

CASE #8: THE DEATH PENALTY—FOR OR AGAINST*

The most dangerous thing about power is to employ it where it is not applicable.

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Over the past 20 years, American citizens have expressed a growing concern regarding the death penalty as a sentence for capital murder. Forensic investigation has greatly advanced and demonstrated that in many situations, the death penalty was being applied to individuals who were later proven innocent. Those against the death penalty point to the fact that when juries and courts dictate a death penalty, innocent people may be executed even when subsequent evidence indicates the likelihood of innocence. An equally sincere group of citizens are of the belief that the death penalty is a fair and just end for an individual that commits murder and takes another person's life.

Facts in the Death Penalty Debate (This case was reviewed in 2016 and 2018 for updates with the result that the facts presented below remain essentially the same)

1. The death penalty is allowed in 31 states, and the Federal government and the military. ... It is outlawed in 19 ... states and the District of Columbia.
2. Since 1976 there have been 1,342 executions. Starting with one person in 1977, the executions reached a peak of 98 in 1999 and a decline to 43 in 2011. The race of defendants executed in this period was 56% white, 34% black, 8% Hispanic, and 2% other (DPIC, updated 2013).
3. Since 1973, over 130 people in the United States have been released from death row with evidence of their innocence. From 1973-1999, there was an average of 3 exonerations per year and from 2000 to 2011, there has been an average of 5 exonerations per year, totaling more than 130 from 1973 to 2011 (DPIC, 2013).
4. Wrongful execution in the US: Some have claimed that as many as 39 executions have been carried out in the face of compelling evidence of innocence or serious doubt about guilt from 1992 through 2004. Newly available DNA evidence prevented the pending execution of more than 15 death row inmates during the same period of time in the US.
5. The most comprehensive study in the country found that the death penalty cost North Carolina \$2.16 million per execution *over* the cost of sentencing murderers to life imprisonment. Greatest costs occur at the trial level (Duke Univ., 1993).
6. A Gallop poll in the fall of 2011 found support for the death penalty had slipped to 61% nationally, the lowest level in 39 years. When poll participants are given alternatives to the death penalty, a majority would choose a punishment other than the death penalty for murder (2010 poll by Lake Research Partners).
7. A 2009 poll commissioned by DPIC found police chiefs ranked the death penalty last among ways to reduce violent crime. The police chiefs also considered the death penalty the least efficient use of taxpayers' money.
8. The United States ranked 5th in the world in 2011 for the highest number of executions (2012 report of Amnesty International). The US (43 executions)

- ranked behind China (1000s), Iran (360+), Saudi Arabia (82+), and Iraq (68+), for the most executions in 2011. Yemen and Sudan were 6th and 7th.
9. The US leads the world in mass incarceration of prisoners and holds records for solitary confinement and sentences to life in prison. Out of 195 countries, just 21 carried out the death penalty in 2012. In December 2012, 111 countries (more than half the world's countries) voted in favor of a United Nations resolution that would declare a global moratorium on execution.
 10. Europe is a continent free of the death penalty in practice. All states but Russia, which has entered a moratorium, have ratified the European Convention on Human Rights except Belarus. In 2004 Turkey amended its constitution in order to remove capital punishment in all circumstances.
 11. In Latin America, most states have completely abolished the use of capital punishment, while some countries, such as Brazil, allow for capital punishment only in exceptional situations, such as treason committed in wartime. Canada and Australia abolished the death penalty in the 1970s. The state of Israel retains the death penalty only for Nazis convicted of crimes against humanity

What follows are arguments *for and against* the death penalty. Critique your own view as you review each of the four arguments.

ARGUMENT 1: DETERRENCE—The death penalty prevents future murders

Support. Society has always used punishment to discourage would-be criminals from unlawful action. Since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder, and that is the death penalty. If murderers are sentenced to death and executed, potential murderers will think twice before killing for fear of losing their own life.

“I believe the death penalty, is more feared than imprisonment, and deters some prospective murderers not deterred by the thought of imprisonment. Sparing the lives of even a few prospective victims by deterring their murderers is more important than preserving the lives of convicted murderers” (Ernest van den Haag, Professor of Jurisprudence and Public Policy, Fordham University). People fear nothing more than death. Therefore, nothing will deter a criminal more than the fear of death. Life in prison is less feared; otherwise they would not try to be sentenced to life in prison instead of death.

Rebuttal: There is no conclusive proof that the death penalty acts as a better deterrent than the threat of life imprisonment. A survey of the former and present presidents of the country's top academic criminological societies found that 84% of these experts rejected the notion that research had demonstrated any deterrent effect from the death penalty. The poll of police chiefs noted above (#7) seems to support this claim.

With the exception of professional hit-men, very few people are in a rational frame of mind when they kill others. It may be unreasonable to expect any form of

punishment to act as a deterrent. “Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. In such cases, violence is inflicted by persons heedless of the consequences to themselves as well as others” (Hugo Adam Bedau, Professor of Philosophy, Tufts University)

Dr. Dorothy Lewis, a psychiatrist, and Dr. Jonathan Pincus, a neurologist, studied over 150 death-row inmates and found that, almost without exception, their brains were severely damaged. Typically, they were battered and often sexually abused as children. They concluded that most murderers have damage to their frontal lobes which control a person’s aggression and impulsiveness.

Since many murderers are either sociopaths devoid of empathy toward others or brain-damaged, one might argue that the death penalty is unlikely to influence their behavior. About 23% of people in prison are sociopaths, compared to 1 % of people in the general population.

ARGUMENT 2: RETRIBUTION—A just society requires the death penalty for the taking of a life

Support: When someone takes a life, the balance of justice is disturbed. Unless that balance is restored, society succumbs to a rule of violence. Only the taking of the murderer’s life restores the balance and allows society to show convincingly that murder is an intolerable crime which will be punished in kind.

Retribution has its basis in religious values, which have historically maintained that it is proper to take an “eye for an eye” and a life for a life.

Rebuttal. Retribution is another word for revenge. The emotional impulse of revenge is not sufficient justification for invoking a system of capital punishment, with all its accompanying problems and risks. Our laws and criminal justice system should lead us to higher principles that demonstrate a complete respect for life, even the life of a murderer.

“Respect for all human life and opposition to the violence in our society are at the root of our long-standing opposition (as bishops) to the death penalty. We see the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance in our culture. As we said in *Confronting the Culture of Violence*: ‘We cannot teach that killing is wrong by killing.’ The death penalty offers the tragic illusion that we can defend life by taking life.” (Statement from the U.S. Catholic Conference March 24, 1999)

COUNTER ARGUMENT 3: INNOCENCE—The risk of executing the innocent precludes the use of the death penalty

Support. The death penalty imposes an irrevocable sentence. There is considerable evidence that many mistakes have been made in sentencing people to death. In one study from 1973 to 2000, at least 88 people were released from death row after

evidence of their innocence emerged. During the same period of time, over 650 people were executed. Thus, for every seven people executed, one person on death row should never have been convicted. These statistics represent an intolerable risk of executing the innocent.

Our capital punishment system is unreliable. A study by Columbia University Law School found that two thirds of all capital trials contained serious errors. When the cases were retried, over 80% of the defendants were not sentenced to death and 7% were completely acquitted.

Rebuttal to Innocence. Executing the innocent is a rare but acceptable risk of the death penalty. Many of the claims of innocence by those who have been released from death row are actually based on legal technicalities. Just because someone's conviction is overturned years later and the prosecutor decides not to retry him, does not mean he is actually innocent.

“Our present system of capital punishment limits the ultimate penalty to certain specifically-defined crimes and even then, permit the penalty of death only when the jury finds that the aggravating circumstances in the case outweigh all mitigating circumstances. The system further provides judicial review of capital cases. Finally, before capital sentences are carried out, the governor or other executive official will review the sentence to insure that it is a just one, a determination that undoubtedly considers the evidence of the condemned defendant's guilt” (Paul G. Cassell, Associate Professor of Law, Univ. of Utah and former clerk of Chief Justice Warren E. Burger)

COUNTER ARGUMENT 4: ARBITRARINESS AND DISCRIMINATION—The death penalty is applied unfairly and should not be used

Support. The mentally ill, poor, males, and racial minorities are over-represented among those executed. In practice the death penalty does not single out the worst offenders. Rather, it selects an arbitrary group based on such irrational factors as the quality of the defense counsel, the county in which the crime was committed, or the race of the defendant. Almost all defendants facing the death penalty cannot afford their own attorney. Hence, they are dependent upon the quality of the lawyers assigned by the state, many of whom lack experience in capital cases.

With respect to race, studies have repeatedly shown that a death sentence is far more likely where a white person is murdered than where a black person is murdered. The death penalty is divisive because it appears to count white lives as more valuable than black lives.

Rebuttal to Arbitrariness and Discrimination. The death penalty is applied fairly. No system of justice can produce results which are 100% certain all the time. Mistakes will be made in any system which relies upon human testimony for proof. Each crime is unique, both because the circumstances of each victim are different and because each defendant is different. An analysis of cases has shown disparities based primarily

upon the race of the victim. However, Justice Lewis Powell in writing a majority opinion for the Supreme Court held that statistical studies on race by themselves were an insufficient basis for overturning the death penalty (1987).

QUESTIONS

1. What is your position on the use of the death penalty and the use of capital punishment? Provide a rationale for your position.
2. Which of the above four arguments, pro or con, supports your view best? What other rationale might be used: religious beliefs, humanitarian values on the intrinsic worth of a human life, research and scientific findings, financial costs, the impact upon the family of the person executed, etc.?
3. Some authorities argue that the men and women on death row most likely have some combination of bad genes, bad parents, bad ideas, bad luck, or abnormal brain functioning. Should any of these be factors in determining punishment?
4. The issue of genuine repentance. Most of the criminals on death row committed crimes when young and often under the influence of alcohol or drugs. Do we take into consideration that these individuals have changed during their imprisonment? This was the case several years ago regarding a woman executed in Texas. She had become an evangelical Christian and model prisoner. Many of the left and right appealed that she be spared based on her new life. From a Christian perspective, what right does the state or court possess to shorten the life of a person before they have a chance to mature or change for the better?
5. While some oppose the death penalty for most of the crimes for which it is now allowed; do you believe there are actions so heinous that they demand capital punishment; and if yes, what should they be and why?

* Reference for this material: Excerpts from documents accessed on the internet, the Death Penalty Information Center, 2000, 2013; Michigan State University; *Religious Tolerance, Capital Punishment*, Ontario Consultants on Religious Tolerance; *Death Penalty, Top 10 Pros and Cons*, ProCon. org.

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