did, yet he was even allowed to represent himself. During his trial, which has been called a “joke,” “farce” and ‘a mockery,” Pannetti dressed as a cowboy and rambled nonsensically, claiming he was possessed by “Sarge,” which was an auditory hallucination. After the jury rejected his plea of not guilty by reason of insanity in just two hours, Pannetti moved to the sentencing phase of the process but offered no mitigating circumstances because he did not know what that meant (Amnesty International, 2004).

The Supreme Court has previously ruled, in *Ford v. Wainwright* (1986), that it is unconstitutional to execute someone who does not understand the reason for or reality of their punishment. These cases clearly demonstrate that the Court’s ruling has frequently been ignored, in violation of the Constitution as well as international human rights law. The UN Commission on Human Rights has called on countries that retain the death penalty to cease using it against anyone suffering from a mental disorder (Amnesty International, 2004).

Conclusion

It is clear that in the U.S officials are aware of the physical and mental health problems with respect to the death penalty. Efforts to illegally obtain lethal injection drugs are in obvious violation of not just state and federal law, but also international human rights law. Several Supreme Court Justices, include Stephen Breyer and

former Justice Ruth Bader Ginsburg, acknowledged that international law should guide decisions about the death penalty and that retaining it is inconsistent with human rights treaties (Death Penalty Information Center, N.D.). Change may be afoot, however. In August 2021, a federal judge in Oklahoma City ruled that a lawsuit challenging the state's lethal injection protocol can proceed. A moratorium on executions had been in place for six years while the state figured out which chemicals it would use. Oklahoma had planned on resuming executions using three drugs, midazolam, vecuronium bromide and potassium chloride. The death row inmates who filed the suit had proposed that they be executed via different drug combinations or by firing squad. Yet the judge stopped short of approving all the inmate's requests, including a right to know more about the drugs used for lethal injection and that the proposed lethal injection protocol made them guinea pigs for human experimentation (Murphy, 2021).

. Similarly, that states are still putting to death people who are severely mentally ill is cruel and inhumane and is counter to UN recommendations, the U.S. Constitution, and the advice of many major medical bodies. Although prisons are far from wonderful places and prison reform is desperately needed, while that reform is in progress life without parole is a viable alternative to the death penalty. That punishment will never have the state killing someone in horrific fashion, with them taking 45 minutes or longer to die. It does not require dubious maneuvering in order to happen. Utilizing mental health facilities for those who committed crimes while severely mentally ill is the only fair and humane strategy. Dr. Joe Thornton, a psychiatrist and former death row medical director, noted that 18% of people on death row are veterans and their violent behavior commenced after their service. Thornton recommends greater utilization of drug and veteran courts and additional services for veterans with mental health issues (Vasilinda, 2021). Several states have introduced bills to prohibit the execution of those suffering from severe mental illness which would help with that issue but is only one step. Abolitionists are also concerned that such bills might leave people the impression that the death penalty is fixable. It simply is not.

Abolishing the death penalty at the federal level and in all states would ensure that this state-sanctioned murder no longer occurs. UN Secretary-General Antonio Guterres stated, "The death penalty has no place in the 21st century." The Office of the High Commissioner for Human Rights lobbies for the universal abolition of the death penalty, and former Secretary General of the UN, Ban Ki Moon expressed in 2012, "The right to life is the most fundamental of all human rights. ... The taking of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process" (Kim, 2016). United Nations human rights experts have called on President Joe Biden to take action to

end the death penalty in the U.S., describing capital punishment as an “inherently flawed” and “abhorrent practice” (United Nations Office of the High Commissioner, N.D.). A statement issued from the Office of the UN High Commissioner on Human Rights on March 11, 2021 implored President Biden to abolish the death penalty, saying the death penalty “serves no deterrent value and cannot be reconciled with the right to life.” The group also acknowledged that executions in the U.S. “have repeatedly resulted in degrading spectacles” (Death Penalty Information Center, 2021c).

Yet the U.S. has repeatedly shown that it ignores international human rights law when it wishes. For example, when ratifying the ICCPR, the U.S issued reservations to the part of it that prohibited executing juveniles simply because the country still wanted to do that. The U.S. was one of only three countries that made reservations to Article 6, and they have been roundly criticized in international forums and eleven countries issued formal objections. The U.S. Reservation specifies that the state be allowed to murder whomever it pleases. The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting (Dieter, N.D.).

Abolition movements should be using every means possible to publicize these and other issues with the death penalty. Studies have shown that people who are more fearful of crime are more supportive of the death penalty (Kort-Butler & Ray, 2019). Perhaps if people knew that the State is knowingly engaging in illegal and injurious behavior when it comes to lethal injections and inhumane treatment of those who are not mentally capable of understanding their actions and the consequences of them, they’d be less inclined to support the death penalty. Globally, framing the death penalty as a human rights issue has been effective as a tool for abolition (Kim, 2016). Awareness has already resulted in decreased support and the abolition of the death penalty in many states (Lambert, Camp, Clarke & Jiang, 2011), including, most recently, the first Southern state to abolish, Virginia. As a Presidential candidate, Biden pledged to “work to pass legislation to eliminate the death penalty at the federal level and incentivize states to follow the federal government’s example.” Abolitionists should pressure the administration to follow through on this promise.

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