Capital Punishment and Reforming the Bifurcated Trial System

Alex Michalak
Department of History, University of Louisville.

Introduction

Capital punishment is a long-debated issue in United States public policy, with arguments ranging from complete abolition of the penalty to continuing the punishment in states that wish to do so. Regardless of evolving public opinion, numerous landmark Supreme Court cases have ruled capital punishment as constitutional under the Eighth Amendment, which outlaws cruel and unusual punishment. In *Furman* v. *Georgia* (1972), the court ruled in a 5-4 decision that certain applications of the death penalty were unconstitutional, vacating the current processes of capital punishment.[1] After this decision, Georgia then adopted the bifurcated trial system to attempt to practice capital punishment in a constitutional manner. Although later widely adopted by states that practice capital punishment, this trial system has drastically increased the time it takes from sentencing to execution, therefore raising another question of constitutionality. That being said, if capital punishment is to persist in the United States, substantial reform efforts need to be undertaken to preserve the Supreme Court's decisions, specifically through creating a separate state court of appeals division dedicated to reviewing capital cases.

Background

Following the *Furman* decision, in 1976, the United States Supreme Court decided *Gregg* v. *Georgia* (1976), which tested the constitutionality of the bifurcated trial method utilized by the state of Georgia. The court ruled in a 7-2 decision that the death penalty did not violate the Eighth or Fourteenth Amendments under all circumstances where capital punishment was carefully employed, and ". . . as long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved."[2] Although the Supreme Court upheld the death penalty, it established an even narrower set of guidelines for capital punishment to be imposed. Even today, this opinion has stood against the test of time, and "[s]ince *Gregg*, the Supreme Court has decided dozens of capital cases with full opinions."[3]

After the *Gregg* ruling, a majority of states mimicked Georgia's system of the bifurcated trial model. In Georgia, the sentencing process began with ". . . a separate sentencing hearing following a jury's finding that a capital murder has been committed."[4] In the sentencing hearing ". . . the jury must find the existence of one or more specified aggravating circumstances . . ."

[1] *Furman* v. *Georgia*, 408 U.S. 238 (1971).

[2] Irwin P. Stotzky, "Capital Punishment," *University of Miami Law Review* 31 (1977): 849.
[3] Lewis F. Powell, Jr, "Capital Punishment," *Harvard Law Review* 102 (1989): 1037.

[4] Ibid., 1036.

along with considering the mitigating factors of the case.[5] After all of this was completed, if the death penalty was sentenced, then the state supreme court would review the case to ensure that this particular ruling was not disproportionate to other capital punishment sentencings.

One of the main issues that arose from this trial system was the amount of time that offenders waited on death row while waiting on the state appeals court. In fact, the average time between sentencing and execution is nine years, a significant amount of time for an inmate to await execution.[6] Surprisingly, "[o]f all the civilized countries that have retained the death penalty, the United States is the only one that permits or even insists on these long . . . delays."[7] Other countries across the globe have handled this problem of delays before execution, and the United States should follow.

The other major problem that stems from the lengthy bifurcated trial process is that it becomes grounds for litigation. The delay of this process causes a punishment consistently held as constitutional by the Supreme Court to become an unconstitutional affair. In addition to an appeal, the condemned have the opportunity to argue ". . . that execution after a long stay on death row may violate the Eighth Amendment."[8] The psychological trauma inmates experience while waiting on death row can be considered cruel and unusual, and the wait infringes on their Eighth Amendment rights. Awaiting impending death for nine years is not only unnecessary, but brutal and inhumane. The time leading up to execution is an unofficial punishment in itself, while in reality only the actual execution should serve as the punishment of the crime committed.

Conclusions & Discussion

If capital punishment is to remain in the United States as held by the Supreme Court, reform of the bifurcated trial system is necessary. As is, the system is inefficient, produces incredibly long wait times for inmates, and as a result, may be considered cruel and unusual punishment under the Eighth Amendment. A solution to the lengthy waiting period created by the bifurcated trial system is implementing a separate division of state appeals courts to review capital sentencing cases. Implementing a separate division of state appeals courts is a powerful idea because it would not only reduce the amount of time each inmate spends on death row, but it would also allow the judge more time to review the details of the case in depth, better securing the delivery of justice. Courts do not have control over the content of the cases leading to a long appeals process, however, courts have the ability to influence the factors leading to the time spent on appeal.[9]

A case study from 2008 performed by James N. G. Cauthen and Barry Latzer found that in capital cases that were appealed directly to the state supreme court, the median processing time

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[5] Ibid., 1036.

[6] James Liebman, Jeffrey Fagan, Valerie West, and Jonathan Lloyd, "Capital Attrition: Error Rates in Capital Cases," *Texas Law Review* 78 (2000): 1856.
[7] Ernest van den Haag and John P. Conrad, *The Death Penalty: A Debate* (New York: Plenum Press, 1983), 14.
[8] Ibid., 300.
[9] James N. G. Cauthen and Barry Latzer, "Why So Long? Explaining Processing Times in Capital Appeals," *Justice System Journal* 29 (2008): 310.

"from the filing of the notice of appeal to the state supreme court decision, was 897 days, approximately two and one-half years."[10] This study revealed that the intermediate appeals courts were lengthening the time of appeal by considerable amounts—potentially by five to seven years. Through creating a division of state appeals courts that only focuses on the reviews of death sentences, the burden of the state appeals courts' dockets would lighten. This separate division would move through the docket much more efficiently, and, if necessary, would be able to hand cases to the state supreme court in a timelier manner. The introduction of separate state appeals courts merits further discussion and research, and certainly holds the potential to significantly alter the capital punishment appeals process.[11]

[10] Ibid., 303.

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