The Right Anti-Death Penalty Movement?

written by Colleen Eren | January 19, 2015

Since the year 2000, victories claimed by death penalty abolitionists have seemed significant. In 1999, the United States executed 98 death-row inmates, the highest number since capital punishment's reinstatement following the *Gregg v. Georgia* Supreme Court ruling in 1976. Subsequently, however, executions have been on the decline, with 39 inmates killed in 2013. Additionally, after peaking in 2000 with a death-row population of 3,593, there has been a reduction to 3,054 inmates awaiting execution, with a 62 percent decrease in new death sentences passed down between 1998 and 2007. Public support for the death penalty in 2014 in the United States remained around a 40-year low of 63 percent. Adding to the sense of optimism, Maryland abolished the death penalty in 2013, making it the sixth state in six years to do so, and raising the total number of states without the death penalty to 18 (Death Penalty Information Center, DPIC).

However the tactics and frames through which anti-death penalty organizations sought to obtain their objectives in the late 1990s and early 2000s, which I witnessed as a community organizer, deserve attention. Herbert Haines' excellent overview of abolitionist movements in the United States, *Against Capital Punishment*, emphasizes that from the beginnings of abolitionism following the American Revolution through the mid-1990s, the anti-death penalty movement had primarily tried to achieve its objectives through a "moralistic critique" (Haines, 163). In other words, those arguing against capital punishment have linked their arguments to human rights, to concerns about racism and unequal treatment of the poor, and to religious concerns about the sanctity of life. These arguments, according to Haines and more recent scholarship by Jolie McLaughlin, have been unsuccessful because they have not sought to appeal to the rational self-interest of non-progressives. They have been too emotive, and to use the cliché, they have been preaching to the choir. And largely, the actions of key anti-death penalty organizations (ADPOs) indicate that they have philosophically sided with the analyses of McLaughlin and Haines.

My intent here is to explore how the leading ADPOs' framing of the issue since 2000 has shifted away from "moralistic," allegedly "emotional/non-rational," traditionally progressive arguments to "rational," "consensus-seeking," crime-prevention frames and arguments that parallel those found in rightist, conservative movements, in the false belief that doing so is the best way to win abolition. I make the case that recent advances in abolitionism should not be attributed primarily to this change in framing, and argue that the historical precedent for achieving progress in abolitionist sentiment in the United States is not predicated on a move to the right, but rather a move toward the *left*, and toward a paradigm of more radical economic and racial justice. I also argue that appealing to commonsense rationality as a strategy ignores the way in which the right's opposition to capital punishment has been primarily characterized by retributive emotionality. To obtain any type of significant change, the movement against the death penalty must be allied with a larger movement against mass incarceration that taps into the emotions of those individuals and communities whose lives have been most affected. Otherwise, ADPO strategies will have the unintended consequence of bolstering mass incarceration's impulse and logic, rendering any victories fragile and subject to swings of the economy.

New Century, New Frames,
New Leaders

The anti-death penalty movement has never had extensive financial resources. In 1981, the National Coalition to Abolish the Death Penalty received contributions that after inflation would amount to

$23,000 today (Haines, 62). Certainly, even today its funding is insufficient to run television campaigns or take out ads in prominent newspapers. It has relied primarily on the efforts of volunteer activists, notably lawyers and clergy who have donated extensive amounts of time. However, several key ADPOs in the 2000s have been able to move away from relying only on volunteers and to increase their resources through grants given by foundations such as Atlantic Philanthropies, JEHT Foundation, and George Soros' Open Society Institute to hire full-time paid staff to strategize, organize, and lobby. For example, public records show that in 2013, the National Coalition to Abolish the Death Penalty had $1.3 million in revenue, with its executive director garnering $136,000 in compensation. Death Penalty Focus, located in California, in 2012 reported $1.2 million in revenue. The same year, Equal Justice USA reported net assets of $2.3 million.

With the hiring of full- and part-time staff, messaging could be honed, and the ears of politicians reached without demonstrations or legal actions in court. Since the late 1990s, the framing of the debate against capital punishment by these largely white, middle-class professionals has moved increasingly to adopt center-right rationales for abolition that fit congruently with conservative ideologies. Most prominently, the issues that are brought to the forefront are cost-inefficiency benefits, innocence, the "true" needs of law enforcement, and better meeting the needs of particular (that is, white) victims of crime and their loved ones.

Cost, Inefficiency, and "Alternatives"

"[Capital Punishment's] fatal flaw is not its immorality … but rather its enormous lack of cost-effectiveness," Herbert Haines concludes in *Against Capital Punishment* (193). Indeed, in the characteristic move away from 'moralistic' and emotional arguments in the late 1990s, ADPOs have endorsed this perspective: that we can all have different philosophical opinions about whether capital punishment is ethical, but during a period of budgetary restraint and slow economic recovery, we must all agree that it is too expensive. McLaughlin notes that arguments about cost were not used in the anti-death penalty movement until the late 1990s. "More and more anti-death penalty organizations now cite cost to taxpayers as the *number one reason*, or at least a top reason, why the death penalty should be abolished" (McLaughlin, 705). On Death Penalty Focus' webpage, the second reason they list for abolishing the death penalty (the first being innocence) is cost. "It costs far more to execute a person than to keep him or her in prison for life," they argue. The understanding here of course is that life without parole is the default, unquestioned alternative.

Along with the framing of the death penalty as *expensive,* there has been a concomitant emphasis on it being *ineffective* and *inefficient*. Inefficiency and costliness are entirely compatible with neoliberal discourses and conservative framing of the issue, and hence more likely to garner support from at least some segments of the right-leaning constituency. The group Conservatives Concerned about the Death Penalty, in giving its primary reasons for supporting abolition of the death penalty, cites the "alarming cost," calling it an "inefficient, bloated program." Montana Conservatives Concerned about the Death Penalty joined the anti-death penalty movement because of their belief that the "death penalty is another institution of government that is wasteful and ineffective" (McLaughlin, 703). The language of cost effectiveness also gives "cover" to politicians who might want to take action to end the death penalty but not risk being accused of being too liberal (soft) on violent offenders. Governor Martin O'Malley, after signing the anti-death penalty bill in Maryland in 2012, was quoted as saying, "We have a responsibility to stop doing things that are wasteful and ineffective."

Law Enforcement

The framing of the death penalty as wasteful or ineffective plays directly into a second narrative, which further confirmed the movement of ADPOs to the right—that of saving money on capital

punishment in order to spend *more*, not *less* on law enforcement, part of a strategy to win over cops and corrections officers to the side of abolition, appealing to their needs. The obvious conservatism of tacitly upholding the prison-industrial complex by siphoning money from state-sanctioned executions to fund other law enforcement endeavors is striking. Haines goes so far in *Against Capital Punishment* as to suggest that abolitionists advocate for expanding the construction of prisons (182). It doesn't appear that this suggestion has been taken up directly by anti-death penalty activists, but "In NJ, CT, and NM advocates proposed that the money saved as a result of abolishing the death penalty should be used to provide additional law enforcement officers or victim assistance" (McLaughlin, 692). In Illinois, law enforcement programs have been directly granted resources that would have been allocated for the capital punishment system.

Key ADPOs have actively solicited the voices of law enforcement. Equal Justice USA, Death Penalty Focus, National Coalition to Abolish, and New Yorkers for Alternatives to the Death Penalty amongst others have reached out extensively to this group, positing them as voices that are honored and respected and authoritative on issues of safety. Equal Justice USA, for example, attempts to obtain the support of law enforcement on their website, writing, "As a current or former police officer, prosecutor, or corrections officer, the public looks to you for guidance about issues of crime and punishment. People respect your opinion about the effectiveness of our criminal justice system because you have been on the front lines, devoting your skills and your time to keeping our communities safe" (Equal Justice USA). While such organizing amongst law enforcement may bring nontraditional bedfellows into the anti-death penalty movement, it does nothing to challenge (and in fact, buttresses) mass incarceration. ADPOs have not acknowledged the conflict that has existed between police and minority communities, as evidenced in extensively documented accounts of police brutality, racial profiling, and dehumanizing treatment of prisoners.

Innocence

Using the possibility of executing innocent persons as a way of framing opposition to capital punishment is not entirely new to the anti-death penalty movement. The controversial executions of Barbara Graham and Caryl Chessman brought the issue national attention in the 1950s. However, it wasn't consistently and deliberately used until the end of the twentieth century. Prior to the National Conference on Wrongful Conviction and the Death Penalty held in Chicago in 1998, "advocates had not focused on wrongful convictions in capital cases as an area of serious concern" (McLaughlin, 691).

The way in which focusing a lion's share of attention on the innocent plays into conservative narratives is twofold. First, it strengthens what Silvia Federici in "Why Feminists Should Oppose Capital Punishment" calls ontological apartheid—"the existence of two … ontologically different humanities: on the one side the 'rational' citizens for whose benefit executions are allegedly carried on. On the other, the beastly criminals, to whom anything can be done, since … they have placed themselves outside the boundaries of our humanity." There are, then, two types of death-row inmates—those who are innocent, ontologically different from those who are guilty. Of course, the act of incarcerating an innocent human being is morally reprehensible and shocking. Yet, a progressive message should not be that we should not have the death penalty *because* innocent people are killed. Even if the death penalty were to be 100 percent error free, the right to take the life of one rendered defenseless must be beyond the reach of the state.

The second way in which focusing on innocence dovetails with conservative narratives is by appealing to the pro-life movement. While white conservatives are often staunchly anti-abortion, they are the least likely demographic group to oppose capital punishment. This seeming paradox is reconciled and rationalized by those on the right by pointing to the idea that a fetus is innocent, untarnished life, whereas the life of the death-row inmate has been sullied with sin and therefore

forfeit.

Victims

The victims' rights movement has been a powerful voice in the United States since the mid-1970s. To help neutralize the powerful retributionist language provided by the right in terms of providing justice for the families of murder victims, increasingly the voices of this group are sought by ADPOs, and proposals made to use "savings" from executions to give them support, which is often severely lacking. In New Mexico, for instance, activists called attention to the ways in which the death penalty siphoned money away from victims' families (McLaughlin, 698). Equal Justice USA writes on its website, "We believe repeal of the death penalty and increasing services for surviving families must go hand in hand. In many of the states where we have won repeal, we are still working to meet this second goal. … As a surviving family member, your voice is so important in the death penalty debate—no matter how you feel."

There have been advantages to the overtures, as organizations like Murder Victims' Family Members for Reconciliation (MVFR) and Murder Victims' Family Members for Human Rights have been visible and active in the anti-death penalty movement. MVFR, for instance, played a large role in the effort to defeat the death penalty in New Mexico, and murder victims' family members have testified against the death penalty at the Maryland Judiciary Committee and at the California Commission on the Fair Administration of Justice, among many other examples.

Of course, the inclusion of voices of victims against capital punishment has the potential for a strong emotional and moral impact. And I am not suggesting that the voices of victims and their families should *not* be heard. However, the way in which the anti-death penalty movement has used victims and their families has the potential to advance an agenda that is useful to the right and which supports already-in-existence stereotypes of who the victims are and who the offenders are. In his work on the victims' rights movement, Markus Dubber concludes (177), "The victims' rights movement has been dominated by whites at all levels, and most certainly at the levels of power, both outside and inside government. … The paradigmatic victim of the victims' rights movement is white. The paradigmatic *offender* of the victims' rights movement is black."

Allegiance to those victims who do not support capital punishment furthermore carries with it contingencies that obviate broader progressive advocacy on criminal justice issues. For example, when murder victims' family members lobby legislators on behalf of the ADPOs, there is often the understanding that the organizations will not challenge life without parole because many of these family members *would not testify* if life without parole were not a possibility. In some instances, murder victims' family members supporting ADPOs have continued to advocate for juvenile life without parole very vocally. These individuals are fully entitled to their opinions and emotions. However, as a movement, the anti-death penalty movement must re-examine indirectly advocating and normalizing life without parole, a punishment that has seen a "historic rise" in recent years in the United States, where some 50,000 prisoners including juveniles are serving life sentences, but which has been eschewed by the European Court of Human Rights.

Looking Back to Look Forward

The annals of those executed in New York State tell a particular story of the way in which executions in the United States have always been rooted in the reality of slavery. Between 1712 and 1742, approximately 65 slaves were hanged, burned, or hung in chains for the crime of "revolt." Today, one in three black men will be incarcerated during his lifetime and the United States incarcerates a greater percentage of its citizenry than any other country on the planet. The anti-death penalty movement's tactical framing away from emphasizing issues of inequality, poverty, and race should

be of concern to political progressives and radicals. Instead of the anti-death penalty movement aligning with—or at best being silent on—initiatives and practices that only serve to perpetuate the system of mass incarceration (such as life without parole, more resources to law enforcement, and so forth), activists should be encouraged to look historically at the way in which the *greatest* victories were achieved. We are not currently in the era in which abolitionist sentiment has been strongest, nor in the era in which state victories in overturning the death penalty are at their peak. This period occurred in the 1960s and early 1970s as a direct consequence of the civil rights movement.

Abolitionist victories and sentiments in the United States can be said to have peaked during the 1960s, "a period characterized by diverse forms of collective action and generally liberal outlooks within the federal government's executive and judicial branches. … The effort that produced the short-lived judicial ban on capital punishment (1972-1976) was a direct outgrowth, both organizationally and ideologically, of the 1960s civil rights revolution" (Haines, 21). Haines notes, "The Civil Rights movement paved the way by mobilizing members who would later venture into … other movements, by loosening up the political center and making it more receptive to demands for change of various kinds" (41).

From the vantage point of the 1960s and early 1970s, the abolitionist movement could not have looked stronger. In 1966, a Gallup poll revealed that only 42 percent of Americans supported capital punishment (DPIC), compared to over 60 percent today (which is nevertheless touted by anti-death penalty activists as a victory over 1990 levels). In 1971, 13 states had effectively eliminated capital punishment, either *de jure* or *de facto* (with no one on death row), and two states had anti-death penalty bills reach the floors of their legislatures (Haines, 37). Beginning in 1968, there was not a single execution until 1977, which saw only the death of Gary Gilmore. And, in 1972, the *Furman v. Georgia* case resulted in a temporary halt to executions as the death penalty's arbitrary application was ruled unconstitutional. It was not until 1984 that executions began once again to number in the double digits, at the same time as growing support for death-penalty implementation, as the tough-on-crime era blossomed in the move towards conservative politics. It appears that key, better-funded ADPOs have forgotten this radical history of using mass mobilizations around broader issues of justice when considering what leads to change on contentious issues, or have abandoned a grander vision as too idealistic.

ADPOs also, when claiming their victories vis-à-vis the 1980s or 1990s, have not considered the socio-historical reality of the 2000s and 2010s. Americans no longer place crime as a central concern—in fact it ranks amongst the least of Americans' worries (Gallup 2014). We have experienced starting in 2008 the Long Recession—the longest and deepest recession since the Great Depression. The lack of centrality of crime as an issue and excessive attention to fiscal austerity have made conditions unusually ripe for arguments framed around cost and efficiency. However, recessions do not last forever, and a high-profile violent crime is always waiting to receive national media attention and rekindle the retributive flames. Even in the absence of such factors, support for the death penalty increased in 2014, and the anti-death penalty movement is nowhere close to where it was in the 1960s, or even during earlier abolitionist eras. In the 1830s and 1840s, abolitionism was characterized by radical, broad demands that were not single-issue. Activists advocated for prison reform and an end to slavery. They realized that the connection amongst these issues was profound. During the second abolitionist era at the end of the nineteenth century leading up to World War I, abolitionists "rode the waves of Populist and Progressive Reform [and] a socially conscious form of Christianity," which resulted in ten states banning capital punishment (Haines, 10).

It will not, in the final analysis, benefit progressive ADPOs to limit their vision of change, to claim "neutrality" on other issues, to privilege a focus on the rational and non-emotive when rightist

movements have been very successful in using emotional appeals for retribution to their benefit and rational arguments when convenient. Progressives have at their disposal the emotional power of recent events that have brought attention to the ways in which class and race have intersected to continue disparities and oppression in a system of mass incarceration, for example the Troy Davis, Trayvon Martin, Michael Brown, and Eric Garner cases. Abolitionists must harness this energy, and incorporate more black and brown voices—the populations who are at ground zero—into a movement that is almost exclusively white and affluent. Abolishing the death penalty would be a tremendous step forward, saving about 50 lives a year, but this must be achieved while not at the same time abandoning the 2.3 million behind bars for whom a struggle must also be waged.

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Footnotes