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 The article that I chose to read was about capital punishment. It was written by Thom Brooks and cited other articles written by Daniel McDermott and Stephen Nathanson. I will begin this paper by explaining the background of McDermott and Nathanson’s opinions and the terms used by Brooks throughout the paper. I will then define Brooks’ argument, conclusion, and will explain the rationale behind them. Finally, I will provide counterexamples to show that the premises are false and that capital punishment is constitutional.

 Daniel McDermott’s article “argues that America’s use of capital punishment is unjustified because the practice is racially biased” (Brooks, 188). McDermott’s article followed Stephen Nathanson’s which argued the same issue. They both base their arguments on the idea that only a legitimate authority can punish a criminal and that the United States government is not a legitimate authority. Brooks uses their arguments and examples to help support his own argument. Brooks uses the term retributivist throughout his article to define the type of argument he, McDermott, and Nathanson are making. The retributivist argument stems from the theory of retributivism which is defined as “a policy or theory of criminal justice that advocates the punishment of criminals in retribution for the harm they have inflicted” (dictionary.com).

 Capital Punishment Argument

1. The punishing authority linked with capital punishment in the United States is illegitimate.
2. If (1), then “capital punishment is unconstitutional because it denies due process of law by restricting the opportunity a person has to demonstrate their innocence”.
3. Therefore, “capital punishment is unconstitutional because it denies due process of law by restricting the opportunity a person has to demonstrate their innocence”.

The rationale for the first premise comes from the ideas of McDermott and Nathanson that Brooks agrees with. McDermott and Nathanson agree that a legitimate authority only punishes criminals that “are selected for punishment for the correct reason” (Brooks, 189). Brooks restates an example Nathanson provides that supposes that a highway patrol officer, responsible for issuing speeding tickets, only gives tickets to people who have beards. Nathanson believes those punishments are then illegitimate because tickets should be issued to everyone who speeds, not just those with beards.

Brooks then explains how McDermott related this to the United States with regards to racial discrimination. He cited a statistical study done by David Baldrus that was presented in a Supreme Court case, that showed that “Georgia’s capital-sentencing process was biased against African Americans, especially when their victim was white”(Brooks, 190). McDermott believes that Baldrus’ study helps to demonstrate that many people, especially African Americans, “have been discriminated against systematically” (Brooks, 190). This leads McDermott and Brooks to conclude that since the American legal system is corrupted by racial discrimination, it is an illegitimate authority.

The rationale for the second premise stems from Brooks individual argument against capital punishment. Brooks’ individual argument revolves around DNA testing. He discusses how DNA testing and new scientific technologies have exonerated innocent criminals who were executed in the past. It has also helped to remove inmates off of death row, like in the Supreme Court case *U.S. vs Quinones*. This court case established that “for any person to be deprived of life, liberty, or property, [they] must not be deprived of due process of law” (Brooks, 192). Brooks believes that because of the new scientific technologies and the illegitimacy of the punishing authority “we will never be able to know with absolute certainty a defendant’s guilt”, which takes away their due process of law (Brooks, 193). Taking away a person’s due process of law, which they are given through the Fifth Amendment, is what Brooks believes makes capital punishment unconstitutional.

I disagree with the first premise that the punishing authority linked with capital punishment in the United States is illegitimate. Corruption and discrimination do exist throughout the United States in law enforcement and the legal system. However, I do not think that the actions of some members within that system make the whole system illegitimate. If you take the example of the highway patrol officer, he could be in a unit of 20 officers. If he is the only one in that unit who only gives speeding tickets to people with beards, then the whole unit is not illegitimate, only that officer is. Within the United States legal system, there are legitimate and fair officers and lawyers in addition to the illegitimate and corrupt ones. The whole system should not be written off as illegitimate.

I also disagree with Brooks’ second premise about due process of law being denied. I agree that discrimination in the courts is a serious issue and can change the outcome of a legal proceeding. However, the United States has a court system that is organized in way that everyone has an equal opportunity at a fair trial. The illegitimacy of the government should not and does not affect the proceedings and decisions of a trial led by a jury.

The discovery of new scientific technologies also does not deny people due process of law. If anything it makes the law process more efficient. One of Brooks’ points is that since new evidence can arise in cases in the future, committing someone to the death penalty takes away their chance at future exoneration. I disagree with this because very few cases have additional evidence come to light years after their case is decided. Not giving the death penalty to a criminal who, according to the courts, has earned simply because they could be exonerated later is not a good choice.

Brooks argues against the death penalty by saying that it is unconstitutional. He uses arguments by McDermott and Nathanson to help support his argument. His argument is valid because the premises follow the conclusion. I disagree with his argument and believe that the death penalty is constitutional.

Citations

Brooks, Thom. "Retributivist Arguments against Capital Punishment." ["Journal of Social Philosophy"]. *Journal of Social Philosophy*, vol. 35, no. 2, 01 June 2004, pp. 188-197. EBSCO*host*, login.proxy.longwood.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=phl&AN=PHL1782568&site=ehost-live&scope=site.

"Retributivism." *Dictionary.com*. Dictionary.com, n.d. Web. 30 Apr. 2017.