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OPINION

Healing the Wounds of Crime

Abolishing capital punishment is not enough

BY JASON LEE BYAS

After yet another terrifying botched execution, questions about whether the death penalty constitutes "cruel and unusual punishment" once again fill the air. Perhaps, though, now may be time to pose even more radical questions about criminal justice.

The particular incident sparking national attention this time was a lethal injection in McAlester, Okla. that failed to immediately kill its intended victim. Instead, convicted murderer and rapist Clayton Lockett died — of a heart attack — after 43 minutes spent writhing in pain and struggling to get out the words "Man," "I'm not" and "something's wrong."

Unsurprisingly, Amnesty International calls it "one of the starkest examples yet of why the death penalty must be abolished." Even the White House — headquarters of worldwide mass drone assassinations — made a point to publicly state that the execution "fell short" of the standard for humane executions.

We might ask ourselves, though, why we find such a horrible death for such horrible crimes repugnant. If we think punishment should be retributive and proportionate to the crime committed, we ought to welcome particularly cruel punishments for particularly cruel crimes. If we think punishment should serve as a deterrent, we ought to welcome such gruesome, excruciating deaths in hopes that they make crimes like those committed by Lockett less likely.

In fact, we arguably passively accept more cruel punishments already.

As jokes in popular culture reveal, it's socially understood that a prison sentence involves condemning a convict to a hell of constant abuse from both guards and fellow inmates. This looming threat lasts much longer than the 46 minutes of pain Lockett experienced, leaving permanent psychological damage. Even when sentences end and inmates leave with their bodies, they don't always escape with their souls.

None of this is to downplay what happened to Lockett in McAlester, especially considering that his time on death row ensured he went through the torture of prison as well.

The problem is not just that what Lockett experienced was cruel and unusual. The problem is that the all too usual practice of punishment itself — the process of intentionally inflicting harm on another human being for the purpose of inflicting harm — is irredeemably cruel.

If this is where punishment has brought us, to systematic killings and mass incarceration, then it's time to reexamine punishment. We must reflect on what it is we really want out of punishment, and whether or not we can achieve it some other way.

One of the most basic things we want out of punishment is a way to restore respect for victims and their dignity. When a murderer escapes conviction, our anger comes out of solidarity with the victim.

What better way to respond to crime, then, than by demanding restitution for victims or their loved ones? The focus there is placed firmly on showing respect for those harmed, and away from bringing new harm to the criminal.

The most obvious objection to such a proposal is that no amount of monetary compensation will ever bring back the dead, or undo an assault, making full justice impossible under restitution. While this is unfortunately true, it is also true of punishment — even if Lockett had suffered for three hours, his victim would still be just as dead.

The difference is that with a restitutive model of justice, we can at least go some way toward healing the wounds of crime. With a punitive model, no steps are taken in that direction at all and new injustices are committed.

When we look back at the history of criminal justice, most of us mark progress by the abolition of the cross, the rack and the guillotine. We take it as a mark of our humanity that our modern debates about lethal injections are about how we can punish with the least additional pain possible. When we fail in that goal, as Oklahoma did with Lockett, we are repulsed. Those who oppose capital punishment take it as a reason to abandon the practice altogether.

Each of these steps that we praise backs away from the principles used to justify punishment.

When we are disgusted by the unnecessary pain inflicted even on those who've inflicted unnecessary pain, we are disgusted with retribution. When we are outraged by the horror of a botched execution, we are outraged by the use of punishment to make an example out of its victims.

It is time to take the final steps on the path we're already taking. It is time to abolish the crime of punishment.

Jason Lee Byas is a writer and activist living in Norman, Okla.

Supremely Mistaken About Affirmative Action

A strike against truly equal access

BY MARC MORIAL

In a disturbingly lopsided 6-2 vote, the United States Supreme Court once again became a willing accomplice in the recent onslaught of attacks on 60 years of civil rights progress.

Less than a year after it effectively dismantled the Voting Rights Act of 1965, the Court ruled on April 22 that voters may ban race as a factor in college admissions at public universities.

The Court's decision curbed affirmative action and undermined a landmark 2003 ruling that affirmed the use of race-sensitive admissions policies at the University of Michigan Law School because of a compelling interest in fostering diversity in higher education.

In 2006, opponents of that ruling rallied around and passed Proposal 2, an amendment to Michigan's constitution that gave voters the right to supersede elected university trustees and the right to ban the consideration of race as one of many factors in the admissions process.

It's important to note that this ban only singled out race. Other selective factors, such as alumni status, athletic achievements, and geography remain in place. A federal appeals court subsequently ruled that Prop 2 violated the Equal Protection clause of the 14th Amendment, rendering it unconstitutional. With their recent ruling on Schuette v. Coalition to Defend Affirmative Action, a majority of the Supreme Court's justices allowed the Michigan amendment to stand.

Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia, Clarence Thomas and Stephen Breyer joined Justice Anthony Kennedy in concurring in the judgment. Having worked on the case when she was Solicitor General, Justice Elena Kagan recused herself. The two dissenting votes were cast by Justices Ruth Ginsberg and Sonia Sotomayor, the Court's most reliable civil rights defenders.

Sotomayor's written dissent is an exceptionally scholarly, eloquent, and impassioned argument in defense of affirmative action. She methodically discredited the majority's legal justification for its decision by citing several previous cases where the Court overturned attempts to change rules in ways that were detrimental to minority voters. She also pointed out that the Supreme Court bears an obligation to right historical wrongs and to expand educational opportunities for those who have traditionally been locked out.

"Race matters," she wrote, "because of the long history of racial minorities being denied access to the political process (and) because of persistent racial inequality in society — inequality that cannot be ignored and that has produced stark socioeconomic disparities."

Mindful of Michigan's shameful history of segregation in higher education and of a significant decline in minority enrollment and graduations since Prop 2 took effect, Sotomayor concluded:

"The effect of [the Court's ruling] is that a white graduate of a public Michigan university who wishes to pass his historical privilege on to his children may freely lobby the board of that university in favor of an expanded legacy admissions policy, whereas a black Michigander who was denied the opportunity to attend that very university cannot lobby the board in favor of a policy that might give his children a chance that he never had and that they might never have absent that policy."

We may have lost this affirmative action battle. But as long as there are voices as clear and strong as Sonia Sotomayor's on the Supreme Court, I'm confident that in the end, equal opportunity, equal protection and equal justice will prevail.

Six other justices made clear how far from over the fight for civil rights remains in 21st-century America. Sotomayor shouldn't need to remind her colleagues what the world looks like beyond their chambers. Yet she does.

"As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society," the first Latina on the Supreme Court wrote in her dissent.

We all need to sit up now.

Marc Morial is the president and chief executive officer of the National Urban League.