Why Capital Punishment is Cruel: Argumenatation Example

Death penalty, or capital punishment, are means of legal punishment that have been continuously analyzed and argued. Some serious criminal offenses are punishable by death (most often violent homicides where the jury determines that the convicted offender lacks remorse). Capital punishment remains controversial and has been outlawed in many countries. Many countries also still allow the death penalty under certain circumstances/when a certain crime is committed. Many states in the United States still allow capital punishment. The majority of the states where capital punishment legal have not executed anyone in the past 5 years. Opposers argue that capital punishment is cruel and unusual and that it takes away the constitutional guarantee to equal and due process. Those for the death penalty argue that perpetrators deserve done to them what they did to other(s) and that society is better without those who have committed heinous crimes.

Proposition: Capital punishment is cruel and unusual and does not allow charged persons the right to equal and due process.
Key Words: Capital punishment/death penalty is the legal process of taking the life of a person as punishment for a crime they committed.

Standard: Two standards will be used in showing that capital punishment is cruel and unusual and does not allow equal and due process.

1) The Eighth Amendment will be used as a standard to show that capital punishment is a cruel and unusual means of punishment.

A) The Eighth Amendment states that, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Individuals convicted of a crime have the right to be free of "cruel and unusual" punishment while in jail or prison. This means after a criminal defendant is convicted and sentenced, the Constitution will continue to guarantee his/her fundamental rights concerning conditions of confinement and treatment by corrections officers/staff. While there is no concrete definition of what constitutes “cruel and unusual punishment,” any punishment that is clearly inhumane, violates basic human dignity or rights may be deemed "cruel and unusual." A basic human right is to live and killing someone violates that right even if a person has committed a capital crime.

2) The Fourteenth Amendment will be used as the second standard in order to show that capital punishment denies the person sentenced to death an equal and due process.

A) The Fourteenth Amendment states that, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.” In order for one to be stripped of their life, they must first be given notice of all legal proceedings and be given a chance to be heard before the government. The Due Process clause describes the legal obligation of all states to provide a fair legal process to any person convicted of a crime. Due process both balances and protects a person from the “law of the land.” Although there are capital cases where equal and due process is present, I will illustrate why many capital cases lack equal and due process due to...
factors such as racial bias and tampered/botched evidence.

II. A. There are racial biases in death sentencing.

In the famous case Furman v. Georgia, racial discrimination was one of the grounds on which the Supreme Court ruled the death penalty unconstitutional. In American Dilemma by Gunnar Mydral (1944), Mydral explains that, “the South makes the widest application of the death penalty, and Negro criminals come in for much more than their share of the executions.” In a University of Texas study on the death penalty, it was concluded that the death penalty is an “outgrowth of the racist legacy of slavery.” Slavery is considered cruel and unusual; since the death penalty can be compared to slavery in how it treats minorities, capital punishment can also be ruled cruel and unusual by association. America's death rows have always held a disproportionately large proportion of African Americans, relative to their percentage of the total population. Blacks are often executed for what are considered “less-than” capital offenses for whites, such as rape and burglary. Between 1930 and 1976, 455 men were executed for rape. 90 percent of them were black. A large number of blacks who were executed were juveniles. The rate of execution for blacks without having their conviction reviewed by a higher court was higher than that of whites. (Bowers, Legal Homicide 1984; Streib, Death Penalty for Juveniles 1987).

Since the death penalty was reinstated in the mid-1970s, about half of those on death row at any given time have been black. The American population is not 50 percent black; it is about 13 percent black, give or take. The Governor of Maryland commissioned a study that concluded that “black offenders who kill white victims are at greater risk of a death sentence than others, primarily because they are substantially more likely to be charged by the state’s attorney with a capital offense.” A statistical study of the death penalty presented in the McCleskey v. Kemp case concluded that "the average odds of receiving a death sentence among all indicted cases were 4.3 times higher in cases with white victims." (David C. Baldus et al., Equal Justice and the Death Penalty 1990). Courts have said that statistical evidence collected on the death penalty has failed to show that there is "a constitutionally significant risk of racial bias...." (481 U.S. 279).
The state of Texas was prepared to execute Duane Buck on September 15, 2011. Buck's death was decided by a jury that had been told by a psychologist that Buck was more likely to be dangerous because he was African-American. The US Supreme Court stayed the case. These results of the jury/case cannot be explained by (relevant) non-racial factors (prior criminal record, type of crime, etc.) Telling a jury that someone is more dangerous because of their race denies the person accused equal and due process, as the jury is then biased. In the courts of the US, the killing of a white person is treated substantially more severely than the killing of a black person. Of the 313 people who were executed between January 1977 and the 1995, 20 percent had been convicted of killing a black person while 80 percent had killed a white person. Only 3 of 178 whites executed had killed a person of color. Studies show that the US criminal justice system tends to reserve the death penalty for those who kill a white person. Since 1900, only 51 women have been executed, yet 15 of them were black. 30 percent of all women executed since 1900 were black, when again, only 13 percent of people in the US are black.

B. Innocent people are in danger of receiving the death penalty

Unlike other criminal punishments, the death penalty is not reversible. Since 1900 in the US, there have been more than four cases each year on average in which an innocent person was convicted of murder. Many of these people were sentenced to death. In many of these cases a reprieve or commutation arrived hours, or minutes before the actual execution. Evidence and statistics on the conviction of innocent people shows that innocent people are often convicted of crimes, including capital crimes. Some have even been executed.

A report in the Columbia Human Rights Law Review in 2012 detailed the tragic and haunting case of Carlos DeLuna. DeLuna was executed in Texas in 1989 for a murder that it was well known had been committed by another man. DeLuna's case demonstrates many factors that can go wrong in a capital case: “faulty eyewitness identification, prosecutorial misconduct, police misconduct, a botched crime scene, destroyed DNA evidence, a poor person represented by ineffective by an ineffective inexperienced defense attorney overmatched by a professional prosecutor, and insufficient oversight from the bench.”(ACLU) In the case against DeLuna, the State of Texas presented no blood/DNA evidence, no crime scene fingerprints, and no proof of hair/fibers from the
victim having been found on DeLuna. He was convicted based on a weak eyewitness testimony made from the back of a police car in a badly lit parking lot near the site of the murder. A violent criminal named Carlos Hernandez, who shared DeLuna's name and looked like him, boasted about how he had committed the murder and gotten away with it repeatedly. These facts about DeLuna's case contradict the claim, made by proponents of capital punishment, that the US has never executed an innocent person.

In 1980 in Texas, a black high school janitor named Clarence Brandley and his white co-worker found the body of a missing 16-year-old student who was white. Both were interrogated by police and told, "One of you two is going to hang for this." Looking at Brandley, the officer said, "Since you're the nigger, you're elected." (Davies) Brandley was tried, convicted, and sentenced to death. The circumstantial evidence against him was weak and other leads were ignored by law enforcement. In 1986, Centurion Ministries (a volunteer group who helps to free the wrongly convicted) came to Brandley's aid. Meanwhile, evidence had come forth that another man had committed the murder for which Brandley was sentenced to death. Brandley was not released until 1990. (Davies, White Lies 1991)

Walter McMillian, a black man, was convicted and sentenced to death for the murder of a young white woman who worked as a clerk in a dry-cleaning store in Monroeville, Alabama in 1986. McMillian was held on death row prior to being convicted and sentenced to death by a jury who listened to only 3 witnesses testify against McMillian, and who ignored multiple alibi witnesses who happened to be black. The alibi witnesses testified that McMillian was not at the scene at the time of the murder. He was at a church fish fry. The trial judge overrode the jury's sentencing verdict for life in prison and instead sentenced McMillian to death. His trial only lasted a day and a half. Bryan Stevenson (EJI) took on the case post-conviction. He showed that the State's witnesses had lied on the stand and that the prosecution had illegally suppressed (ignored) exculpatory evidence. McMillian's conviction was overturned by the Alabama Court of Criminal Appeals in 1993. McMillian was released in 1993 after spending six years on death row for a crime he did not commit.

Killing a person is cruel and unusual in and of itself, but killing an innocent person is even more so. The court who
convicts and kills an innocent person is no better than a person who received the death penalty based on a trial with due process. Innocent people who are sentenced to death are denied equal and due process through racial bias, suppression of evidence, botched/destroyed evidence or crime scene, etc.