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## **Killing to Heal?: One Year After the Boston Bombing**

This week marks the one-year anniversary of the Boston Marathon bombing. The bombing was a stunning display of domestic terror that blew apart an April day that should have been full of celebration and accomplishment. Three people, including an eight-year-old boy, were killed and two-hundred people were injured, some severely, in the explosion. A fourth man was killed during the police investigation.

The crime, indeed, was heinous, and the suspect, Dzhokhar Tsarnaev, was not particularly sympathetic. It perhaps comes as no surprise that this past January, U.S. Attorney Eric Holder announced the federal government would seek the death penalty against Tsarnaev. But the death penalty, even in this horrible case, is unlikely to serve the interests of the people of Massachusetts and the taxpayers of America. Instead, it only likely extends the suffering of all involved, and hurts the credibility of the United States in the international human rights arena.

The people of Massachusetts and the residents of Boston specifically, are not clamoring for the death penalty. Indeed, a 2013 survey of Boston residents, conducted several months after the bombing, found that 57 percent favored life without parole over the death penalty for the suspect. In other words, a majority of residents believed that the death penalty was not the answer in this case. Boston's ambivalence toward capital punishment is consistent with the State of Massachusetts at large. The last execution in Massachusetts took place in 1947. In 1984, the Supreme Court of Massachusetts declared capital punishment to be unconstitutional. Attempts by then-Governor Romney, among others, to reinstate the death penalty gained no traction.

But this is not a Massachusetts prosecution. It is a federal prosecution, spearheaded by Holder, who is personally opposed to capital punishment. The Tsarnaev prosecution will be the most high profile death penalty case since Timothy McVeigh was charged in the Oklahoma City bombing that left 168 people dead and over 600 wounded.

The McVeigh prosecution cost taxpayers over \$13.8 million dollars. And that trial took place in 1997. Federal capital prosecutions are expensive. The average cost to the taxpayer of defending a trial in a federal death case is \$620,932. This is roughly eight times more expensive than a non-capital murder case. Capital cases, by definition are bound to cost more -- a lot more -- because as the Supreme Court has said, "death is different." In capital cases, for example, pre-trial motion practice and jury selection are far more complicated and extensive than non-capital cases. Defendants have a bifurcated trial in which the jury first decides guilt and second determines the penalty. And then there are years of protracted appeals. All of this takes more time and resources than non-death penalty cases, and comes with a much higher price tag.

Yet, for all that expense, the federal death penalty rarely results in an execution. Since the reinstatement of the federal death penalty in 1988, over 70 defendants have been sentenced to death, but only three have been executed. One of those three was Timothy McVeigh, who was executed in 2001 only after voluntarily dropping his appeals. The vast majority of federal death row inmates, however, will languish on death row, serving a sentence that is rarely implemented and often only after lengthy years of litigation. This draws out the pain and uncertainty for victims, defendants, and their families alike.

If cost and uncertainty were not enough, the federal government also could have declined to bring capital charges simply because the use of capital punishment is hurting our moral legitimacy in the international arena. The United States is an international outlier in the developed world for its support of the death penalty, ranking only behind China, Iran, Saudi Arabia and Iraq in its use of death penalty as a lawful sentence. Since many nations consider the death penalty to violate human rights, the United States' continued support of capital punishment makes it hard for us to have legitimacy when we seek to police human rights abuses.

The federal government also risks enabling Tsarnaev to martyr himself in front of the entire world. Tsarnaev could use the capital trial as an opportunity to broadcast his radical views and to accept the punishment of death as a moment of extremist jihad. A non-capital trial would have diluted that argument, and allowed Tsarnaev to fade into obscurity, inside an anonymous prison cell, for the rest of his natural life; a punishment that is as slow and tedious as it is severe.

Perhaps, as some have suggested, the federal government brought these capital charges to push Tsarnaev into a plea agreement for a life without parole sentence. The irony, of course, is that a state prosecution could have resulted in exactly the same outcome and just as effectively would have spoken for a majority of the people of Massachusetts.

Tsarnaev, if found guilty of these charges, committed a terrible crime. Proponents of capital punishment argue that if ever a case deserved a death sentence, it is this one. But perhaps it is time to rethink whether any case should be punished by death. Tsarnaev can be appropriately punished without an execution, with less expense, more certainty, and no loss to the United States of international standing.

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