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THE PRISONER'S FRIEND,

# Big Sky Debate

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ed with the spirit of universal philanthropy, and worth  
aid."

(From the N. E. Washingtonian.)

"The paper, Prisoner's Friend, contains besides very  
behalf of the prisoner, much other valuable and instructive  
is well worthy of the patronage of all who wish to help the  
lent cause, and get their money's worth at the same time.  
lishers, Messrs. Charles and J. M. Spear, are well known  
going Washingtonians, and are in fact engaged in every  
day, which promises to better the condition of their fel-  
lows."

(From the Boston Trumpet.)

"Charles and John M. Spear, who are to conduct this  
eminently philanthropic. For their good intentions, they  
the countenance of the community. We hope the paper  
will be largely patronized."

(From the Evangelical Magazine, Utica, N. Y.)

"The objects of the paper are truly benevolent and good,  
it will receive an extensive patronage."

(From the Ladies' Repository, Boston.)





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## **AFFIRMATIVE**

### **CAPITAL PUNISHMENT IS UNFAIRLY APPLIED**

#### **DEATH PENALTY IS RESERVES FOR MINORITIES, THE MENTALLY ILL OR THOSE TOO POOR TO HIRE A GOOD ATTORNEY-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Americans who support the death penalty think it should be reserved for the worst of the worst. The reality of capital punishment, however, shows that it is reserved for racial minorities, people who are retarded or mentally ill, and those who cannot afford to hire a good attorney. It is also all too often reserved for people who are factually innocent of the crime for which they were convicted and sentenced to be executed. Doubt that the death penalty is racist? Consider this: 55 percent of the inmates who make up America's death row population are people of color (43 percent of death row inmates are black). Two of every three juvenile offenders on death row are people of color, as are a majority of retarded inmates. Furthermore, the race of the victim plays a role in who ends up on death row. Nationwide, just half of murder victims are white, yet four out of every five people executed in the United States have died for killing white people.

#### **US BUNGLES HIGH PROFILE DEATH PENALTY CASES IN DUE PROCESS; LESSER KNOWN CASES COULD BE WORSE-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

It is becoming increasingly evident that those who are leery of the death penalty have reason for skepticism. The last-minute news that the Federal Bureau of Investigation had withheld thousands of pages of documents from Timothy McVeigh's attorneys spoiled what should have been the strongest possible argument for capital punishment. This bungling drew attention to the fact that prosecutors often withhold documents, and that in cases with less media scrutiny than *The United States vs. McVeigh*, such a violation might never be discovered. "If the FBI could fail to turn over documents in a case this important, think what happens in the thousands of lesser cases where the death penalty is also meted out," said Kenneth Roth, executive director of Human Rights Watch.



**CAPITAL PUNISHMENT UNJUSTLY IMPACTS MINORITIES**

**SUPREME COURT HAS RULED THAT CAPITAL PUNISHMENT UNFAIRLY TARGETS MINORITIES-- Grant '04**  
[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

These changes led in June 1972 to the U.S. Supreme Court decision in *Furman v. Georgia*. The Court ruled that the way in which capital punishment statutes were administered was unconstitutional. After reviewing the statistics from the 1920s through the 1960s, the majority concluded: "The death sentence is disproportionately imposed and carried out on the poor, the Negro, and the members of unpopular groups." The conviction and execution of blacks were particularly disparate when the murder victim was white and especially when a white woman was raped. Justice William J. Brennan observed, "When a country of over 200 million people inflicts an unusually severe punishment no more than 50 times a year, the inference is strong that the punishment is not being regularly and fairly applied." The Court also found that excessive punishments are prohibited and concluded that, since life imprisonment is as effective a deterrent as execution, capital punishment was excessive. Justice Thurgood Marshall added, "I cannot believe that at this stage in our history, the American people would ever knowingly support purposeless vengeance."

**NO CONCLUSIVE REPORTS EXISTS ON MINORITIES AND THE FEDERAL DEATH PENALTY; MUST STUDY FURTHER BEFORE EXECUTIONS ARE ALLOWED TO CONTINUE-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

Janet Reno had expressed doubts about the fairness of the federal death penalty during her tenure as U.S. Attorney General. [In] September [2001], she said she was disturbed by a Department of Justice report that mentioned the large numbers of minorities on federal death row. She ordered an investigation "to determine if bias does, in fact, play any role in the federal death penalty system."

On June 6, [2001], however, current Attorney General John Ashcroft brushed aside Reno's concerns with a new report claiming the federal death penalty is applied fairly, though he acknowledged that a more systematic study was necessary.

Ashcroft's haste to execute before the lengthier study was done is inexcusable. And his own report is shoddy. It fails to grasp the basic question of whether minorities are more likely to be charged with federal capital offenses than whites are. "The Ashcroft report purports to study this issue without looking at the much larger universe of cases in which federal charges could have been filed but were not.... For all we know, there were so many white defendants with cases just as suitable for federal capital prosecution as the minority defendants who were charged, or more so," wrote Samuel R. Gross in an op-ed for the Progressive Media Project. Gross is a professor of law at the University of Michigan and co-author of *Death and Discrimination: Racial Disparities in Capital Sentencing*. He criticized Ashcroft's assertion that the racial imbalance occurred because federal courts target crimes associated with drugs and that "organized drug trafficking is largely carried out by gangs whose membership is drawn from minority groups." Gross said, "This explanation has a depressingly familiar ring" of racial profiling about it.



**DEATH PENALTY IS APPLIED MORE OFTEN WHEN THE ACCUSED IS A MINORITY AND THE VICTIM IS WHITE-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

And evidence that courts punish people more harshly for murders of whites than of blacks is also stark. A study of the death penalty in North Carolina released this year found that the likelihood of landing on death row was much higher if the victim was white and the perpetrator was nonwhite.

Jack Boger, a professor at the University of North Carolina School of Law, examined 3,990 homicide cases. He found that 11.6 percent of nonwhite defendants charged with murdering white victims were sentenced to death versus 6.1 percent of whites who murdered whites and 4.7 percent of nonwhites whose victims were nonwhite.

These results are nothing new. A 1998 study released by the Death Penalty Information Center in Washington, D.C., found that blacks in capital cases in Philadelphia were almost four times as likely to be sentenced to death as whites in similar cases. It also said there is a "disturbing and consistent" pattern of imposing the death penalty much more often when the victims are white.

This bias is not lost on Prejean. "When people of color are killed, when poor people are killed, when 'the nobodies' of this society are killed, there is no big quest to pursue the ultimate punishment to avenge their deaths," she says.

**MINORITIES ARE THE VICTIM OF VINDICTIVE PROSECUTIONS; CLARENCE BRANDLEY EXAMPLE-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Of course, the numbers do not paint a complete picture. Racial minorities have been the victims of particularly cruel and vindictive wrongful prosecutions, particularly in the South. Consider the case of Clarence Brandley, who spent 10 years on death row in Texas for a crime he did not commit.

Brandley was the head janitor at a high school where a young white female student was found strangled. When police arrived at the crime scene and saw Brandley, a black man, and another janitor, who was white, one officer reportedly declared, "One of you is gonna hang for this. Since you're the nigger, you're elected." Brandley was freed from prison when all charges against him were dropped after a Department of Justice and FBI investigation uncovered trial misconduct.



## TEXAS UNJUSTLY EXECUTES MINORITIES

**TEXAS EXECUTION PATTERNS DEMONSTRATE CONTINUED APPLICATION OF RACIST JUSTICE-Walpin '00**  
[Ned; research associate at Frontline; Why is Texas #1 in Executions?; PBS Frontline; 2000;  
<http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>; retrieved 19 Aug 2011]

Some have speculated that the Texas execution rate also reflects a heritage of frontier justice coupled with modern urban crime.

However, James W. Marquart, Sheldon Ekland-Olson, and Jonathan R. Sorensen offer a more complex thesis. In their book, *The Rope, the Chair, and the Needle: Capital Punishment in Texas, 1923-1990*, [5] they argue that Texas' execution rate reflects the Southern "cultural tradition of exclusion," and that "[s]uch exclusion was a basic element of the legacy of slavery."

In other words, the South has a cultural tradition of dehumanizing certain groups of people, which has made it easier for Southerners to separate themselves from those who do not adhere to the normal social (and in this case, legal) code. The authors argue that this cultural tendency accounts for the fact that, in 1992, "the states in the former Confederacy accounted for approximately 90 percent of the total executions in the first two decades following *Furman v. Georgia*." [6] The authors argue that Texas provides the clearest case study to help explain this larger Southern phenomenon.

**THE APPLICATION OF THE DEATH PENALTY IN TEXAS REPLICATES THE RACISM OF LYNCHINGS-Walpin '00**  
[Ned; research associate at Frontline; Why is Texas #1 in Executions?; PBS Frontline; 2000;  
<http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>; retrieved 19 Aug 2011]

One way they show how Texas' current execution rate continues certain social norms of the former Confederacy is by exploring the historical relationship between state-sanctioned executions and illegal lynchings. Lynching, in their interpretation, did not represent justice but rather the clearest way to exclude someone (or, implicitly, a whole group) from society. A member of a society who breaks the law experiences the force of justice; the representative individual who is forcibly rejected by, or excluded from, society is lynched. Based on this understanding of lynching, their findings are compelling: there is a direct, inverse relationship between executions and lynchings over the course of the twentieth century. Executions simply replaced lynchings as the accepted way to sate the popular (white) need to "dehumanize" or "exclude" certain groups from normal society. If lynchings reminded white folk and black folk alike who was an "insider" and who was an "outsider"--who was "us" and who was "them"--then executions were implemented to serve the exact same purpose.

How could the coldly bureaucratic and legalistic execution serve the same socio-cultural purpose as the heated, violent and carnival-like lynching? The authors' argument is quite complex. The end of the Civil War undermined the disenfranchisement of blacks that had characterized the ante-bellum South. Lynchings had been a tool white Southerners used to combat their insecurity about the status of blacks. However, white insecurity diminished as the Southern states enforced segregation and so it was only natural that "local mobs gave way to centralized state-sanctioned executions." The authors thus claim that lynchings in Texas (and across the South) declined in the early twentieth century because "the enactment of Jim Crow and related disenfranchising legislation, buttressed by the Supreme Court's *Plessy v. Ferguson* decision in 1896," codified and enforced the social and cultural demands that had often culminated in lynchings.



**CAPITAL PUNISHMENT UNJUSTLY IMPACTS THE POOR**

**DESPITE GOVERNMENT ASSURANCES THAT DEPENDENTS WILL RECEIVE ADEQUATE COUNCIL, MANY CAPITAL DEPENDENTS HAVE HORRIBLE REPRESENTATION-- Leahy '02**

[Patrick, Senator from Vermont; US Senate Testimony on the Innocence Protection Act; 18 November 2002; Gale Group]

The Constitution requires the Government to provide an attorney for any defendant who cannot afford one. The unfortunate fact is that in some parts of the country, it is better to be rich and guilty than poor and innocent, because the rich will get their competent counsel, but those who are not rich often find their lives placed in the hands of underpaid court-appointed lawyers who are inexperienced, inept, uninterested, or worse.

We have seen case after case of sleeping lawyers, drunk lawyers, lawyers who meet with their clients for the first time on the eve of trial, and lawyers who refer to their own clients with racial slurs. Part of the problem, I think, lies with some state court judges who do not appear to expect much of anything from criminal defense attorneys, even when they are representing people who are on trial for their lives. Good judges, like good prosecutors, want competent lawyering for both sides. But some judges run for reelection touting the number and speed of death sentences they have handed down. For them, the adversary system is a hindrance.

**CAPITAL CASES DISCRIMINATES AGAINST THOSE WITHOUT THE MONEY FOR ATTORNEY-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Doubt that the death penalty discriminates against those who cannot afford a good attorney? Consider the case of Ronald Keith Williamson, who was convicted in Oklahoma and sentenced to death for murder and rape in 1988.

Williamson's conviction was tossed out because of ineffectiveness of counsel; a federal appellate court wryly noted that his attorney failed to investigate and present to the jury the fact that another man had confessed to the rape and murder. It was a case of you get what you pay for — the attorney had received only \$3,200 for his defense. Later, DNA evidence would exonerate Williamson.

Of course, that is just the tip of the iceberg. We've seen capital murder suspects represented by drunken lawyers, sleeping lawyers, biased lawyers, inexperienced lawyers, lawyers who were later disbarred, and lawyers who would be institutionalized due to mental illness.

Aden Harrison Jr., a black man, had as his court-appointed counsel 83-year-old James Venable, who had been an imperial wizard of the Ku Klux Klan for more than 15 years. Judy Haney's court-appointed lawyer was so drunk during the trial in 1989 that he was held in contempt and sent to jail. The next day, both client and attorney came out of the cellblock and the trial resumed. George McFarland's attorney slept through much of the trial. He objected to hardly anything the prosecution did, and every time he opened his eyes, a different witness was on the stand.

As Supreme Court Justice Ruth Ginsburg put it, "People who are well represented at trial do not get the death penalty. I have yet to see a death penalty case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial."



**TEXAS UNJUSTLY EXECUTES THE POOR**

**TEXAS DOES NOT HAVE A PUBLIC DEFENDER SYSTEM FOR INDIGENT DEFENDANTS-Walpin '00**

[Ned; research associate at Frontline; Why is Texas #1 in Executions?; PBS Frontline; 2000; <http://www.pbs.org/wgbh/pages/frontline/shows/execution/readings/texas.html>; retrieved 19 Aug 2011]

Texas does not have a public defender system for indigent defendants, and instead relies upon court-appointed lawyers who likely do not have experience in capital murder defenses or appeals. Newton notes that incompetent defenses in capital murder cases are legion in Texas, and that, even in a death penalty appeal, bad lawyering is hard to prove. One decision, which turned down a defendant's habeas appeal due to bad lawyering, concluded that "[t]he Constitution does not say that the lawyer has to be awake" during trial proceedings. Furthermore, Texas was not obliged to provide lawyers free of charge to post-conviction habeas appeals until September 1, 1995, and the amount the state is willing to pay lawyers for these appeals is sufficiently low that most defendants still do not receive counsel for their appeals.

**THE MAJORITY OF COUNTIES IN TEXAS FAIL TO PROTECT THE RIGHTS OF POOR DEFENDANTS IN CAPITAL CASES-American Constitution Society '10**

[Study Finds Flawed System for Poor Defendants Facing Texas Death Penalty; American Constitution Society; 24 Feb 2010; <http://www.acslaw.org/acsblog/study-finds-flawed-system-for-poor-defendants-facing-texas-death-penalty>; retrieved 01 Sep 2011]

The majority of Texas counties continue to rely on procedurally flawed method that is failing poor defendants facing the death penalty, according to research published in a new ACS Issue Brief. University of Denver Sociology and Criminology Professor Scott Phillips studied more than 500 death penalty cases in Harris County, home of Houston, which the author dubs the "capital of capital punishment," and found that a method of employing court-appointed lawyers is riddled with procedural problems.

Phillips writes:

Defendants who hired counsel for the entire case were never sentenced to death. Even defendants who hired counsel for a portion of the case were substantially less likely to be sentenced to death than defendants with appointed counsel.

The findings are not an indictment of appointed attorneys, but rather an indictment of the structural deficiencies in the appointment method of indigent defense. The system is flawed, not the individuals who work within the system.



**TEXAS UNJUSTLY EXECUTES MEN MORE OFTEN**

**TEXAS UNEQUALLY APPLIES THE DEATH PENALTY ON MEN-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

There are more women awaiting execution in the United States than in any other country in the world. n7 Although this statistic may seem to indicate that American women are sentenced to death at an alarming rate, women actually account for less than one percent of people executed in the United States. n8 Since the reinstatement of the death penalty in 1976, only twelve women have been executed. n9 Three of these women were executed in Texas. n10 Texas tends to have the reputation as the most "bloodthirsty" death penalty state and has executed more people than any other state in the nation. n11 But even Texas fails to apply capital punishment equally to its male and female offenders. n12 [\*407] Since the reinstatement of the death penalty, Texas has executed 464 men and only three women. n13

The gender disparity in Texas's executions is not due to a mere disparity in the commission of homicides, but is rather due to far more complicated factors. n14 Although women commit nearly ten percent of death-eligible crimes, they almost never receive the state's ultimate punishment. n15 America's paternalistic view of women has shaped Texas's views on moral culpability and produced a capital punishment statute that punishes "masculine" rather than "feminine" crimes. n16 If women do become eligible for death sentences, this paternalism continues to provide protection to female defendants as they are charged, tried, sentenced, and reviewed for clemency. n17 Women lose this protection only if they stray from feminine norms or breach their duties as wives, mothers, and caretakers.

**MEN ARE FAR MORE LIKELY TO RECEIVE CAPITAL PUNISHMENT IN TEXAS-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

Although factoring gender into the scheme of criminal punishment has been commonplace in American history, since the Supreme Court's decision in *Furman v. Georgia*, favoring or disfavoring either sex in a sentencing scheme violates the Equal Protection Clause of the Fourteenth Amendment. n53 Therefore, death penalty statutes no longer contain any mention or consideration of gender. n54 Despite their facial neutrality, however, most capital statutes, including the one in Texas, are drafted in ways that make it more likely that men will be charged with capital crimes.



**THE LAW IN TEXAS IS FAR MORE LIKELY RESULT IN MEN RECEIVING THE DEATH PENALTY-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

Mitigating circumstances are essentially the opposite of aggravating factors because they provide guidance to juries about what makes offenders deserve sympathy and leniency. n76 Most mitigating circumstances also seem to provide more protection to women than they do to men. n77 For example, one common mitigating circumstance is the existence of "extreme mental or emotional disturbance," a trait more often associated with women than men. n78 Another consideration is whether the defendant is under the "substantial domination" of another person. n79 Juries commonly apply this factor to women because many jurors [\*416] assume that women commit crimes only because of their commitments to their husbands or lovers. n80

The Texas Penal Code, however, does not lay out specific mitigating factors. n81 Instead, it contains a "catch-all" provision that allows a jury to consider any and all characteristics of a particular defendant when deciding whether to sentence that defendant to death. n82 Although seemingly innocuous, such catch-all provisions also discriminate against men because "[j]udges and juries generally are more likely to find sympathetic factors in the lives and backgrounds of women than of men." n83 Although this may be explained partially by the reluctance of male defendants to expose vulnerable or sympathetic aspects of their lives, the fact that women receive greater public empathy is undeniable. n84 In addition, judges and juries are more likely to see women as capable of rehabilitation, an element that often factors into a sentencing decision.

**FEMALE CLIENTS TAKE ADVANTAGE OF GENDER BIAS TO AVOID THE DEATH PENALTY-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

Not only do female defendants benefit from a lower likelihood of being charged with capital crimes, but female defendants also use emotional [\*418] tactics to gain the sympathy of juries in the courtroom. n94 Many defense attorneys counsel their female clients to cry profusely on the stand, to shake uncontrollably, or to hang their heads in shame. n95 Portraying women as damaged and fragile can be a strong defense tactic because it "lumps women in with the retarded and children by implying that they can't control their own actions." n96 For example, women who kill their abusive spouses are represented as helpless victims. n97 Another tactic is to portray a female defendant as traditionally feminine, especially as a mother or grandmother. n98 Even supposedly impartial judges admit to treating women with more leniency and mercy.



**TEXAS IS ONE THE WORST OFFENDING STATES WHEN IT COMES TO VIOLATING EQUAL PROTECTION-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

The Fourteenth Amendment guarantees all persons in the United States equal protection of the laws. n159 The application of the death penalty in Texas shows that men may not receive equal protection during the various stages of a capital case in Texas. n160 Some have argued that the best way to attack the death penalty on Equal Protection Clause grounds is to raise the challenge in those states that have capital punishment but have never executed a woman. n161 The case seems even stronger in Texas, however, because even in Texas, a state that has executed more women than almost any other, application of capital punishment may still be unconstitutionally gender biased. n162

**TEXAS HAS AN UNCONSTITUTIONALLY UNFAIR GENDER DISPARITY IN CAPITAL PUNISHMENT-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

Although facially neutral, Texas's capital punishment statute has an unconstitutional disparate impact on male offenders. n163 While women commit 10% of homicides, they account for only 0.6% of executions in Texas. n164 This disparity is much too stark to be explainable by other reasoning and amounts to a Fourteenth Amendment violation. n165 There is also implicit discrimination in the Texas death penalty statute itself. n166 The statute uses factors that apply disproportionately to male offenders to determine whether a defendant is death-eligible and permits [\*426] unguided consideration of mitigating circumstances, which allows juries to rely on gender-based stereotypes and paternalistic attitudes when making sentencing decisions.

**TEXAS'S APPLICATION OF THE DEATH PENALTY IS UNCONSTITUTIONAL ON GROUNDS OF GENDER-Salvucci '11**

[Jessica; Editor; Femininity And The Electric Chair: An Equal Protection Challenge To Texas's Death Penalty Statute ;Boston College Third World Law Journal; Spring 2011]

Furthermore, the Texas statute is unconstitutional not only because of discriminatory application during the initial determination of death eligibility, but also because legal and political actors treat male offenders more harshly. n168 Juries convict women of murder less frequently than they convict men, and they tend to convict women of lesser degrees of murder, which carry lighter sentences. n169 Judges, politicians, and the general public also treat women with leniency and purposefully give them protections and considerations to which men are not entitled. n170 In the rare instances when women do receive death sentences, they are even more rarely executed. n171 Whereas nearly forty-five percent of men on death row are eventually executed, this figure may be as low as sixteen percent for women. n172 Since the reinstatement of the death penalty, [\*427] nineteen death sentences were imposed upon women in Texas, but only three of those women were actually executed. n173 This is due in part to the purposeful consideration of gender by governors and judges during the process of granting reversals and stays.



**CAPITAL PUNISHMENT UNJUSTLY APPLIED TO MENTALLY ILL**

**DEATH PENALTY EXECUTES THOSE WITH MENTAL ILLNESS OR COGNITIVE DELAY-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Doubt that the death penalty is reserved for people who are retarded or mentally ill? Since executions were allowed to resume in 1976, we've executed 44 mentally retarded inmates. (And that is a conservative number. Many inmates are not evaluated for mental retardation before they are executed.)<sup>1</sup>

These 44 inmates include Morris Mason of Virginia who, on his way to the death chamber, turned to a prison worker and said, "You tell Roger [another death row inmate] when I get back, I'm going to show him I can play basketball as good as he can." Ricky Rector of Arkansas separated his pecan pie from his last meal and left it on the windowsill of his prison cell. He wanted to eat it after the execution.

**DESPITE SUPREME COURT RULING, TEXAS CONTINUES TO EXECUTE COGNITIVELY DELAYED-Democracy Now '10**

[Despite a US Supreme Court Ban, Texas Continues to Send Mentally Retarded Criminals to Death Row ; Democracy Now; 12 Jan 2010;

[http://www.democracynow.org/2010/1/12/despite\\_a\\_us\\_supreme\\_court\\_ban](http://www.democracynow.org/2010/1/12/despite_a_us_supreme_court_ban); retrieved 01 Sep 2011]

A 2002 Supreme Court ruling allowed states to set their own definitions of mental retardation to decide who meets the criteria for execution. Instead of adopting the Supreme Court's accepted clinical standards for mental retardation, Texas has granted heavy leeway to psychologist evaluations. Now one psychologist, George Denkowski, is facing scrutiny over methods that critics say unfairly send mentally retarded prisoners to death row. For more, we go to a report from Renée Feltz for the Texas Observer.

**TEXAS GIVES HUGE LEEWAY TO PSYCHIATRISTS, LEADING TO MORE EXECUTIONS-Democracy Now '10**

[Despite a US Supreme Court Ban, Texas Continues to Send Mentally Retarded Criminals to Death Row ; Democracy Now; 12 Jan 2010;

[http://www.democracynow.org/2010/1/12/despite\\_a\\_us\\_supreme\\_court\\_ban](http://www.democracynow.org/2010/1/12/despite_a_us_supreme_court_ban); retrieved 01 Sep 2011]

We turn to Texas, where mentally retarded prisoners continue to face the death penalty despite a 2002 Supreme Court ban. The ruling allowed states to set their own definitions of mental retardation to decide on who meets the criteria for execution. Instead of adopting the Supreme Court's accepted clinical standards for mental retardation, Texas has granted heavy leeway to psychologist evaluations. Now one psychologist is facing scrutiny over methods that critics say unfairly send mentally retarded prisoners to death row.

**GOVERNOR PERRY VETOED A LAW BANNING EXECUTION OF COGNITIVELY DELAYED-Democracy Now '10**

[Despite a US Supreme Court Ban, Texas Continues to Send Mentally Retarded Criminals to Death Row ; Democracy Now; 12 Jan 2010;

[http://www.democracynow.org/2010/1/12/despite\\_a\\_us\\_supreme\\_court\\_ban](http://www.democracynow.org/2010/1/12/despite_a_us_supreme_court_ban); retrieved 01 Sep 2011]

Texas Governor Rick Perry vetoed a law that would ban executions of the mentally retarded, so the state courts made up their own criteria to comply with the Supreme Court's ruling. But they still consider whether a defendant meets a three-part clinical definition, an IQ of seventy or below, and adaptive behavior deficits in everyday skills used to work and communicate. These systems must be present before the age of eighteen. When Kase interviewed the doctor in Mexico that attended Plata's birth, he said he had been born practically dead from lack of oxygen.



**CAPITAL PUNISHMENT RISKS EXECUTION OF INNOCENT**

**POSSIBILITY OF KILLING THE INNOCENT TRUMPS ALL ARGUMENTS IN FAVOR OF CAPITAL PUNISHMENT-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

Even if we were to accept the arguments in favor of capital punishment, the clearest reason to forego killing criminals comes from the inevitable miscarriage of the punishment itself. I shudder at the fact that ninety-four innocent individuals in the last decade were released from death row. They had been wrongfully condemned to death for crimes they did not commit. Some were minutes from execution. For each person exonerated, how many innocent people have we executed? This utter disgrace should make members of the criminal justice system hang their heads in shame. I cannot even imagine the anguish of a wasted life, the years away from friends and family, the disrepute and shame suffered by these poor souls who spent precious moments of their lives locked away in a maximum security prison for crimes they did not commit. What does the sword hanging over one's head do to the psyche of a wronged person who awaits the hand of the executioner while the appeals process is being exhausted? Frank Lee Smith was convicted of a 1985 rape and murder and condemned to death row. Smith died in prison after spending fifteen years there. His innocence was proven by DNA tests after his death! This is only one of many poignant examples that cries out loud against capital punishment.

**LEGAL APPEAL PROCESS ISN'T ENOUGH TO STOP THE KILLING OF INNOCENT PEOPLE USING CAPITAL PUNISHMENT-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

In many of these cases, nothing in the legal appeals process helped uncover the innocence of these wrongly convicted individuals. Instead, it was investigations conducted by journalists or college students, or the confessions of the true perpetrators of these crimes that helped to exonerate the innocent. In fact, the justice system has at times worked to wrongly criminalize the innocent. Reckless prosecutors and police lab chemist teams like Robert Macy and Joyce Gilchrist of Oklahoma have been criticized for playing with the rules to convict people in murder trials. This makes a mockery of the system when professional enforcers of the law mangle the spirit of the law to get convictions, forcing outsiders to rescue the hapless victims of the criminal justice system.



**MISTAKE-PRONE HUMANS MAKE APPLICATION OF THE DEATH PENALTY INAPPROPRIATE-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikun; July/August 2002; Gale Group]

People also make mistakes; research shows that even eyewitnesses are unable to recall events accurately. Yet we brazenly act as if we were God and condemn people to death, calmly ignoring that we are mistake-prone humans. Furthermore, our history is replete with stories of governments framing people they did not like. Individuals such as Geronimo Pratt can attest to the effectiveness with which innocent people can be framed by a determined government. Criminal cops such as Rafael Perez ride roughshod over prosecutors and juries and railroad people into prison or worse. Corruption in FBI crime labs, lying forensic analysts, biased juries, and prosecutors bending to local politics make a dangerous mixture, making the legal process highly unsafe for those on the lower socio-economic stratum of the society. I am not saying that a majority of people on death row are innocent; most are brutal killers who deserve to be there. However, even if a minute fraction of individuals on death row are innocent, it is immoral to support capital punishment. When our government executes an innocent person in our name, all of society is responsible for the death of that innocent person.

**THE DEATH PENALTY ENSNARES INNOCENT PEOPLE INTO LIVE OR DEATH SITUATIONS-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Doubt that the death penalty ensnares innocent Americans in its complicated legal web? More than 100 people have been freed from death row due to actual innocence, while close to 800 people have been executed. This means that for every eight people we are executing, one person is completely exonerated. Think of it this way. What if a prescription drug cured eight of every nine people who took it but killed the ninth? What if an airline carrier successfully completed eight of every nine flights it launched, but the ninth resulted in mechanical failure?

What if you are able to successfully reboot your computer eight of every nine tries, but the rest of the time, it crashes and destroys your document? As a society that depends upon a functioning criminal justice system, should we have confidence when that same justice system sends innocent people to death row? As Supreme Court Justice Sandra Day O'Connor put it, "If statistics are any indication, the system may well be allowing some innocent defendants to be executed. More often than we want to recognize, some innocent defendants have been convicted and sentenced to death."

**SAYING THAT SEEING INNOCENT PEOPLE RELEASED FROM JAIL IS PROOF THAT THE SYSTEM IS WORKING ARE IN "INNOCENCE DENIAL"-- Leahy '02**

[Patrick, Senator from Vermont; US Senate Testimony on the Innocence Protection Act; 18 November 2002; Gale Group]

Finally, there is one more argument against the bill which is rarely stated out loud. I call it the "innocence denial" argument. We saw this in the Earl Washington case in Virginia where, despite conclusive DNA evidence to the contrary, the Commonwealth for years clung to the hopelessly unreliable and implausible confession of a mentally retarded man. We see it in claims that "the system is working" when an innocent man is released after years on death row due to the work of journalism students. And we see it in the often-repeated insistence that, no matter how many people have been exonerated, no one can prove that an innocent person has actually been executed.

The innocence deniers will never concede there is a problem. But with 100 known instances of the system failing—and those are only the ones we know about—it would be surprising if there were not more unknown cases of innocent people being sentenced to death.



**ACTUAL NUMBER OF INNOCENT PEOPLE KILLED IS NO MATTER; IF EVEN ONE INNOCENT PERSON DIES, THE DEATH PENALTY IS UNACCEPTABLE-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Some death penalty proponents quibble over the number of people who have been found to have been factually innocent. The exact number isn't really what's important. What's important is that not one of us — death penalty opponents or proponents — would conclude that executing even one innocent person constitutes acceptable criminal justice policy in the United States.

**OVER 100 PEOPLE WHO HAVE BEEN SENTENCES TO DEATH HAVE BEEN RELEASED; JUSTICE SYSTEM ISN'T CONSISTENT ENOUGH TO HAVE A DEATH PENALTY-- Leahy '02**

[Patrick, Senator from Vermont; US Senate Testimony on the Innocence Protection Act; 18 November 2002; Gale Group]

Since the 1970s, more than 100 people who were sentenced to death have been released, not because of some technicality, but because they were innocent, because they had been sentenced to death by mistake. One wonders how many others were not discovered and how many innocent people were executed. These are not just numbers, these are real people. Their lives are ruined. Let me give an example: Anthony Porter. Anthony Porter was 2 days from execution in 1998 when he was exonerated and released from prison. Why? Not because the criminal justice system worked. He was exonerated and released because a class of journalism students, who had taken on an investigation of his case, found that he did he not commit the crime. They also found the real killer. A group of students from a journalism class did what should have been done by the criminal justice system in the first place. Ray Krone spent 10 years in prison. Three of those ten years were on death row waiting for the news that he was about to be executed. Then, [in 2002], through DNA testing, he was exculpated and the real killer was identified. These are two of the many tragedies we learn about each year. These situations result not only in the tragedy of putting an innocent person on death row, but they also leave the person who committed the crime free. Everything fails. We have the wrong person in prison. But we have not protected society or the criminal justice system because the real criminal is still out running free. Often times, the actual perpetrator is a serial criminal.

**POLICE OFFICIALS HAVE ADVOCATED FOR A MORATORIUM ON THE DEATH PENALTY WHEN LABS ARE PROBLEM UNRELIABLE-- Badkhen '05**

[Anna; "Pendulum Begins Swing Away from Death Penalty;" The San Francisco Chronicle; 10 April 2005; Gale Group]

In Texas, which led the nation with 23 executions last year, Houston Police Chief Harold Hurtt called for a moratorium on executions on cases from his county, Harris County, after the local police crime lab was declared unreliable.

"I think it would be very prudent for us as a criminal justice system to delay further executions until we have had time to review the evidence," Hurtt said last fall. Gov. Rick Perry has rejected Hurtt's call, despite similar appeals from state and local lawmakers.



**TEXAS EXECUTES THE INNOCENT**

**THE DEATH PENALTY IN TEXAS IS RIDDLED WITH ERRORS, LEADING TO EXECUTION OF INNOCENTS-  
Houston Chronicle '11**

[The death penalty: It's time for capital punishment to become Texas history; Houston Chronicle; 02 Jan 2011; <http://www.chron.com/opinion/editorials/article/The-death-penalty-It-s-time-for-capital-1692445.php>; retrieved 29 Aug 2011]

The death penalty in Texas is fraught with demonstrable error, and the people of the state seem more willing to deal with that fact than their leaders.

Events of the past year have convinced us that defendants have been executed on the basis of invalid evidence. They may or may not have been guilty, but the fact that we have convicted people based on faulty evidence leads inexorably to a horrible likelihood — that we have executed innocent people. The high number of death row prisoners eventually exonerated makes a strong case that other innocent but less fortunate prisoners have been wrongfully put to death.

We don't lose sleep over the execution of guilty murderers. But the possible or probable execution of the innocent should trouble every Texan.

**THE DEATH PENALTY IN TEXAS INVOLVES AN UNACCEPTABLY HIGH RISK OF EXECUTING THE INNOCENT-  
Houston Chronicle '11**

[The death penalty: It's time for capital punishment to become Texas history; Houston Chronicle; 02 Jan 2011; <http://www.chron.com/opinion/editorials/article/The-death-penalty-It-s-time-for-capital-1692445.php>; retrieved 29 Aug 2011]

Still, even as Texas juries show increased restraint in utilizing capital punishment, Texas elected officials - including most jurists - seem equally determined not to examine its flaws. When District Judge Kevin Fine attempted to conduct a hearing on the constitutionality of the death penalty as practiced in Texas, Harris County District Attorney Pat Lykos first ordered her prosecutors to stand mute in court and then successfully appealed to the Texas Court of Criminal Appeals to halt the hearing. More than 60 people, including former Texas Gov. Mark White, have filed a brief with the high court in support of allowing the death penalty hearing to go forward.

When the state Forensic Science Commission attempted to investigate whether Willingham was executed for the murder of his three children based on faulty arson evidence, Gov. Rick Perry replaced the commission chairman and several board members. A protracted and inconclusive investigation followed. An attempt by an Austin judge to conduct a hearing on the Willingham case has also been stymied by an appeals judge, who ruled that the jurist should have recused himself.

The accumulating evidence indicates that the current application of the death penalty in Texas involves an unacceptably high risk of killing innocent people. Yet even as the evidence of false convictions and wrongful executions piles up, only the participants at the base of the Texas criminal justice system, jury members, seem to be waking up to the reality of this evil.



**CAPITAL PUNISHMENT INSTILLS A CULTURE OF VIOLENCE**

**THE LOGICAL EXTENSION OF CAPITAL PUNISHMENT IS GOVERNMENT-ORDERED KILLING WITHOUT TRIAL-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

At least the members of death row in the United States had the opportunity to go to trial. To see the logical extension of this willingness to kill in the name of the state we need only look to Israel, which in [2002] has begun an even more brazen and barbaric application of capital punishment: the selective assassination by the Israeli government of those suspected of being involved in terrorist activities. It is a disgrace that a government can indulge in such a sinister practice. Even in the United States, an argument to execute hard-core gang members in the inner-city because that would prevent them from killing others would jolt the conscience of the most callused hard-on-crime person. The pre-emptive executions of "suspected" terrorists by the Israeli government are based on similarly fallacious reasoning. What about proving someone's guilt before meting out the ultimate punishment? Not only do such executions backfire and lead to more violence against the Israeli people, they result in a complete loss of moral authority for the state; we should take heed from this example of the inherent immorality of the state playing God.

**THE DEATH PENALTY IS A FORM OF VIOLENCE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

For me, even in the post-September 11 world, America's death penalty continues to be just another form of violence in an already too-violent society. The problems with the death penalty—the conviction of the innocent, racial discrimination in its application, and the abysmal quality of representation most death-row inmates received at their trials—are legion and have certainly not changed since September 11, and no past or future terrorist attack will affect those realities. Elected officials such as Illinois Governor George Ryan had compelling reasons before September 11 to call for a moratorium on executions, and none of those reasons has gone away. Indeed, so long as the death penalty exists, there will be men like Anthony Porter, one of many death-row inmates recently exonerated in Illinois alone, who are sent to death row in error.

**USING THE DEATH PENALTY GIVES THE MESSAGE THAT VIOLENCE IS AN ACCEPTABLE ANSWER TO PROBLEMS-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

What makes no sense to me is for a government that already has a criminal in custody to use violence—that is, the death penalty—to try to reduce violence. Using capital punishment only sends the misguided message to members of society that killing already-incarcerated criminals can somehow solve the problem of violence in American life. Statistics and history, in fact, show that just the opposite is true; when the death penalty is used, it tends to brutalize society, not make our lives any safer. While American death-penalty laws may give some a false sense of security, only incarcerating offenders and taking steps to prevent violence will make us safer in the end. Timothy McVeigh's<sup>2</sup> execution did not put a stop to acts of terrorism on American soil, just as death-penalty laws do not stop homicides in Dallas or Houston and did not deter suicidal fanatics from hijacking commercial airliners and killing thousands of innocent people in a single day.



**ALLOWING CAPITAL PUNISHMENT PUSHES VIOLENCE INTO OUR CULTURE-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

So we need to approach the problem of capital punishment not as a legal matter determining the rights and duties of the parties but as if we were treating a disease—the disease of violence. The past one hundred years have comprised the most violent century in human history. That violence is reflected in our television programs, movies, video games, literature, political attitudes, militaristic paranoia, the alarming abuse toward children, pervasive domestic violence, hostility toward the genuinely poor and helpless, the persistence of racism and intolerance, the way we treat petty juvenile offenders, and the mistreatment of prisoners. When we impose severe and excessive punishment, when we seek an eye for an eye, a tooth for a tooth, a life for a life, when we seek revenge on lawbreakers by some clumsy arithmetic we call justice, we become violent law abiders. We become what we say we abhor—more like criminals—more violent people. And the contagion spreads.

**THE DEATH PENALTY IS A FORM OF VIOLENCE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

In the wake of terrorist attacks, workplace shootings, carjackings, or gun violence ... effective measures can and should be taken to curtail violence. More sophisticated computer systems to track offenders, beefed-up security at public places, and better regulation of firearms are all steps that we can take to make the United States a safer place in which to live and work. Although lethal injections have largely sanitized executions, it cannot be doubted that the death penalty is a form of violence. Whether carried out by firing squad, hanging, electrocution, the gas chamber, or lethal injection, the result is the same: the killing of human life.

**VIOLENCE DOESN'T JUSTIFY MORE VIOLENCE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

The amount of violence in American society, whether on the streets or as seen on prime-time television, is astonishing. We see hijacked planes piloted into the World Trade Center and bursting into flames; we see murder scenes with yellow police tape on the evening news; and family-friendly television programming often seems to be a rare commodity. The media, acting under the guarantees of the First Amendment, must be allowed to report and expose acts of violence. However, the sheer amount of violence we face does not mean that we should inject even more violence into our lives by using the death penalty. Indeed, everyone from parents to our nation's lawmakers must play a role in shaping a better, more nonviolent future for our children.



**THE DEATH PENALTY SENDS THE WRONG MESSAGE TO THE NATION'S YOUTH-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

When our country's governors or judges sign death warrants for people already confined in prison, they send the wrong message to our nation's youth. Do we really want some of our most educated members of society, who should be role models of the highest order, telling our children that killing locked-up criminals is the way to solve problems? We certainly do not hold up executioners as role models for our children, yet when executions occur aren't all members of our society in some way responsible for what those executioners are doing? It is, after all, our own laws that allow executions to happen within our borders. If anything, the death penalty only perpetuates the mistaken notion that state-sanctioned executions can somehow curtail violent crime in the United States. Just as the NAACP [National Association for the Advancement of Colored People] successfully crusaded against lynching in the last century, it is time for all of us in this century to work to do away with state-sponsored executions.

**THE DEATH PENALTY VALIDATES SENSELESS VIOLENCE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

If America is to have a safer society, we must stop seeing the death penalty as a "crime-fighting" tool, which it clearly is not. Instead, we must start seeing capital punishment for what it is: just another form of violence in our society. Thus, as we grapple with the thorny issues of how to bring heavily armed terrorists in Afghanistan to justice, America's domestic political agenda cannot be allowed to stand still. The abolition of America's death penalty is, in fact, one way already within our grasp to reduce violence. Instead of putting needles into criminals who are brain-damaged, mentally retarded, or who do not share our value for human life, our crime-fighting efforts should focus on real solutions such as tougher gun-control laws, stiffer penalties for violent offenders, better child-protection laws, and combating truancy to keep kids in school and out of gangs.

In the final analysis, the death penalty does nothing more than validate the use of senseless violence, which is not a wise or sensible thing to do in the first place. As Martin Luther King, Jr., warned: "The ultimate weakness of violence is that it is a descending spiral, begetting the very thing it seeks to destroy." America's death penalty, inflicted after murders have already been committed, only creates more violence and represents yet another roadblock that we must dismantle if we are ever to realize King's dream of a nonviolent society based on the principles of equality and respect for human life.



**CAPITAL PUNISHMENT INCREASES THE CULTURE OF VIOLENCE IN A COUNTRY-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

Many who seek to eliminate the culture of violence in society assert that capital punishment actually exacerbates the level and intensity of violence in the community. They observe that the state is backwardly killing people in order to teach others not to kill. They search for ways to heal the effects of crime upon society, the victim, and the offender. Restorative justice seeks to eliminate violence from the community and heal the harm done to the extent possible.

Violence is a highly contagious social disease that causes emotional, psychological, and physical damage and turns a peaceful person into a hostile one. The essence of violence is hatred, anger, rage, and desire for revenge caused by an act of wrongful violence internalized by the victim. When one allows oneself to be filled with these emotions in response to a violent attack, it allows the attacker to do more than just cause physical injuries. The attacker then does emotional and psychological damage as well. She or he has destroyed the victim's sense of inner tranquility and stability—a destruction that remains long after the physical injuries have healed. When anger, rage, hatred, and vengeance fill that space, the victim is turned from a peaceful to a violent person. This violence is the self-inflicted destruction of one's inner peace.

**PUBLIC EXECUTIONS WERE ELIMINATED BECAUSE THEY CAUSED A GENERAL STATE OF DISORDER-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

That executions are brutalizing to American society was actually clear at least more than a century ago. Indeed, in the 1830s, American states began moving executions out of public squares because of ... the general disorder that often prevailed at them. This trend started in northeastern states and then gradually spread to all parts of the country. Midday executions on the public commons were, over the next hundred years, gradually replaced by after-dark executions that, by the late 1930s, universally took place behind prison walls. State laws specifically limited attendance at executions to a few official witnesses, and county sheriffs and prison wardens regularly barred children and women from attending them. In the twentieth century, new laws were passed throughout the country forbidding television cameras from filming these events.

Because civic leaders saw public executions as corrupting morals, many states even passed laws in the nineteenth century forbidding newspapers from printing any details of executions. Public executions, it was recognized, often drew pick-pockets and drunken spectators, and state legislators concluded that if executions were creating unintended consequences, so too were newspaper accounts of hangings. Thus, in many locales such as Arkansas, Minnesota, New York, and Virginia, only the bare fact that a criminal was executed could be printed or published. Any reporter who violated one of these laws and described an execution in print could be criminally prosecuted and jailed.



**VIOLENCE BEGETS VIOLENCE-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

And violence begets more violence. It is a contagion spreading hatred, anger, rage, and desire for revenge to others out of empathy for the victim. Moreover, a violent victim may seek revenge against the original perpetrator and can be tempted to take out that anger on family members and friends when emotional triggers enflame the violent condition. Violent people don't have ample social skills to resolve differences peacefully and thus the contagion spreads. Each time a person commits a violent act with the intent to injure or kill, the attacker not only causes physical, emotional, and psychological injury to the victim but becomes a more violent person as well. Every act of violence makes the perpetrator more violent — whether the person is someone assaulting an innocent shopkeeper, acting in self-defense, performing a state execution, or soldiering in war. The contagious nature of violence infects the morally righteous police officer as well as the brutal lawbreaker. In his study of young murderers, Cornell University human development professor James Garbarino observes:

Epidemics tend to start among the most vulnerable segments of the population and then work their way outwards, like ripples in a pond. These vulnerable populations don't cause the epidemic. Rather, their disadvantaged position makes them a good host for the infection.... The same epidemic model describes what is happening with boys who kill.

Horribly, this is a social disorder that can turn innocent people against each other.



**CAPITAL PUNISHMENT VIOLATES INTERNATIONAL LAW AND MORALITY**

**THE UNITED STATES IS MORALLY ISOLATED IN ITS SUPPORT OF THE DEATH PENALTY-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

While the American public examines its conscience, the U.S. capital punishment system is an enormous embarrassment overseas.

Until recently, U.S. executions got much more attention abroad than they did here. "An average person in France," reported the New York Times, "could not help but be familiar with the case of Betty Lou Beets," who was executed in Texas in February of [2000] for killing her fifth husband. "Her story, with particular attention to her assertion that she was abused by her father and husbands, has been on the front page of many newspapers."

The same was true, said the Times, of Odell Barnes. French editorialists had penned columns questioning whether Barnes was innocent, and the mayor of Paris even traveled to Texas to meet him. Barnes was executed in March of [2000].

The moral isolation of the United States has grown more glaring almost by the day. In April [2001], the United Nations Human Rights Commission called for a global moratorium "with a view to completely abolishing the death penalty." The proposal was put forward by the European Union. The vote was 27 to 18, with the United States, along with Japan, China, Indonesia; and Saudi Arabia, voting against.

**FOREIGN NATIONS DOUBT US CREDIBILITY ON HUMAN RIGHTS DUE TO SUPPORT OF THE DEATH PENALTY-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

Then, in late June [2001], the Council of Europe, the continent's forty-three-nation human rights group, voted to remove Japan and the United States as observers unless they call a moratorium on executions "without delay" and begin a formal repeal of the death penalty.

"The debate at the Council of Europe is further evidence that the credibility of the U.S. on human rights issues has reached a new low point," said Ajamu Baraka, acting director of Amnesty International USA's Program to Abolish the Death Penalty. "The U.S.'s reputation continues to be tarnished by its defiant and puzzling commitment to a punishment that has no deterrent effect and that the majority of the world's nations has abandoned as barbaric and outdated."

**US VIOLATES THE VIENNA CONVENTION IN ITS APPLICATION OF THE DEATH PENALTY-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

A few days later, the World Court ruled that the United States had violated the Vienna Convention in a death penalty case involving Karl and Walter LaGrand, both German nationals who were executed in 1999. Neither of the LaGrands was informed of his right to seek assistance from the German consul upon arrest. More than ninety foreign citizens from thirty-three nations are reportedly under death sentences in the United States, according to Amnesty International. In most of these cases, says Amnesty, local authorities failed to inform the prisoners upon detention of their right to consular notification and assistance—"in glaring violation of the Vienna Convention." In the past ten years, at least fourteen foreign nationals who were not informed of their consular rights have been executed here in the United States.

In mid-June [2001], Frank Keating, the governor of Oklahoma, granted a thirty-day reprieve to a Mexican national named Gerardo Valdez. Valdez, like the LaGrands, was not told of his right to contact his consulate upon arrest. Keating later criticized the legal standard for capital punishment in Oklahoma as "too low."



**RESTORATIVE JUSTICE IS REAL JUSTICE**

**MUST ALLOW RESTORATIVE JUSTICE FOR VIOLENT OFFENDERS-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

In order to foster a less violent society, the treatment of the offender should be as humane and non-violent as forcible incarceration can allow. Rehabilitation of the offender ought to be a necessary condition of parole. Life imprisonment without the possibility of parole ought to be the alternative to capital punishment.

Restorative justice seeks to eliminate the culture of violence in U.S. society and replace it with a culture of caring. It's a matter of attitude. We must not allow our hearts to be filled with hatred, anger, rage, and the desire for revenge. It's hard to put aside such feelings when a child or loved one is murdered, especially if the killing is particularly brutal or cruel. This is why violence is so hard to subdue. Look at the difficulties in restoring peace in countries like Northern Ireland, Israel, Bosnia, and India and Pakistan which have engaged in civil wars. Similarly, if we don't find a way to break the cycle of violence we will never be able to end the culture of violence that infects the United States.

Restorative justice doesn't ask that we "turn the other cheek." Restorative justice doesn't seek mercy or forgiveness for those who, by the calculus of duties and rights, deserve to die. Rather, it asks us to protect ourselves from the disease of violence by not killing the despised one. Someone must go first to stop the cycle of violence; the obvious candidate is the state. The words of John Donne from his poem "No Man Is an Island" seem particularly appropriate when we execute a condemned prisoner: "Ask not for whom the bell tolls; it tolls for thee!"

**DEATH PENALTY PROVIDES NO CLOSURE FOR CRIME VICTIMS-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

This is common. "More often than not, families of murder victims do not experience the relief they expected to feel at the execution, says Lula Redmond, a Florida therapist who works with such families," U.S. News & World Report said in a June 1997 article. "Taking a life doesn't fill that void, but it's generally not until after the execution [that the families] realize this," Redmond said.

Helen Prejean—the author of *Dead Man Walking*, which was turned into a movie starring Susan Sarandon and Sean Penn—stresses how illusory the relief is. She tells of a father who insisted on seeing the execution of the man who murdered his daughter. Once it was over, he said: "The S.O.B. died too quick. I hope he burns in hell." Prejean notes, "He could have watched him die a thousand, thousand times," and that still would not have healed his loss.



**FOCUS ON THE DEATH PENALTY AS PUNISHMENT DISTRACTS FROM THE VICTIM-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

Instead of using the death penalty to express society's rage at wanton murder, we would be better off forcing remorseless and callous criminals to confront their depravity and make them realize how much pain they cause to others. It would be even more useful to turn our energies away from revenge on the perpetrators of crime and concentrate them instead on community support for the victims, who are often neglected as the criminal justice system focuses on retribution. Those of us who oppose the death penalty should never concentrate our efforts solely on the manifold problems of the death penalty or, as some do, on the humanity of the killer. We must pay equal attention to compassionate support for the families and other loved ones of the victims. We must feel the loss, agony, and anger of the survivors, and build social and institutional support for them. It is as immoral to ignore the pain of the victims as it is to support capital punishment.

**RESTORATIVE JUSTICE IS THE ANSWER TO VIOLENCE CRIME-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

On the day of McVeigh's execution, a pastor at a memorial service for some of the victims' families asked, "Is there another way we can respond to this violence without doing violence ourselves?" Restorative justice doesn't promote anger, hatred, rage, or revenge by society or by the victim but offers a nonviolent response to the violence done. The focus of restorative justice isn't the punishment of the offender; it is the separation of the violent person from peaceful society for the protection of law-abiding citizens. With a peaceful attitude and conscious decision to choose a nonviolent and nonvengeful response, the cycle of violence can be broken and the contagion stopped. It is all a matter of attitude and the realization that violence should be countered in a mature and rational manner in order to protect society without doing damage to its citizens.



## LIFE IN PRISON IS JUST

### **LIFE IN PRISON IS THE BEST ALTERNATIVE-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

An effective alternative to the death penalty exists. Life in prison without parole is moral, practical, and far less expensive than the complicated process that leads to the death chamber. With life imprisonment, the cold-blooded murderer is removed from society and immediately forgotten, so that attention can be turned to the victims and their needs.

Revenge may bring momentary satisfaction, but only the potential to reach into someone's callused heart can bring healing. We cannot be a civilized society while we indulge in hatred and consign forgiveness to the sidelines. Anyone can be a knee-jerk reactionary and demand blood; it takes enormous courage to forgive the depraved who have caused us such enormous pain and sorrow.

### **IF AN OFFENDER IS IN PRISON ALREADY, THE DEATH PENALTY DOES NOTHING MORE THAN INJECT VIOLENCE INTO CULTURE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

In wartime or when someone acts in self-defense to preserve his or her own life, the use of violence can be justified to protect life. World War II, for example, was fought to stop Nazi aggression and end the Holocaust. But when a government already has someone in prison, what purpose is served by an execution? All an execution does is inject more violence into a society. Because the government should be setting an example for its people, executions are especially counterproductive. The need for public safety and what should be any government's goal—that is, a nonviolent society—can be easily reconciled by making life-without-parole sentences the maximum penalty allowed by law for murder.

### **LIFE IN PRISON PROVIDES ADEQUATE RESPONSE-Bedau '04**

[Hugo; Austin B. Fletcher Professor of Philosophy, Emeritus, at Tufts University ;*Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

I will not quarrel with appeal to a general principle of desert: "Wrongdoers deserve to be punished." But by itself, this principle provides no defense of the death penalty; it is fully satisfied by a lesser punishment, such as imprisonment. The proposition that "murderers deserve to die" obviously does support the death penalty, but it does so by essentially begging the question. Why do murderers deserve to die when rapists do not deserve to be raped (or do they? and by whom?)? Why do murderers deserve to die when we haven't the faintest idea what punishment traitors or embezzlers or kidnappers deserve? Retributive considerations rightly tell us who deserves to be punished—it is the guilty. But it does not tell us what their punishment ought to be. Relying on some version of *lex talionis* is of no help in building a systematic and comprehensive schedule of punishments for crimes.



## LEGAL RETRIBUTION IS NOT JUST

### RETRIBUTIVE JUSTICE FUELS CRUEL PUNISHMENTS-- Grant '04

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

Today it seems even less evident. Many in U.S. society demand vengeance and retribution for violent criminal conduct. Retributive justice means that the criminal must be made to pay for the crime by a crude mathematics that demands the scales of justice be balanced; this appeals to humanity's basest animal instincts and ancient demands for an eye for an eye, a life for a life. Retributive justice is fueled by hatred and satisfied only with full and complete revenge—the more cruel, the more satisfying. Civil liberties defender and lawyer Clarence Darrow observed that the state "continues to kill its victims, not so much to defend society against them ... but to appease the mob's emotions of hatred and revenge." After Oklahoma City bomber Timothy McVeigh was executed amid wide television coverage, over 80 percent of the viewers polled said that he deserved to die; many said his death was too clinical and he should have died more painfully. One man said that McVeigh should have been stoned to death. Others were willing to forego his execution because they thought that life behind bars with no possibility of parole would be a greater punishment.

### RETRIBUTIVE JUSTICE ENFORCES DIFFERENCES BETWEEN CLASSES-- Grant '04

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

Retributive justice has a bad history, however, as it has historically been used to enforce a class society by oppressing the poor and protecting the rich. It has been used to impose racism by applying the law in an unfairly heavy-handed way upon African-American citizens and in a lenient manner upon white Americans. The U.S. justice system has imprisoned more than two million people; about all are black, although African-Americans constitute only 12 percent of the total population. The prison system has been likened to a twenty-first century form of slavery.

### DEATH PENALTY IS A POOR MEAN OF REVENGE-- Dutta '02

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

However, even as a means of revenge, the death penalty is an absolute failure. Candlelight vigils, media coverage, and an endless judicial process turns the criminal into a celebrity while the victim's family seethes with resentment, sometimes for decades! Not only does the criminal become glorified, the taxpayer-subsidized court costs are horrendous. Victims are re-victimized repeatedly as the loss of their dear ones is downplayed and they are portrayed as despicable people because some of them want the execution to proceed. This sort of revenge is not sweet. Despite the hopes of most pro-death penalty victims, executing criminals does not necessarily bring resolution and healing to the victim's family. In a calculated act so depraved that even sick people would deplore it, Reynaldo Rodriguez walked into the wealthy suburban home of his ex-girlfriend Maria Calderon in Simi Valley and systematically killed three of her family members and wounded two others. After his heinous crime, he drove to a campground in Los Padres National Forest and killed himself. Maria Calderon's feelings reveal the profound flaw in capital punishment. She said to the Los Angeles Times, "I would have much rather he stayed alive. That way he could face the justice system and live with the fact that he murdered three people, and suffer what we're suffering. Now he took his own life—and he's not suffering anymore."



**ANY PUNISHMENT IS AN ACT OF RETRIBUTION; A SYSTEM PROPOSED BY ADVOCATES OF THE DEATH PENALTY WOULD BE A DANGER TO US ALL-Bedau '04**

[Hugo; Austin B. Fletcher Professor of Philosophy, Emeritus, at Tufts University ;*Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

In place of deterrence, now that murder has become virtually the only capital crime in the United States, the principal defense of the death penalty is retribution: “Murderers deserve to die,” we are told. Accordingly, the second objection to the Minimal Invasion argument is that it completely ignores the role of retribution in a system of punishment, and so ignores the proper, even unique, role that the death penalty plays in providing appropriate retribution for the gravest of wrongs: murder. I think these objections are misguided. First, punishment in any case is a retributive act, insofar as the only persons deemed eligible for punishment are persons judged to be guilty of a crime and thought to be deserving of punishment because of their guilt. A system of inflicting deprivations on persons in the name of punishment that lacked this retributive feature would be a danger to us all.

**NO ACT OF PUNISHMENT CAN UNDO THE HARM OF THE CRIME COMMITTED-Bedau '04**

[Hugo; Austin B. Fletcher Professor of Philosophy, Emeritus, at Tufts University ;*Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Second, I do not believe that it is rational to assign as one of the legitimate goals of a system of punishment the exaction of retribution, in some special fashion or further degree that goes beyond the inherently retributive nature of any system of punishment, as described above. Thus, life imprisonment for murder is every bit as retributive as the death penalty for murder, even if it is less severe. Its failure to imitate the crime does not make it less retributive. It provides no support for the notion that a lawful punishment of death could wipe out or cancel the lawless wrongdoing in murder. The doctrine of punishment as cancellation or annulment of wrongdoing has had its distinguished supporters (notably, Hegel), but I do not believe it will withstand scrutiny. No act of punishment as such can undo the harm of the crime; and any plausible punishment suffices to display (and in that sense, annul) the wrongness of the crime. Annulling the crime by proper punishment in a more literal sense might work in some cases —for example, where a thief is punished by being required to return what he stole and in addition to compensate the owner for his trouble. But neither death nor imprisonment can serve in this way to annul a murder.



**CAPITAL PUNISHMENT DOES NOT DETER CRIME**

**DEATH PENALTY HAS NO DETERRENT EFFECT ON CRIME-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

Death penalty support in law-enforcement comes from a deeply-held conviction by police officers that it is a deterrent. Demagogues exploit the fear of crime in the community and use their support for capital punishment as a badge of honor. As a police officer myself, I can emphatically state that many of my colleagues are wrong: the death penalty has no deterrent effect on crime. Capital punishment fails to deter those who commit crimes of passion. Capital punishment also has no dissuading power over criminals who are opportunistic, calculating, or overcome by drugs. A person taking a chance that he will not be caught for the crime he is planning to commit does not discriminate between the death penalty and life in prison without parole. Killing a criminal will prevent him from committing another crime —but so will putting him behind bars forever.

**CAPITAL PUNISHMENT WON'T DETER MANY MURDERERS-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

Of those who favor capital punishment, not all would agree that retribution is their motive. Many argue that it is a deterrent to murder. But is it? Think of the troubled boys at Columbine High School who killed a teacher and students first and then committed suicide.<sup>1</sup> Many violent people —particularly violent adolescents—resort to violence toward others only as an alternative to suicide and, in many cases, kill themselves anyway after killing others. Capital punishment wouldn't be a deterrent to them. If these might be viewed as exceptional circumstances, then a way of covering all circumstances would be to compare statistics between states and nations with and without capital punishment. However, the majority of the justices in Gregg, after reviewing the evidence, concluded, "Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive." This may be because whatever deterrence factor exists for capital punishment probably exists almost equally for life imprisonment.

**STATES WITHOUT THE DEATH PENALTY DON'T HAVE THE HIGHEST MURDER RATE, DISPROVING DETERRENCE CLAIMS-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

Then there is the bogus claim of deterrence.

During the Presidential campaign [in 2000], Bush said that the only reason he was in favor of the death penalty was because it is a deterrent. But it isn't. The most striking recent evidence to emerge on this front comes from a September 2000 article by Raymond Bonner and Ford Fessenden in the New York Times. The piece showed that the twelve states that have not enacted the death penalty since it became legal in 1976 have not had higher rates of murder than those states with the death penalty. More revealing yet, the study also found that "homicide rates had risen and fallen along roughly symmetrical paths in the states with and without the death penalty."

The death penalty is biased against the poor and against racial minorities. It is arbitrary. It is capricious. It is cruel. It should be banned.



**HIDDEN NATURE OF EXECUTIONS PROVE THAT CAPITAL PUNISHMENT CANNOT DETER CRIME-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

The modern-day contention by some that executions deter crime better than life-without-parole sentences is thus totally at odds with both American history and the facts. If executions were such a wonderful deterrent, why would the government choose to hide them from public view and even pass laws to prohibit the dissemination of news about them?

**DEATH PENALTY DOES NOTHING TO FIGHT CRIME-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

I prefer life-without-parole sentences to the death penalty because capital punishment has a corrosive influence on any society, and there is no evidence that the death penalty really does anything to fight crime. In fact, a recent study commissioned by the New York Times examined FBI data and found that death-penalty states' average murder rates consistently exceeded those of non-death-penalty states. The study reached the very disturbing conclusion that, over the last twenty years, death-penalty states' homicide rates have been, on a per capita basis, an astonishing 48 percent to 101 percent higher than in non-death-penalty states. Of America's twelve non-death-penalty states, ten have murder rates that are below—often far below—the national average.

**DEATH PENALTY DOES LITTLE TO FIGHT CRIME; MINNESOTA EMPIRICALLY PROVES-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

The State of Minnesota, where I live, for instance, abolished capital punishment in 1911 and yet has one of the lowest violent-crime rates in the country. While the national homicide rate was 6.3 murders per 100,000 people in 1998, Minnesota's rate that year was less than half that figure; in contrast, active death-penalty states such as Texas and Louisiana regularly have some of the country's highest murder rates. I think anyone who fairly considers the evidence should be extremely troubled by the fact that, year after year, America's death-penalty states have higher homicide rates than do non-death-penalty states. Obviously, many factors can affect a state's homicide rate. However, these compelling statistics—indeed, logic itself—compel the conclusion that the death penalty is, at bottom, really nothing more than part of a culture (still prevalent in many places) that condones the use of violence.

**A BETTER POLICE FORCE WOULD BE A BETTER DETERRENT THAN CAPITAL PUNISHMENT-- Grant '04**

[Robert; Attorney and Retired Judge; "Capital Punishment and Violence;" Humanist; January/February 2004; Gale Group]

A far greater deterrent than either, however, would be more efficient police investigation. An average of twenty-two thousand murders and non-negligent manslaughters are committed annually in the United States but only two-thirds, or fifteen thousand, suspects are arrested. And only 45 percent, of about ten thousand, of all accused killers are convicted.



**IT CANNOT BE JUST TO APPLY CAPITAL PUNISHMENT FOR HORRIFIC CRIMES**

**SAYING THAT MURDER JUSTIFIES THE DEATH PENALTY WOULD ONLY WORK IF WE KILLED EVERY MURDERER-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

I have heard many arguments in favor of capital punishment. For example, some people argue that if I kill someone, I give up my right to live. That principle would qualify as a moral argument only if it were applied evenly. However, we do not sentence every murderer to death. Why isn't a reckless drunk driver who kills an entire family not sentenced to death? Because murders are different from each other, is the response — some are more cruel than others. But how do we quantitatively measure the heinousness of a murder? When mistake-prone humans send some criminals to the death chamber and others to prison are we not appropriating God's authority? What could be more immoral?

**CAPITAL PUNISHMENT OF TERRORISTS MAKES MARTYRS-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikkun; July/August 2002; Gale Group]

People have asked me whether I would support capital punishment if the criminal is absolutely identified beyond a shadow of a doubt. What if the wickedness of the crime shocks the conscience of everyone? The dastardly bombing in Oklahoma by Timothy McVeigh and the evil mass murder [on] September [11, 2001], of people in the World Trade Center come to mind. Is it moral and practical to execute a terrorist whose sole reason for existence is causing pain and suffering? Well, I don't think that capital punishment would make such terrorists rethink the shallowness of their reasoning and understand the insanity of their behavior. Instead, we would make them martyrs. Capital punishment is not a deterrent to these terrorists, but a goad. It is more important to look to social and political circumstances to prevent such monumental catastrophes from happening.

**IDEA THAT GRAVEST CRIMES REQUIRE DEATH PENALTY IS NOT SUPPORTED--Bedau '04**

[Hugo; Austin B. Fletcher Professor of Philosophy, Emeritus, at Tufts University ;*Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

A similar conclusion is reached if we invoke another retributive principle: "The graver the crime, the greater the punishment deserved." No doubt some such principle of proportionality will be incorporated into any reasonable theory of punishment. By itself, however, this principle does not defend the death penalty. If murder is the gravest crime, then under this principle it warrants the severest punishment. But that punishment could surely be (as it is in the typical abolition jurisdiction) some form of long-term imprisonment. Other schemes of trying to make the punishment fit the crime have also been developed by philosophers in recent years, but without conspicuous success.



**EVEN WITH HORRIFIC DEATHS, THE DEATH PENALTY IS NOT MORALLY JUSTIFIED-- Dutta '02**

[Senil; Sergeant of the LAPD; "Humans Playing God: Capital Punishment and Its Follies;" Tikun; July/August 2002; Gale Group]

The murderer had viciously executed his frail victims by slitting their throats, then started a fire to cover up the crime. The gentle couple, loved by their neighbors, had been married for the last fifty years. Now they were dead. I stood silently, shaken by human savagery that no other animal could match.

The crime-scene photographer walked slowly to me and whispered, "I hope they find the guy and hang him!" She sees a lot in her job, but the brutality of the crime and the elderly age of the victims had visibly shaken her. I didn't have the courage to tell her that executing the depraved killers would not turn back the clock and erase this blot on the sheer fabric of humanity. As I looked at the young photographer, I thought, would I have the courage to look into the eyes of the victims' daughter and self-righteously proclaim that the death penalty is immoral? Could I emphatically say that the cold-blooded monster who planned this robbery and viciously murdered these defenseless people could or should be rehabilitated? No. It would be presumptuous of me to tell the victims' families that I feel their pain. It would be even more preposterous to ask them to forgive the murderer and not root for capital punishment.

Nevertheless, although I am deeply aware of the suffering that murder causes, I don't believe the death penalty can be justified. When I find myself faced with murder, I think about my great-uncle, who used senseless murder to justify senseless murder. The practice of capital punishment, particularly by our "justice system," reveals a serious failure in our humanity. We no longer burn witches or keep slaves or have monarchs dictate our lives. Capital punishment is similarly anachronistic.

I am not some soft-hearted ignoramus arguing for going easy on murderers. As a police officer, I am sometimes confronted by vicious people who have so lost their humanity that they don't belong in any neighborhood. Some are such cold-blooded killers and others bring such misery to the world around them that they should be locked up forever. I want the people who calculatingly and brutally murder others to pay severely for their heinous crimes. Wanting to keep dangerous people out of society is different, however, from wanting to respond to violence with violence. No society can reach a peaceful existence if its people resolve their problems with violence.

**DIFFERENCE IN STATES INVALIDATES GRAVE CRIMES ARGUMENT-Bedau '04**

[Hugo; Austin B. Fletcher Professor of Philosophy, Emeritus, at Tufts University ;*Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

We could safely and sensibly say that offenders deserve whatever punishment the law provides. But that would land us in the awkward position of maintaining that murderers in Michigan deserve life in prison, but next door in Indiana they deserve death. What they deserve today may turn out not to be what they deserved yesterday, or tomorrow. What we need to know is not what the law provides by way of "deserved" punishment, but what the principles of morality tell us offenders deserve as their punishment. This is precisely what our principles fail to tell us in anything like a uniform and nonarbitrary manner. The attempt to rescue the death penalty for murder as an exception just begs the question.



**PUBLIC DOES NOT SUPPORT CAPITAL PUNISHMENT**

**US CONSERVATIVES BEGINNING TO QUESTION THE DEATH PENALTY-- Badkhen '05**

[Anna; "Pendulum Begins Swing Away from Death Penalty;" The San Francisco Chronicle; 10 April 2005; Gale Group]

It started when Rick Santorum, a conservative Republican senator from Pennsylvania, announced ... that he was questioning his once unyielding support for the death penalty.

Then Sen. Sam Brownback, an equally conservative Kansas Republican, chimed in, saying capital punishment contradicts the efforts to establish a "culture of life," a phrase that became prominent during the controversy over Terri Schiavo's fate [when family members battled in courts over removing her life support].

Neither lawmaker has suggested that the United States abandon the death penalty altogether—it should still be reserved for the "most horrific and heinous of crimes," Santorum said.

But the apparent change of heart from two of its unequivocal supporters illustrates a broader tendency.

**DIVERSE ADVOCATES ARGUE AGAINST THE DEATH PENALTY-- Badkhen '05**

[Anna; "Pendulum Begins Swing Away from Death Penalty;" The San Francisco Chronicle; 10 April 2005; Gale Group]

"One of the really interesting things about the movement against the death penalty is how diverse it is," said Brooke Matschek, a spokeswoman for the Religious Organizing Against the Death Penalty Project, a Philadelphia-based activist organization. "People are starting to understand that it's not a perfect system."

**MANY RELIGIOUS GROUPS BEGINNING TO DISAPPROVE OF THE DEATH PENALTY-- Badkhen '05**

[Anna; "Pendulum Begins Swing Away from Death Penalty;" The San Francisco Chronicle; 10 April 2005; Gale Group]

According to a Zogby International poll of 1,000 Catholics in March, just 48 percent supported capital punishment—down from 68 percent in 1994. John Zogby, who heads the polling organization, called the difference "huge."

Among America's evangelical Christians, support has dwindled from 82 percent in 1996 to 59 percent in 2004, according to a survey by the Pew Forum on Religion & Public Life—although influential conservative evangelical groups, such as Colorado-based Focus on the Family, continue to back executions.



**DESPITE SUPPORT IN THEORY, AMERICANS ARE STARTING TO QUESTION THE NATURE AND APPLICATION OF THE DEATH PENALTY-- Hawkins '02**

[Steven W.; Director of the National Coalition to Abolish the Death Penalty; "It Is Immoral and Ineffective;" World & I; September 2002; Gale Group]

Arguments against the death penalty are easy to make, but is anyone listening? The bad news is that most Americans continue to support capital punishment in theory. The good news is when you start to probe, there is a growing sense of unease and ambivalence.

For example, 80 percent of voters want to abolish or significantly reform the death penalty system. Sixty-nine percent of voters are more worried about executing an innocent person than executing the guilty. And 64 percent of voters—including 50 percent of Republican voters—want to suspend executions until issues of fairness can be resolved.

The fact is that people are beginning to respond to concerns about the system. Across the United States, a healthy and vibrant moratorium movement is gathering steam. Elected bodies in 73 municipalities have passed resolutions in favor of a moratorium.

Two governors, Republican George Ryan in Illinois and Democrat Parris Glendening in Maryland, have each declared a moratorium. Some 14 states have debated moratorium legislation; in New Hampshire, the legislature passed a bill abolishing the death penalty, only to see it vetoed by the governor.

**PUBLIC SUPPORT FOR THE DEATH PENALTY IS DWINDLING-- Badkhen '05**

[Anna; "Pendulum Begins Swing Away from Death Penalty;" The San Francisco Chronicle; 10 April 2005; Gale Group]

"We've come to a new era in this issue," said Richard Dieter, head of the Death Penalty Information Center, a nonprofit group in Washington critical of the death penalty. "There is a sense that there are problems with the death penalty, that there's a need for reform."

With an increasing number of convictions reversed by DNA evidence, receding murder rates and the huge financial costs of putting people to death, public support for capital punishment dropped to 50 percent last year [2004] from 80 percent in 1994, according to a Gallup poll.

The numbers of executions and death sentences have almost halved in the past five years, according to figures supplied by the Death Penalty Information Center. Last year, 59 death row inmates were executed, down from 98 in 1999; December was the first month in a decade that passed without an execution.

**PEOPLE ARE BEGINNING TO PULL THEIR SUPPORT FROM THE DEATH PENALTY-- The Progressive '01**

["Stop the Killing Machine;" The Progressive; August 2001; Gale Group]

Anyone who pays attention to the death penalty can feel it. A sea change is under way. Support for the death penalty has fallen to its lowest point in years. It now [in 2001] stands at 63 percent, down from 77 percent [in 1996], according to the latest available poll. However, that drops to 46 percent when life in prison is offered as an option. [In] September [2000], a bipartisan study showed that 64 percent would favor a moratorium on further executions until "issues of fairness can be resolved."

But the numbers tell only so much. The cultural shift on the death penalty is going on in kitchens and neighborhoods and factories and offices and press rooms across the country, where people are talking about it as they have not since 1976, the year the Supreme Court lifted its ban on executions. Many are looking at capital punishment with newfound horror and sudden doubts.



**A/T: UTILITARIAN JUSTIFICATION FOR CAPITAL PUNISHMENT**

**THERE CAN BE NO UTILITARIAN JUSTIFICATION FOR CONTINUING THE USE OF CAPITAL PUNISHMENT-  
Bohm '10**

[Robert; Professor of Criminal Justice and Legal Studies at University of Central Florida; Ultimate Sanction: Understanding the Death Penalty Through its Many Voices and Many Sides; 2010; pgs. 234-236]

A final theory to be considered here imputes the willingness to participate in the capital punishment process to “false consciousness” about what capital punishment is believed to accomplish. Unlike some of the aforementioned theories that view capital punishment participants as unreflective or unthinking bureaucrats, this theory emphasizes the cognitive dimension to their participation. A theory of false consciousness presumes that participants in the capital punishment process have what they believe to be good reasons or sound arguments for capital punishment and their roles in the process. The problem for such individuals is that what they believe to be true about capital punishment—the arguments they use to justify their behavior—is false and the product of propaganda. Despite substantial evidence to the contrary, many participants continue to believe, for example, that capital punishment deters would-be capital offenders better than long-term imprisonment, prevents vigilante justice, is the only legitimate way of achieving retribution for the most heinous crimes, provides comfort and closure for victims’ family members, is administered fairly (that is, not in an arbitrary or discriminatory way), is not plagued by miscarriages of justice (such as wrongful convictions and executions), and is cost-effective compared to a process that results in lifelong imprisonment. If any of those beliefs about capital punishment were true—if capital punishment were the only way of achieving a greater social good or social advantage—then the collateral damage to the participants in the capital punishment process could be justified, at least from a utilitarian view. However, an enormous body of research shows that the claims made about capital punishment’s unique utility are false. Perhaps the strongest evidence is that fifteen states and the District of Columbia, as well as two-thirds of the world’s nations, are able to achieve the utilitarian (and moral) goals of capital punishment with an alternative noncapital punishment at least as well as states and countries with capital punishment. Thus, capital punishment is unnecessary to accomplish any utilitarian or moral goals, which begs the question: Why incur capital punishment’s collateral damage?

No doubt, any alternative to capital punishment will produce collateral damage, too, but that alternative, whatever it is, is less likely than capital punishment to be used by politicians for political gain, needlessly divert scarce resources from efforts to reduce violent crime, force participants to navigate a complex and chaotic capital punishment process, subject victims’ family members to the secondary victimization caused by the capital punishment process, burden defense and post-conviction attorneys, damage offenders’ family members, wreck havoc with trial judges’ court dockets, and cause appellate court judges to expend a disproportionately large share of their resources on a very small percentage of their case load.

The replacement of capital punishment with an alternative punishment would also eliminate entirely the need for defense attorneys, prosecutors, and judges to expend time and resources on capital punishment; for jurors and governors to make life-and-death decisions; for prison wardens, death row correctional officers, execution team members, and execution witnesses to participate in executions; and the ultimate horror of executing an innocent person. The arguments in support of capital punishment do not hold up well to critical scrutiny, while the arguments in opposition to it seem compelling. Capital punishment’s collateral damage is another good argument for rethinking the wisdom of the ultimate sanction.



## **NEGATIVE**

### **CAPITAL PUNISHMENT PREVENTS RECIDIVISM**

#### **CRIMINALS CONVICTED OF MURDER ARE HIGHLY LIKELY TO MURDER AGAIN, EVEN IF INCARCERATED--**

**Tremonglie '03**

[Michael; Former Police Officer; "Capital Punishment Canards;" Insight on the News; 4 March 2003; Gale Group]

In March 1979, a Graterford (Pa.) prison guard was murdered brutally by an inmate. The inmate — at the time he murdered the guard — already was serving a life sentence for the triple murder of two infants and an elderly woman.

In 1994, an inmate who already was serving two life sentences in the Philadelphia Industrial Correctional Center was sentenced to three more after he was convicted of stabbing three prison guards.

In 1995, two death-row inmates at the Florida State Prison in Starke were killed by their fellow inmates.

In 1999, a Beeville (Texas) prison guard was killed by an inmate already serving a sentence for murder.

More examples could be cited, but it would be pointless. The fact is that murderers who already are imprisoned murder again. According to the latest Department of Justice (DOJ) information, of those sentenced to be executed, 65.7 percent had been convicted of a prior felony. Nearly one in 10 had been convicted of a prior homicide, and 4 percent either were in prison or escaped from prison when they murdered again.

#### **EVERY COUNTRY THAT HAS ABOLISHED THE DEATH PENALTY HAS SEEN A SPIKE IN CRIME-- Clark '01**

[Neil; Teacher and Freelance Writer; "Bring Back the Rope;" The Spectator; 9 June 2001; Gale Group]

The second point, that capital punishment acts as a deterrent, has always been disputed by the anti brigade. Yet every country that has abolished the death penalty has, within five years, seen a dramatic increase in its murder rate. The most notable recent example of this phenomenon is South Africa, with Johannesburg being transformed into one of the most dangerous cities in the world. The main reason for this is simple. In the days of the death penalty, criminal gangs would take great care to avoid the risk of violence in their activities, because they knew that, if a killing ensued, they might pay with their lives. Moreover, there is one crime for which the death penalty is arguably the only deterrent, namely the smuggling of hard drugs. With the potential rewards running into millions, and the chances of being caught and punished slim, it is no wonder that, despite 'Drug Czars' and numerous other costly government initiatives, Britain is, in the words of the National Crime Intelligence Service, 'awash with drugs'.



**CAPITAL PUNISHMENT DETERS CRIME**

**THE DEATH PENALTY SAVES THE LIFE OF THE INNOCENT- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Perhaps the most straightforward argument for the death penalty is that it saves innocent lives by preventing convicted murderers from killing again. If the abolitionists had not succeeded in obtaining a temporary moratorium on death penalties from 1972 to 1976, McDuff would have been executed, and Colleen Reed and at least eight other young women would be alive today.

Some sense of the risk here is conveyed by the fact that, of the roughly 52,000 state prison inmates serving time for murder, an estimated 810 had previously been convicted of murder and had killed 821 persons following those convictions. 12 Executing each of these inmates after the first murder conviction would have saved the lives of more than 800 persons.

**THE DEATH PENALTY SPECIFICALLY DETERS MURDERERS FROM KILLING AGAIN- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The death penalty's incapacitative benefit comes from preventing the individual murderers who are apprehended and executed from killing again. This effect is what criminologists refer to as specific deterrence. More significant benefits come from the death penalty's restraining effect on the much larger pool of people who are potential murderers, what criminologists refer to as general deterrence. Evidence for capital punishment's general deterrent effect comes from three sources: logic, firsthand reports, and social science research.

**THE ASSERTION THAT THE DEATH PENALTY DOESN'T DETER IGNORES THE MOST OBVIOUS FACTS ABOUT HUMAN NATURE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Logic supports the conclusion that the death penalty is the most effective deterrent for some kinds of murders: those that require reflection and forethought by persons of reasonable intelligence and unimpaired mental faculties. Such an assumption is uncontroversial in other contexts. As James Q. Wilson has explained:

People are governed in their daily lives by rewards and penalties of every sort. We shop for bargain prices; praise our children for good behavior and scold them for bad; expect lower interest rates to stimulate home building and fear that higher ones will depress it; and conduct ourselves in public in ways that lead our friends and neighbors to form good opinions of us. To assert that "deterrence doesn't work" is tantamount to either denying the plainest facts of everyday life or claiming that would-be criminals are utterly different from the rest of us.



**THE DEATH PENALTY DETERS THE KIND OF PREMEDITATED MURDERS IT IS APPLIED TO- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Of course, as the Supreme Court suggests, the death penalty applies only to “carefully contemplated” first-degree murder. That is, murders committed with premeditation and malice. It is no answer to the deterrence argument to say that the death penalty cannot prevent a killing during a fight in a bar room brawl. Such heat of passion offenses are typically punished as second-degree murders and are not eligible for capital punishment. The ultimate penalty is reserved for first-degree murders, and, indeed, for a subset of first-degree murders that are especially aggravated. Nor is it an answer to say that murders continue to be committed in this country in the face of the death penalty. The salient issue is not whether the death penalty deters every murder—only whether it deters some murders. Logic suggests that at least some potential murderers will be deterred.

**STATISTICAL ANALYSIS DEMONSTRATES THE DETERRENT VALUE OF THE DEATH PENALTY- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

A final support for the death penalty’s deterrent effect comes from statistical analysis. 23 Abolitionists appear to have little time for investigating this issue. When they trouble to investigate the issue, they typically do little more than assert that the states without the death penalty have lower homicide rates than states with the penalty. Bright’s chapter in *Debating the Death Penalty* can serve as a convenient illustration. Bright quickly dismisses the possibility of a deterrent effect with the factoid that the South has the highest murder rate in the country while the Northwest, with the fewest executions, has the lowest. 24 This analysis is fundamentally flawed. It fails to account for a variety of regional differences—e.g., educational levels, criminal justice expenditures, economic prosperity—that are well known to have potential affects on homicide levels. 25 Indeed, Bright’s observation may prove little more than that the states that most need death penalty laws have been the ones most likely to pass them.

**LIGHTHOUSE ANALOGY DEMONSTRATES HIDDEN DETERRENCE VALUE OF DEATH PENALTY-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Former Prosecuting Attorney for the State of Florida, Richard Gernstein, has set forth the commonsense case for deterrence. First of all, he claims, the death penalty certainly deters the murderer from any further murders, including those he or she might commit within the prison where he is confined. Second, statistics cannot tell us how many potential criminals have refrained from taking another’s life through fear of the death penalty. He quotes Judge Hyman Barshay of New York: “The death penalty is a warning, just like a lighthouse throwing its beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down.”



**POTENTIAL CRIMINALS DO USE COST BENEFIT ANALYSIS; IT MAKES SENSE THAT CAPITAL PUNISHMENT DETERS CRIME- Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Commonsense informs us that most people would prefer to remain out of jail, that the threat of public humiliation is enough to deter some people, that a sentence of 20 years will deter most people more than a sentence of two years, that a life sentence will deter most would-be criminals more than a sentence of 20 years. I think that we have commonsense evidence that the death penalty is a better deterrent than prison sentences. For one thing, as Richard Herrnstein and James Q. Wilson have argued in *Crime and Human Nature*, a great deal of crime is committed on a cost-benefit schema, wherein the criminal engages in some form of risk assessment as to his or her chances of getting caught and punished in some manner. If he or she estimates the punishment mild, the crime becomes inversely attractive, and vice versa.<sup>14</sup> The fact that those who are condemned to death do everything in their power to get their sentences postponed or reduced to long-term prison sentences, in the way lifers do not, shows that they fear death more than life in prison.

The point is this: Imprisonment constitutes one evil, the loss of freedom, but the death penalty imposes a more severe loss, that of life itself. If you lock me up, I may work for a parole or pardon, I may learn to live stoically with diminished freedom, and I can plan for the day my freedom will be restored. But if I believe that my crime may lead to death, or loss of freedom followed by death, then I have more to fear than mere imprisonment. I am faced with a great evil plus an even greater evil. I fear death more than imprisonment because it alone takes from me all future possibility.

**THE DEATH PENALTY SAVES LIVES- Cassell '08**

[Paul; professor of law, University of Utah; *In Defense of the Death Penalty*; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The abolitionists are remarkably sanguine. If the deterrence argument is correct, innocent people will die when we rely solely on imprisonment and fail to carry out executions. Deterrence is supported by logic, first-hand reports, and statistical studies. All of these sources suggest a specific, incremental savings of lives from the death penalty, over and above long-term imprisonment. We owe to those who might die at the hands of emboldened murderers not to casually “put to the side and disregard” this very real possibility.



**THE DEATH PENALTY MAY NOT STOP HARDENED CRIMINALS, BUT WILL CAUSE OTHERS TO PAUSE-  
Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

John Stuart Mill admitted that capital punishment does not inspire terror in hardened criminals, but it may well make an impression on prospective murderers. "As for what is called the failure of the death punishment, who is able to judge of that? We partly know who those are whom it has not deterred; but who is there who knows whom it has deterred, or how many human beings it has saved who would have lived to be murderers if that awful association had not been thrown round the idea of murder from their earliest infancy?"<sup>16</sup> Mill's points are well taken: (1) Not everyone will be deterred by the death penalty, but some will; (2) the potential criminal need not consciously calculate a cost-benefit analysis regarding his crime to be deterred by the threat. The idea of the threat may have become a subconscious datum "from their earliest infancy." The repeated announcement and regular exercise of capital punishment may have deep causal influence.

**THERE ARE THREE REASONS TO BELIEVE THE DEATH PENALTY DETERS-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Gernstein quotes the British Royal Commission on Capital Punishment (1949–53), which is one of the most thorough studies on the subject and which concluded that there was evidence that the death penalty has some deterrent effect on normal human beings. Some of its evidence in favor of the deterrence effect includes these points:

1. Criminals who have committed an offense punishable by life imprisonment, when faced with capture, refrained from killing their captor though by killing, escape seemed probable. When asked why they refrained from the homicide, quick responses indicated a willingness to serve life sentence, but not risk the death penalty.
2. Criminals about to commit certain offenses refrained from carrying deadly weapons. Upon apprehension, answers to questions concerning absence of such weapons indicated a desire to avoid more serious punishment by carrying a deadly weapon, and also to avoid use of the weapon which could result in imposition of the death penalty.
3. Victims have been removed from a capital punishment State to a non-capital punishment State to allow the murderer opportunity for homicide without threat to his own life. This in itself demonstrates that the death penalty is considered by some would-be-killers.



**THE DETERRENT EFFECT OF CAPITAL PUNISHMENT IS REAL AND SIGNIFICANT-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Gernstein then quotes former District Attorney of New York, Frank S. Hogan, representing himself and his associates:

We are satisfied from our experience that the deterrent effect is both real and substantial...for example, from time to time accomplices in felony murder state with apparent truthfulness that in the planning of the felony they strongly urged the killer not to resort to violence. From the context of these utterances, it is apparent that they were led to these warnings to the killer by fear of the death penalty which they realized might follow the taking of life. Moreover, victims of hold-ups have occasionally reported that one of the robbers expressed a desire to kill them and was dissuaded from so doing by a confederate. Once again, we think it not unreasonable to suggest that fear of the death penalty played a role in some of these intercessions. On a number of occasions, defendants being questioned in connection with homicide have shown a striking terror of the death penalty. While these persons have in fact perpetrated homicide, we think that their terror of the death penalty must be symptomatic of the attitude of many others of their type, as a result of which many lives have been spared.<sup>18</sup>

**THE BEST BET IS TO DEFEND THE DETERRENT EFFECT OF CAPITAL PUNISHMENT-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

The late Ernest van den Haag has set forth what he called the Best Bet Argument.<sup>21</sup> He argued that even though we don't know for certain whether the death penalty deters or prevents other murders, we should bet that it does. Indeed, due to our ignorance, any social policy we take is a gamble. Not to choose capital punishment for first-degree murder is as much a bet that capital punishment doesn't deter as choosing the policy is a bet that it does. There is a significant difference in the betting, however, in that to bet against capital punishment is to bet against the innocent and for the murderer, while to bet for it is to bet against the murderer and for the innocent.

**IT IS OUR MORAL DUTY TO PROTECT INNOCENTS FROM POTENTIAL MURDERERS-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Suppose that we choose a policy of capital punishment for capital crimes. In this case we are betting that the death of some murderers will be more than compensated for by the lives of some innocents not being murdered (either by these murderers or others who would have murdered). If we're right, we have saved the lives of the innocent. If we're wrong, unfortunately, we've sacrificed the lives of some murderers. But say we choose not to have a social policy of capital punishment. If capital punishment doesn't work as a deterrent, we've come out ahead, but if it does work, then we've missed an opportunity to save innocent lives. If we value the saving of innocent lives more highly than the loss of the guilty, then to bet on a policy of capital punishment turns out to be rational. Since the innocent have a greater right to life than the guilty, it is our moral duty to adopt a policy that has a chance of protecting them from potential murderers.



**STRONG PUNISHMENTS DETER CRIME; SINGAPORE EXAMPLE-- Clark '01**

[Neil; Teacher and Freelance Writer; "Bring Back the Rope;" The Spectator; 9 June 2001; Gale Group]

Compare the position of Britain with that of Singapore, a country at which Western liberals love to sneer. All those arriving at Singapore airport are greeted by a large sign stating that anyone convicted of carrying more than a small amount of controlled drugs faces the mandatory death sentence. The message could not be plainer. The result is that Singapore is one of the most drug-free nations on earth, and consequently one of the safest. It may be boring for some, but those who get their kicks from watching armed robberies can always go elsewhere.

**MUST HAVE THREAT OF CAPITAL PUNISHMENT -- van den Haag '02**

[Ernest; Psychoanalyst and Professor of Jurisprudence and Public Policy; "The Ultimate Penalty ... and a Just One: The Basics of Capital Punishment;" The National Review; 11 June 2001; Gale Group]

The issue of deterrence is raised by the abolitionists, who often point out that the number of homicides does not decrease as the frequency of executions increases; from this they conclude that executions do not deter crime. But deterrence depends on the credibility of the threat of execution, and this credibility does not depend on the number of executions. To be sure, a threat never carried out will become incredible; to deter, it must be carried out often enough to remain credible. This does not mean it has to be carried out in all cases; but the threat of execution is currently so minuscule, compared with the homicide rate, as to be altogether ineffective.

It is often argued that criminals do not calculate, and that threats are therefore ineffective. Undoubtedly that is the case for some of them, but it is unlikely that all criminals are so different from the rest of the population that they do not respond to threats at all. If there are no executions over a long period, the deterrent effect of capital punishment may well be reduced to zero; but as long as the threat of execution is not entirely empty, there will be some deterrent effect. How great a deterrent it is will depend on such factors as the certainty of the punishment and the time that elapses between death sentences and executions; currently the deterrent effect is undermined by the uncertainty, infrequency, and delays involved in execution. (Indeed, a calculating criminal might look at the extreme rarity of the death penalty and thereby be encouraged in his murderous course.)

**THEORY IS USELESS IN DISCUSSION OF DETERRENCE; MUST LOOK AT STATISTICS-- Rubin '02**

[Paul; Professor of Economics and Law at Emory University; "The Death Penalty and Deterrence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

Because theory cannot definitively answer the question of the existence of deterrence, analysts have turned to empirical or statistical methods. Among the first to use such analysis on the question of the deterrent effect of capital punishment was Thorsten Sellin. In a 1959 book, Sellin compared states with and without capital punishment and found no significant difference in homicide rates. His methodology is improper, as I show below, but it is still used by some analysts: the New York Times, in an article published on September 22, 2000, used exactly this methodology.



**DETERRENCE IS A STRAW ARGUMENT; DETERRENCE ISN'T THE PURPOSE OF CAPITAL PUNISHMENT-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

Death penalty opponents love to assume that the principal purpose for capital punishment is deterrence, possibly realizing it is a perfect straw argument. Tangible proof of deterrence alone is not a valid reason for capital punishment (or any other form of punishment, for that matter), nor is it the main rationale employed by astute death penalty advocates. As Christian writer C.S. Lewis observes, "[deterrence] in itself, would be a very wicked thing to do. On the classical theory of punishment it was of course justified on the ground that the man deserved it. Why, in Heaven's name, am I to be sacrificed to the good of society in this way?—unless, of course, I deserve it." Inflicting a penalty merely to deter—rather than to punish for deeds done—is the very definition of cruelty. A purely deterrent penalty is one where a man is punished—not for something that he did—but for something someone else might do. Lewis explained the logical end of this argument: "If deterrence is all that matters, the execution of an innocent man, provided the public think him guilty, would be fully justified."

Men should be punished for their own crimes and not merely to deter others. That said, the death penalty undoubtedly does deter in some cases. For starters, those executed will no longer be around to commit any more crimes.

**STATISTICS PROVE THAT THE DEATH PENALTY IS A DISINCENTIVE TO MURDER STRANGERS-- Tucker '03**

[William; Freelance Writer; "Deterring Homicides with the Death Penalty;" Human Events 7 April 2003; Gale Group]

Almost the entire increase in murder from 1966 to the mid-1990s was an increase in felony or "stranger" murders—murders committed during the course of another crime. Only when executions resumed in the 1990s did the murder rate drop precipitously to its 1960s level. About 300,000 Americans died unnecessarily in the interim.

A few years ago a New Jersey housewife was kidnapped at a shopping mall by a teenage carjacker. The youth was obviously an amateur and could think of nothing to do but drive the woman around for a few hours. In the process, though, it became obvious that he intended to kill her. The woman spent the better part of an hour pleading for her life. She also had a pocket tape-recorder, which she activated. Over and over she pleads, "Is it worth my life for you to have a car?" The logic did not work. He killed her anyway.



**STUDY AFTER STUDY PROVES THAT EXECUTION OF MURDERERS SAVES INNOCENT LIVES-- Jacoby '03**  
[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

Though Romney didn't say so when he introduced his new commission, the real threat to innocent life is not the availability of the death penalty, but the absence of one. For every time a murderer is executed, innocent lives are saved.

The foes of capital punishment have denied for years that putting murderers to death has a deterrent effect on other potential killers. That has always flown in the face of common sense and history — after all, wherever murder is made punishable by death, murder rates generally decline. But it also flies in the face of a lengthening shelf of research that confirms the death penalty's deterrent effect.

A recent study at the University of Colorado, for instance, finds "a statistically significant relationship between executions, pardons, and homicide. Specifically, each additional execution reduces homicides by five to six." A paper by three Emory University economists concludes: "Our results suggest that capital punishment has a strong deterrent effect.... In particular, each execution results, on average, in 18 fewer murders — with a margin of error of plus or minus 10."

Comparable results have been reached by scholars at the University of Houston, SUNY [State University of New York] Buffalo, Clemson, and the Federal Communications Commission. All these studies have been published within the past three years. And all of them underscore an inescapable bottom line: The execution of murderers protects innocent life.

**SAYING THAT THE DEATH PENALTY DOESN'T DETER MEANS THAT CRIMINALS ARE STUPID-- Tucker '03**  
[William; Freelance Writer; "Deterring Homicides with the Death Penalty;" Human Events 7 April 2003; Gale Group]

The remarkable thing about the death penalty is why anyone would think it doesn't deter murder. No one wants to die. Why wouldn't the fear of death make people think twice?

Liberals spend a great deal of time running around this point. The best they can come up with is that murderers are stupid. They don't think. They don't plan. They act on impulse. Murders are "crimes of passion." Executing people is only a "barbaric ritual" that does no good.

**DEATH PENALTY HAS BEEN A PROVEN DETERRENT-- Tucker '03**  
[William; Freelance Writer; "Deterring Homicides with the Death Penalty;" Human Events 7 April 2003; Gale Group]

Then the upswing started. Executions dropped precipitously after 1962 when the Supreme Court started intervening on the basis of *Mapp v Ohio* (1961), *Gideon v Wainwright* (1963) and *Miranda v Arizona* (1966). After 1966, the murder rate soared to unprecedented heights, peaking in 1974, 1980, and again in 1991 before finally dropping again precipitously — when executions were resumed.

What caused this upsurge? There is a fairly simple explanation. Liberals were probably right in arguing in the early 1960s that capital punishment could not deter the 90% of murders that occurred among relatives and acquaintances. What they did not perceive is the murders that were being deterred. These were the "stranger" or "felony" murders that have since come to dominate the murder statistics.



**STATISTICAL ANALYSIS PROVES THAT THE DEATH PENALTY SERVES AS AN EFFECTIVE DETERRENT AGAINST HOMICIDE-- Bessler '02**

[John D.; Attorney and Professor of Law at University of Minnesota Law School; "America's Death Penalty: Just Another Form of Violence;" Phi Kappa Phi Forum; Winter 2002; Gale Group]

Along with two colleagues at Emory University (Hashem Dezhbakhsh and Joanna Mehlhop Shepherd), I have performed a statistical analysis of this data. Our analysis has several advantages over previous analyses. First, we have used county-level data, rather than national or state data. The advantage of county-level data is that populations are more homogeneous within counties, so statistically the results are more accurate. Moreover, there are more than 3,000 counties in the United States, so there is a large amount of data. This large amount facilitates statistical analysis. Second, we use techniques (called "panel data") that were not available when Ehrlich did his research. Moreover, these techniques require large amounts of data, which again are available for the county-level analysis. Thus, we are able to advance the argument significantly because we have more and better data and better statistical techniques than were available to others.

A multiple-regression analysis such as that which we perform essentially estimates homicide rates as a function of demographic and other characteristics of the jurisdiction (here, the county). The analysis then can implicitly calculate the effect of each execution on the number of homicides that would otherwise have occurred.

In performing this analysis, we had to solve an important problem. We are interested in the effect of an increase in the probability of an execution on homicides. But a probability must be calculated with a denominator. The probability of an execution is the number of executions divided by the number of homicides. But it is necessary to determine the appropriate year for the number of homicides to put in the denominator. It appears that there is now an average lag of six years between commission of a murder and execution. That is, if an execution occurs in 2001, but the crime was committed in 1995, how do we measure the probability? Does the execution in 2001 deter murders in 1995, or in 2007, or for some year in between? To account for this difficulty, we used three measures of the lag structure. We also used two methods of adjusting for missing data. Thus, we ended with six equations measuring the deterrent effect of executions.

In all six cases, we found that each execution led to a significant reduction in the number of homicides. The most conservative estimate (that is, the one with the smallest effect) was that each execution led to an average of eighteen fewer murders. The "95 percent confidence interval" estimate for this value was between eight and twenty-eight fewer homicides. In other words, we can be 95 percent sure that each execution resulted in at least eight fewer homicides, and it is likely that each execution actually deterred more than eight homicides. All other estimates were even larger than this.

**RESEARCH SUGGESTS THAT IF ALL THOSE ON DEATH ROW ARE EXECUTED, IT WILL SAVE 63,000 LIVES-- Murray '01**

[Iain; Senior Research Analyst with the Statistical Assessment Service; "More Executions, Fewer Deaths;" American Outlook; July/August 2001; Gale Group]

By the study's estimate, the two recent federal executions will save approximately thirty-six lives. On the final day of 1999 (the last day for which we have accurate figures), there were 3,527 prisoners under sentence of death in American prisons. This study suggests that if all those sentences were carried out 63,000 lives would be saved. There were approximately 15,000 homicides in America in 1999, meaning that the deterrence effect could be the equivalent of four years free from murder. Even the most committed opponents of the death penalty should take notice of that figure.



**NEW RESEARCH BACKS TRADITIONAL RESEARCH THAT SAYS THAT THE DEATH PENALTY HAS A  
DETERRENT EFFECT-- Murray '01**

[Iain; Senior Research Analyst with the Statistical Assessment Service; "More Executions, Fewer Deaths;" American Outlook; July/August 2001; Gale Group]

Until now, believers in the deterrence effect of executions have had little hard evidence with which to counter such straw man debating techniques. The work of economist Isaac Ehrlich of the State University of New York in the 1970s, which found a significant deterrent effect, had been diluted by constant reinvestigation and criticism. In the end, it suffered most from being out of date, as it was based on evidence from before the suspension of the death penalty in 1972. Its relevance to the modern debate was therefore questionable.

But there now come impressive new findings from a trio of economists at Emory University in Georgia. Hashem Dezhbakhsh, Paul Rubin, and Joanna Mehlhop Shepherd released their paper "Does Capital Punishment Have a Deterrent Effect? New Evidence from Post-Moratorium Panel Data" in January 2001. Its findings are striking. The authors conclude that each execution deters other murders to the extent of saving between eight and twenty-eight innocent lives, with a best-estimate average of eighteen lives saved per execution.

The researchers reached this conclusion scientifically, by expressing the murder rate mathematically. They calculated the effect on the murder rate of a number of factors including, specifically, the likelihood of being arrested, the chance of being sentenced to death after arrest, and the chance of being executed after sentence. They were then able to work out how significant the chance of being executed is to the murder rate. They found that executions themselves are a very significant factor, certainly much more so than the simple removal of the murderer from the pool of potential killers. And their findings pass all the statistical tests that show that it's not just by chance that the math works that way.

**DEATH PENALTY IS THE ONLY WAY TO STOP MURDERS FROM MURDERING AGAIN-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

Two other factors weigh into the innocence consideration. First, the death penalty remains the most secure form of incapacitation, meaning that executed murderers do not harm and murder again. Living murderers do, quite often. This is unchallenged.

**WITHOUT A DIFFERENTIAL, THERE IS NO DISINCENTIVE TO MURDER VICTIMS OF CRIME-- Tucker '03**

[William; Freelance Writer; "Deterring Homicides with the Death Penalty;" Human Events 7 April 2003; Gale Group]

The need to draw a bright line between a felony and felony murder was what inspired Enlightenment reformers to argue against capital punishment for crimes less than murder. In *The Spirit of the Laws* (1750), Montesquieu wrote:

"In China, those who add robbery to murder are cut in pieces: but not so the others; to this difference it is owing that though they rob in that country they never murder. In Russia, where the punishment for robbery and murder are the same, they always murder. The dead, they say, tell no tales."

But eliminating the death penalty creates the exact same dilemma. Without any qualitative differential, there is no disincentive to murder the victim of the crime.



**RESEARCH PROVES THAT THE DEATH PENALTY DOES DETER CRIME-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

Second, although the deterrent effect of capital punishment has been unjustifiably maligned, the evidence is overwhelming that the potential for negative consequences deters or alters behavior. History and the social sciences fully support that finding.

Three major studies were released in 2001, all finding for the deterrent effect of the death penalty. One, out of Emory University, finds that "each execution results, on average, in 18 fewer murders — with a margin of error of plus or minus 10."

Another, out of the University of Houston, found that a temporary halt to executions in Texas resulted in an additional 90-150 murders, because of the reduction in deterrence. One author, Professor C. Robert Cloninger, states: "[Our] recent study is but another of a growing list of empirical work that finds evidence consistent with the deterrent hypothesis. It is the cumulative effect of these studies that causes any neutral observer to pause."

Death penalty opponents want us to believe that the most severe criminal sanction — execution — deters no one. However, if reason is your guide and you remain unsure of deterrence, you are left with the following consideration. If the death penalty does deter, halting executions will cause more innocents to be slaughtered by giving murderers an additional opportunity to harm and murder again. If the death penalty does not deter, executions will punish murderers as the jury deems appropriate, preventing them from harming any more victims. Clearly, ending or reducing executions will put many more innocents at risk.



**CAPITAL PUNISHMENT DETERS IN TEXAS**

**TEXAS SPECIFICALLY DEMONSTRATES THE DETERRENT VALUE OF CAPITAL PUNISHMENT- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

A far better measure of a deterrent effect comes from measuring the experience of states with death penalty laws over time. Thus, we might compare what various states' murder rates were from 1968 to 1976 (a period of time in which no one was executed) with what they were during the years 1995–2000. Senator Hatch and other senators recently collected the relevant data. 26 The five states showing the greatest relative improvements are, in order: Georgia, South Carolina, Florida, Delaware, and Texas. All these states have aggressive application of the death penalty.

**TEXAS DEMONSTRATES THAT ITS APPLICATION OF THE DEATH PENALTY REDUCES THE MURDER RATE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The six leading states measured by total executions are, in order: Texas, Virginia, Missouri, Florida, Oklahoma, and Georgia. Obviously this way of comparing states is biased against the smaller states. An alternative yardstick is to examine the rate of executions per murders in each state. By this measure — executions per total murders since 1976 — the most aggressive death penalty state in the country is Delaware, followed by Oklahoma, Missouri, Texas, Virginia, and Arkansas. Taking the eight states that show up on either of these two lists, six have seen their murder rates drop since 1966. Arkansas' murder rate is down by 1.5 percentage points, Virginia's by 2.4 points, Texas by 3.0 points, Georgia's by 3.8 points, Florida's by 4.6 points and Delaware's by 5.8 points. The only states whose murder rates went up — Oklahoma and Missouri — went up by only 1.4 and 1.2 points respectively. Of the six states with declining murder rates (Arkansas, Virginia, Texas, Georgia, Florida, and Delaware), the period between 1997 and 1999 saw all six reach their lowest murder rate since 1960. Indeed, four of these states — Virginia, Florida, Delaware, and Arkansas — went from having murder rates well-above the national average in 1966 to rates well-below the average in 1999.



**SUSPENSION OF THE DEATH PENALTY IN TEXAS EMPIRICALLY DEMONSTRATES THAT IT WOULD INCREASE THE MURDER RATE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Finally, Professors Dale Cloninger and Roberto Marchesini of the University of Houston reached similar conclusions with a different methodology, investigating the number of homicides committed in Texas during 1996 and 1997. 30 Before 1996, Texas executed about 17 convicted murderers per year. In 1996, the number of executions fell to near zero because of a temporary stay on actually carrying out the sentences entered by the Texas Court of Criminal Appeals. Then, in the following year, Texas executed 37 murderers. Using a model that compared the actual number of homicides with the “expected” number of homicides, Cloninger and Marchesini found that the suspension in executions produced a statistically significant increase in homicides in Texas. They estimated that the suspension resulted in about 220 additional murders that would have otherwise been deterred—or, put more bluntly, the deaths of 220 innocent people. They explained:

The unexpected homicides occurred despite the fact that arrests continued to be made for homicide, scheduled trials for both capital and non-capital offenses went on, sentencing capital and non-capital verdicts went uninterrupted, and there were no known, dramatic changes in the states’ demographics. The only change relevant to the crime of homicide was the suspension of executions. 3



**CAPITAL PUNISHMENT REQUIRED FOR JUSTICE OF VICTIMS**

**CALLS FOR ABOLITION OF THE DEATH PENALTY IGNORE THE VICTIM-Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Abolitionist arguments concerning the death penalty always seem a bit unsatisfying. Concepts of retribution, deterrence, and just punishment are discussed in the most thoughtful terms, but nowhere do we find a clear discussion of the crimes at issue. In some ways, these discussions are a bit like playing Hamlet without the ghost—reviewing the merits of capital punishment without revealing just what a capital crime is really like and how the victims have been brutalized.

**THERE NEEDS TO BE A FLOOR FOR MINIMAL PUNISHMENT; IN SOME CASES THE ONLY JUST PENALTY IS THE DEATH PENALTY-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Bedau appeals to Beccaria's principle of Minimal Invasion that given a state interest the government "must use the least restrictive means sufficient to achieve that goal or purpose" (p. 19). Bedau admits that punishment for a crime is a legitimate practice, but opts for the Minimal Invasion principle as a constraint on that punishment. I too agree that we ought to minimize suffering, all things being equal, but sometimes things are not equal, for the criminal may deserve more than a minimal punishment, deserving, in fact, the death penalty. So the Minimal Invasion principle may be overridden in the name of justice. Bedau wants to place a ceiling on punitive desert, but there may also be a floor on punishment. Sometimes nothing less than harsh punishment is justified. (5)

**JUSTICE DEPENDS ON PUNISHMENT THAT MATCHES THE CRIME-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Human beings have dignity as self-conscious rational agents who are able to act morally. One could maintain that it is precisely their moral goodness or innocence that bestows dignity and a right to life on them. Intentionally taking the life of an innocent human being is so evil that absent mitigating circumstances, the perpetrator forfeits his own right to life. He or she deserves to die. The retributivist holds three propositions: (1) that all the guilty deserve to be punished; (2) that only the guilty deserve to be punished; and (3) that the guilty deserve to be punished in proportion to the severity of their crime. Thomas Jefferson supported such a system of proportionality of punishment to crime: Whosoever shall be guilty of rape, polygamy, sodomy with man or woman, shall be punished, if a man, by castration, if a woman by cutting through the cartilage of her nose a hole of one half inch in diameter at the least. [And] whosoever shall maim another, or shall disfigure him... shall be maimed, or disfigured in the like sort: or if that cannot be, for want of some part, then as nearly as may be, in some other part of at least equal value.



**CAPITAL PUNISHMENT IS JUSTIFIED TO BRING JUSTICE TO VICTIMS-- Kane '03**

[Gregory; Columnist; "To Murder Victims' Families, Executing Killers Is Justice;" Baltimore Sun; 5 February 2003; Gale Group]

That is a suffering death penalty opponents can't or won't understand. The pain of homicide victims' relatives never ends. It chips away at their souls and psyches year after depressing year. So what's the appropriate punishment for that?

Death penalty opponents would have us believe that squirreling Oken away in a cell — where Frederick A. and Frederick J. Romano, Betty Romano and Keith Garvin would be among the taxpayers footing the bill for his housing and meals— is punishment enough. If the correctional system offered any college courses, the Romanos and Garvin would pay part of the cost if Oken wanted to take them. Dawn Garvin never got to finish her education at Harford Community College.

Capital punishment foes figure that's justice. Here's what death penalty advocates feel is justice. Execute Oken the week of March 17, [2003], as a Baltimore County judge ordered.... After Oken is dead, death penalty advocates can then defy death penalty opponents to show us why and in what ways Oken's execution was not justice.

That's what it's about for Fred Romano. He doesn't buy into the closure argument some death penalty advocates make. (It's just as well. Death penalty opponents, ever noble with grief not their own, dismiss the notion of closure, too.)

"It won't bring closure," Fred Romano said. "Dawn will never be back. I'm not looking for closure. That's a bad misconception on the part of some people. I want Oken to die for the murder of Dawn, Patricia Hurt and Lori Ward."

This isn't even about revenge, another rallying cry of the anti-capital punishment crowd, who chide death penalty advocates for seeking vengeance.

"It's justice," Fred Romano said. "It's not revenge."

**SOCIETY MUST DO EVERYTHING IT CAN TO PREVENT INNOCENT LIVES BEING LOST- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

We are confident of only one thing: that society must do everything reasonably within its power to prevent such tragedies. To be sure, the benefits of the death penalty are not always certain. But we are unwilling to risk innocent lives on the speculative chance that the death penalty will turn out not to deter and not to incapacitate. The last time abolitionists succeeded in invalidating capital punishment in this country, they released brutal murderers to kill again — ultimately causing the deaths of Colleen Reed and many others. That was too high a price then. It is too a high price now.



**CAPITAL PUNISHMENT DOES NOT UNJUSTLY IMPACT MINORITIES**

**THE DEATH PENALTY IS NOT DISPROPORTIONATELY APPLIED TO AFRICAN-AMERICANS- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Such simple statistics of overrepresentation fail to prove racial bias. The relevant population for comparison is not the general population, but rather the population of murderers. If the death penalty is administered without regard to race, the percentage of African American death row inmates found at the end of the process should not exceed the percentage of African-American defendants charged with murder at the beginning. The available statistics indicate that is precisely what happens. The Department of Justice found that while African-Americans constituted 48 percent of adults charged with homicide, they were only 42 percent of those admitted to prison under sentence of death. In other words, once arrested for murder, blacks are actually less likely to receive a capital sentence than are whites.

**THE NUMBER OF AFRICAN-AMERICANS ON DEATH ROW DOES NOT SHOW RACIAL BIAS- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The over-representation of African Americans on death row to which Jackson refers is, indisputably, of great public concern. Policy makers must certainly examine the causes of that over-representation—for example, differences in economic or educational opportunities—and address them. But given such societal factors, racial bias cannot be inferred from such simplistic calculations.

**THERE IS NO COMPELLING EVIDENCE OF RACIAL BIAS- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

To confirm or dispel concern about black defendants being singled out for the death penalty, one must conduct more sophisticated social science research. Various researchers (often of an abolitionist bent) have set out to prove such racial discrimination. They have been disappointed. The studies of the post-Furman death penalty in America have generally found that African American defendants are not more likely to receive the death penalty. Summarizing all the data in 1990, the General Accounting Office concluded that evidence that blacks were discriminated against was “equivocal.”<sup>46</sup> Similarly in a comprehensive study Professor Baldus and his colleagues reported that “regardless of the methodology used,” studies show “no systematic race-of-defendant” effect.



**DISPARITIES IN APPLICATION OF DEATH PENALTY ARE NOT EVIDENCE DEATH PENALTY IS UNJUST-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

One must be careful in reading too much into these statistics. While great disparities in statistics should cause us to examine our judicial procedures, they do not in themselves prove injustice. For example, more males than females are convicted of violent crimes (almost 90% of those convicted of violent crimes are males—a virtually universal statistic), but this is not strong evidence that the law is unfair, for there are biological/psychological explanations for the disparity in convictions. Males are on average and by nature more aggressive (usually tied to testosterone) than females. Simply having a Y chromosome predisposes them to greater violence. Nevertheless, we hold male criminals responsible for their violence and expect them to control themselves. Likewise, there may be good explanations why of one ethnic group commit more crimes than those of other groups, explanations that do not impugn the processes of the judicial system nor absolve rational people of their moral responsibility.

**ARGUMENTS OF DISPROPORTIONATE APPLICATION OF THE DEATH PENALTY SPEAK TO SOCIETAL PROBLEMS, NOT CRITICISMS OF THE DEATH PENALTY ITSELF-- van den Haag '02**

[Ernest; Psychoanalyst and Professor of Jurisprudence and Public Policy; "The Ultimate Penalty ... and a Just One: The Basics of Capital Punishment;" *The National Review*; 11 June 2001; Gale Group]

Some of the most popular objections to capital punishment do not actually deal with the punishment itself, but with its distribution. The issues that are raised are not unimportant, but they do not belong in a discussion of the legitimacy of capital punishment itself. Racial discrimination, for example, would disappear as an issue if the population were racially homogenous. Analogously, the argument that wealthy defendants can avail themselves of legal defenses not available to the poor depends on an unequal distribution of wealth; this argument is relevant to a discussion of social inequality, but is extraneous to an attempt to determine the rightness of the death penalty.

Although we have made great progress, we cannot ignore the remaining inequalities in the criminal-justice system. But there is no good reason to confuse such inequalities with an inherent inequity in the administration of justice. There is nothing in the nature of capital punishment that demands an unfair administration.

**UNEQUAL JUSTICE IS STILL JUSTICE-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

First of all, it is not true that a law that is applied in a discriminatory manner is unjust. Unequal justice is no less justice, however uneven its application. The discriminatory application, not the law itself, is unjust. A just law is still just even if it is not applied consistently. For example, a friend once got two speeding tickets during a 100-mile trip (having borrowed my car). He complained to the police officer who gave him his second ticket that many drivers were driving faster than he was at the time. They had escaped detection, he argued, so it wasn't fair for him to get two tickets on one trip. The officer acknowledged the imperfections of the system but, justifiably, had no qualms about giving him the second ticket. Unequal justice is still justice, however regrettable. So Justice Douglas is wrong in asserting that discriminatory results invalidate the law itself. Discriminatory practices should be reformed, and in many cases they can be. But imperfect practices in themselves do not entail that the laws engendering these practices themselves are unjust.



**CLAIM THAT THE DEATH PENALTY IS UNFAIR TO MINORITIES IS DELIBERATE FRAUD; STATISTICS ARGUE THE OPPOSITE-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

The claim that the death penalty unfairly impacts blacks and minorities is a deliberate fraud. The majority of those executed since 1976 have been white, even though black criminals commit a slim majority of murders, if the death penalty is racist, it is biased against white murderers and not blacks.

According to the U.S. Bureau of Justice Statistics, blacks committed 51.5% of murders between 1976 and 1999, while whites committed 46.5%. Yet even though blacks committed a majority of murders, the Bureau of Justice Statistics reports: "Since the death penalty was reinstated by the Supreme Court in 1976, white inmates have made up the majority of those under sentence of death." (Emphasis added.) Whites continued to comprise the majority on death row in the year 2000 (1,990 whites to 1,535 blacks and 68 others). In the year 2000, 49 of the 85 people actually put to death were whites.

So how can abolitionists claim that the death penalty unfairly punishes black people and other minorities? The statistics they cite are often technically accurate (though not always), but they don't mean what most people assume they mean. Abolitionists often start by analyzing the race of the victims rather than the murderers. Because most murders are intra-racial (white murderers mostly kill other whites and most black murderers kill other blacks), imposing the death penalty more frequently on white murderers means that killers of white people will more likely be executed. In essence, abolitionists playing the race card argue that black murder victims are not receiving justice because only the murderers of white people are punished with the death penalty. Death penalty proponents may consider this denying justice to black people.

**CAPITAL PUNISHMENT DOESN'T PUNISH MINORITIES DISPROPORTIONATELY-- Tremonglie '03**

[Michael; Former Police Officer; "Capital Punishment Canards;" Insight on the News; 4 March 2003; Gale Group]

This racial-discrimination claim is the vilest canard. Abolitionists claim blacks are sentenced to be executed in disproportion to their numbers in the general population. What capital-punishment abolitionists conveniently omit is that blacks make up a disproportionate number of the country's murder victims. According to DOJ data, "Racial differences exist, with blacks disproportionately represented among homicide victims and offenders. Blacks were six times more likely than whites to be murdered in 1999." Unlike college admissions, capital punishment does not consider race.

**CLAIMS OF RACIAL DISPARITIES DO NOT INVALIDATE THE DEATH PENALTY - Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

In the face of the public's rejection of their philosophical arguments, abolitionists have recently decided to change tactics. Rather than mounting a frontal assault on capital punishment, today they make a tactical end run by stressing narrower administrative arguments—e.g., alleged racial disparities in the application of the penalty and deficiencies in appointed counsel. These new arguments seem to have gained some modest traction. Governor Ryan of Illinois, on his way out of office and contrary to previous promises made to victims' families, issued a blanket commutation of death row inmates in his state. As explained in his speech entitled "I Must Act," his concerns were defects in the way in which death sentences were determined in Illinois. 10

These administrative arguments, however, provide no general reason for abolishing the death penalty. And the consequence of abolition for the Colleen Reeds of the future may be no less grim.



**TEXAS DOES NOT DISPROPORTIONATELY EXECUTE MINORITIES**

**TEXAS DOES NOT DISPROPORTIONATELY EXECUTE IN GENERAL OR MINORITIES SPECIFICALLY-Myers '04**

[Linda; Cornell study reveals surprising findings on death row, race and the most death penalty-prone states; Cornell News; 26 Feb 2004;

<http://www.news.cornell.edu/releases/Feb04/Death.row.demo.lm.html>; retrieved 28 Aug 2011]

A new study by three Cornell University faculty members that is the first to compare death row demographics with murder statistics produced some findings that are just as likely to surprise both sides of the political spectrum as they are to confirm popularly held beliefs.

For example, Texas, which in the public's mind tops the most-likely-to-execute list, has plenty of competition from other states when it comes to percentage of murderers on death row and sentencing rates.

Another surprise: The U.S. South has the lowest percentage of black murder defendants on death row, when compared with the percentage of black murder defendants in the general prison population. However, the statistics represent a "racial hierarchy" shaped in part by prosecutors' unwillingness to seek the death penalty in black-on-black murder cases, rather than an unbalanced application of the law that favors black defendants, the authors wrote.

The study, "Explaining Death Row's Population and Racial Composition," by John Blume, Theodore Eisenberg and Martin Wells, was published in the March 2004 issue of *The Journal of Empirical Legal Studies*. Cited in *The New York Times* Feb. 14, the study explored the population and racial makeup of states' death rows by relating them to the number of murders, and the race of murderers and victims (see <http://www.blackwellpublishing.com/jels>).

**TEXAS ASSIGNS THE DEATH PENALTY BELOW THE NATIONAL RATE-Myers '04**

[Linda; Cornell study reveals surprising findings on death row, race and the most death penalty-prone states; Cornell News; 26 Feb 2004;

<http://www.news.cornell.edu/releases/Feb04/Death.row.demo.lm.html>; retrieved 28 Aug 2011]

The relatively large size of death rows in Texas, California and Florida "shape the conventional belief that these jurisdictions, especially Texas, have high death sentence rates," wrote the authors, "[but] after accounting for a state's number of murders, Oklahoma and Nevada are more death-prone states than any of the 'big three.'" Oklahoma sentences at a rate of 6 percent; Nevada at 5.1 percent; and Texas at 2 percent. The national average is 2.5 percent. "The reality is that most death-prone states are under the radar," said Eisenberg, a professor at Cornell Law School.

The view that Texas is the most death penalty-prone state stems partly from the high number of murders committed in the state, 38,000 from 1976 to 1998, leading to 776 death sentences and 319 executions. While the study did not consider executions, Texas' rate is indeed high when compared with California, which had 50,000 murders in that same time period, sentenced 795 people to death between 1976 and 2002 and executed 10.

However, Texas is among the states that assign the death penalty only to certain kinds of murder, such as those of a police officer or witness, and as a result have lower death sentencing rates than those using more subjective standards, such as the heinous nature of a crime, the study noted. The states with the more objective laws assigned the death penalty less (about 1.9 percent in 1977-99) than those with the more subjective laws (which assigned it about 2.7 percent during that period).



**CAPITAL PUNISHMENT DOES NOT LEAD TO EXECUTION OF INNOCENTS**

**CLAIMS OF INNOCENTS BEING EXECUTED ARE NO JUSTIFICATION FOR ENDING DEATH PENALTY- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

While abolitionists have been unable to find a credible case of an innocent person who has actually been executed in recent years, they have provided several credible “close call” cases—that is, examples of innocent persons who were sentenced to death who were exonerated shortly before the execution. Such miscarriages of justice are, to be sure, very troubling. These cases deserve careful study to determine what went wrong and what kinds of reforms can correct the problem. But when offered as justification for abolishing the death penalty, these close call cases are unpersuasive.

**CLAIMS ABOUT RISK TO THE INNOCENT IGNORE THE FACT THAT THERE IS MUCH MORE DANGER TO THE INNOCENT IF WE FAIL TO EXECUTE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

To justify abolishing the death penalty on grounds of risk to the innocent, abolitionists would have to establish that innocent persons are jeopardized more by the retention of the death penalty than from its absence. In fact, the balance of risk tips decisively in favor of retaining the death penalty. On the one hand, abolitionists have been unable to demonstrate that even a single innocent person has been executed in error. On the other hand, there are numerous documented cases of innocent persons who have died because of our society’s failure to carry out death sentences. Earlier in this text, for example, I discussed the deaths of Colleen Reed and many other women because of society’s failure to execute a single dangerous murderer—Kenneth Allen McDuff. The victims of McDuff were no “close calls” but rather fatalities directly resulting from abolition of the death penalty in 1972. Today, thousands of killers no less dangerous than McDuff are currently incarcerated on the nation’s death rows. If they are not executed, they will remain serious threats to kill again—either inside prison walls or outside following an escape or a parole. Clearly, on any realistic assessment, the innocent are far more at risk from allowing these dangerous convicts to live than from executing them after a full and careful review of their legal claims.

**NO INDIVIDUAL EXECUTED BY THE DEATH PENALTY IN MODERN TIMES HAS TURNED OUT TO BE INNOCENT-- Jacoby '03**

[Jeff; Columnist; “When Murderers Die, Innocents Live;” Boston Globe; 28 September 2003; Gale Group]

In recent years, anti-death penalty propagandists have succeeded in stoking the fear that capital punishment is being carelessly meted out. But it's a bogus accusation: Of the 875 prisoners executed in the United States in modern times, not one has been retroactively proved innocent. Widely trumpeted claims meant to illustrate the system's sloppiness—that more than 100 innocent men have been freed from Death Row, for example, or that death-penalty cases have a 68 percent error rate—fall apart under scrutiny. In fact, so exacting is the due process in these cases that the death penalty in America is probably the most accurately administered criminal sanction in the world.



**CLAIMS THAT THE INNOCENT HAVE BEEN EXECUTED INCLUDE CRIMINALS THAT ARE STILL GUILTY--**

**Tremonglie '03**

[Michael; Former Police Officer; "Capital Punishment Canards;" Insight on the News; 4 March 2003; Gale Group]

One such canard proffered is that scores of innocent people have been executed. Maryland Attorney General J. Joseph Curran recently announced that he wants to end capital punishment in his state because of this. He cited a study by the Death Penalty Information Center (DPIC), an abolitionist group that claims 102 people sentenced to be executed have been exonerated.

The exonerated persons DPIC cited include:

- \* Ricardo Aldape Guerra, who was convicted in the murder of a Houston cop in 1982 and was exonerated in 1997 when evidence indicated he may have been only the accomplice;

- \* Steve Manning, who was convicted for an Illinois homicide in 1993. He saw his conviction dismissed in 1998. In 2000 the district attorney chose not to retry Manning, primarily because he already was serving two life sentences;

- \* Clarence Smith, who was reconvicted in a federal court in 1998 of crimes that included the death for which he was acquitted in a state court.

These are not who most of us think of when we think of innocent people. There are other inconsistencies in the DPIC report, but the media do not mention any of them. The mainstream liberal media prefer to be the myrmidons of capital-punishment abolitionists. The liberal media are their accomplices.

**DNA TESTING MAKES WRONGFUL CONVICTIONS ALMOST NON-EXISTENT-- Clark '01**

[Neil; Teacher and Freelance Writer; "Bring Back the Rope;" The Spectator; 9 June 2001; Gale Group]

Even if we agree that the death penalty acts as a deterrent, what about the possible miscarriages of justice which the anti-hanging liberals love to keep reminding us of? Inevitably, miscarriages of justice did occur when Britain had the death penalty, but their number was tiny and must be set against the considerably larger number of people saved from violent death by the much lower homicide rate. Now, though, there is the very real break-through of DNA-testing, which narrows the odds of wrong conviction to one million to one. That still may not be good enough for [liberal journalists] Paul Foot and Ludovic Kennedy, but it is for me and, I expect, for most other people. The great tragedy about the abolition of the death penalty is that it never was the result of public opinion. In fact, every opinion poll ever taken has shown a clear majority in favour of capital punishment.

**NO PROOF EXISTS THAT AN INNOCENT HAS BEEN EXECUTED SINCE 1976-- Murray '01**

[Iain; Senior Research Analyst with the Statistical Assessment Service; "More Executions, Fewer Deaths;" American Outlook; July/August 2001; Gale Group]

In this atmosphere, death penalty proponents have found their arguments tested as never before. The contention that it is a just punishment is countered by the possibility that innocents have been executed. Although there is no proof that such a calamity has occurred since the restoration of the death penalty in 1976, its mere potential has been enough for some state governors to impose moratoria on executions. The argument that the penalty at least incapacitates the murderer himself and prevents him from murdering again has been attacked by life-imprisonment advocates as an overreaction. Murderers are the least likely of all criminals to repeat their crime, but it does occur. One notable recent case occurred in June 1999, when Leroy Schmitz, who served eleven years in a Massachusetts prison for strangling his girlfriend, murdered his wife in similar fashion in Montana. But for the most part, murderers who kill again have not been found guilty of capital murder and have never faced the death sentence.



**FORCING CAPITAL PUNISHMENT TO HAVE 100% PROOF IS A RIDICULOUS STANDARD-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

The propaganda has taken its toll, however. Romney knows that many people who would otherwise support capital punishment now hesitate for fear it may lead to an awful miscarriage of justice. Hence his call for "a standard of proof that is incontrovertible"—an uncompromising benchmark endorsed by members of the new panel. "In this work," says co-chairman Frederick Bieber, a geneticist at Boston's Brigham and Women's Hospital, "there is no room for error."

That is a worthy goal, but it cannot be an absolute criterion. No worthwhile human endeavor is utterly foolproof. Dr. Bieber's hospital would have to shut down its operating rooms if surgeons had to guarantee their infallibility. Even at hospitals as renowned as the Brigham, patients sometimes die on the operating table because of blunders or inadvertence. Is that an argument for abolishing surgery? Should air travel be banned because innocent passengers may lose their lives in crashes? Should the pharmaceutical industry be shut down because the wrong drug or dosage, mistakenly taken or prescribed, can kill?

**REVERSAL RATE IN CAPITAL CASES IS WILDLY OVERSTATED-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

Another major factor in the debate was introduced in a study headed by James Liebman, a professor at Columbia University Law School. A Broken System: Error Rates in Capital Cases revealed that there was a 68 percent reversal rate in death penalty cases from 1973 to 1995. The error rate within that study has not been publicly discussed.

Professors Barry Latzer and James Cauthen of John Jay College of Criminal Justice found a 25 percent error within the study's calculations, bringing the reversal rate down to 52 percent. Unfortunately, they had to accept the accuracy of Liebman's assessments, because he refused to release his database. Case reviews in Florida, New Jersey, Utah, and Nevada have provided specific cause to challenge his data. Florida challenges any assessment of error in 33 percent of the cases identified by Liebman, suggesting that the national "error" rate may be closer to 35 percent.

But even that number is suspect. The Supreme Court has stated that the death penalty system receives super due process. This means that the courts are extraordinarily generous in granting reversals in death penalty cases. In fact, the appellate courts are twice as likely to reverse the sentence in death penalty cases as they are the conviction.



**STUDY THAT SUGGEST THAT INNOCENT PEOPLE ARE EXECUTED ARE FLAWED-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

The major media reported this highly publicized Columbia University study uncritically when it was first released in 2000. But Reg Brown from the Florida governor's office exploded it: "The 'study' defines 'error' to include any issue requiring further review by a lower court.... Using the authors' misleading definition, the 'study' does, however, conclude that 64 Florida post-conviction cases were rife with 'error'—even though none of these Florida cases was ultimately resolved by a 'not guilty' verdict, a pardon or a dismissal of murder charges."

Brown noted that even political overturning of death penalty cases added to the figure. "The nearly 40 death penalty convictions that were reversed by the California Supreme Court during the tenure of liberal activist Rose Bird are treated as 'error cases' when in fact ideological bias was arguably at work." Paul G. Cassell of the Wall Street Journal explained how the 68% figure is deceptive: "After reviewing 23 years of capital sentences, the study's authors (like other researchers) were unable to find a single case in which an innocent person was executed. Thus, the most important error rate—the rate of mistaken executions—is zero."

**NUMBER OF INNOCENT RELEASED FROM DEATH ROW IS WILDLY EXAGGERATED-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

The leading salvo in those claims is that [at least] 101 innocent people have been released from death row with evidence of their innocence. The number is a fraud. Unfortunately, both the international media and, most predictably, the U.S. media have swallowed such claims and passed them along to the public. Even many of our elected officials in Washington have blindly accepted those numbers. Sen. Patrick Leahy, chairman of the Senate Judiciary Committee, has said: "What we know is that nearly 100 innocent people have been released from death row since 1973."

The source for these claims is the Death Penalty Information Center (DPIC), the leading source of antideath penalty material in the United States. Richard Dieter, head of the DPIC, has admitted, in the June 6, 2000, ABA Journal, that his group makes no distinction between the legally innocent ("I got off death row because of legal error") and the actually innocent ("I had no connection to the murder") cases. Although the DPIC has attempted to revise its standards for establishing innocence, none of the various contortions even suggests actual innocence.

As everyone knows, the debate is about the actually innocent. To strengthen their case, death penalty opponents have broadened their "innocent" count by cases that don't merit that description. On June 20, [2002], for example, the Florida Commission on Capital Cases released its review of 23 death sentence cases that the DPIC had called into question. Its conclusion was that in only 4 of those cases were there doubts as to guilt.

Though the DPIC claims that 101 cases were released from death row with evidence of innocence, the actual number is closer to 30. That is 30 cases out of 7,000 sentenced to death since 1973. It appears that the death penalty may well be this country's most accurate criminal sanction, when taking into account the percentage of actual innocent convicted (0.4 percent) and the thoroughness of preventing those allegedly innocent from being executed (100 percent).



**USE OF DNA TEST JUSTIFIES THE DEATH PENALTY; NEW TECHNOLOGIES PROVIDE MORE PRECISION  
PROOF OF GUILT-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

While most of those released from death row have been released for political purposes or for technical reasons unrelated to guilt, it is true that a small number have been released because DNA evidence has proven innocence.

But even though ABC may not agree, its news story reinforces why the release of those on death row argues for, not against, the death penalty: "Widespread use of DNA testing and established standards for defense lawyers will virtually eliminate the argument that the death penalty cannot be fairly applied." If DNA evidence can really prove innocence, it can prove guilt as well and society can be all the more certain that criminals sentenced to death will be guilty. The system as a whole is already working well. Since reinstating the death penalty in 1976, not one person executed in the United States has been later proven innocent as a result of DNA evidence.



**CAPITAL PUNISHMENT DOES NOT VIOLATE CONSTITUTION**

**THE MODERN DEATH PENALTY IS ANYTHING BUT CRUEL AND UNUSUAL PUNISHMENT-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

First, let me briefly comment on specific claims in Hugo Bedau's essay "An Abolitionist's Survey of the Death Penalty in America Today." 1 (1) Bedau contends that "today it ought to be impossible not to regard death in the electric chair as 'cruel and unusual punishment' in direct violation of such punishments in the Eighth Amendment in the Bill of Rights" (p. 5). Why? I take it that the idea of "cruel and unusual" simply means morally unjustified and unconscionable. If so, we need an argument for this conjunction. I fail to see that death in the electric chair is either "immoral or unconscionable." After all, the criminal has committed a heinous act of violence with malice aforethought. I would argue that the electric chair, far from being unconscionable, is completely justified. Painless lethal injection, which is the process of choice in many states, seems too good for someone who in callous disregard for his victim shed innocent blood. Hanging or the firing squad or a painful electric shock seem more fitting to most acts of murder.

**DEATH PENALTY ISN'T "UNUSUAL" -- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

The death penalty is not unusual. All of the nations of the world have had the death penalty on the lawbooks throughout most of their recorded history, and the death penalty remains on the statute books of about half of the nations of the world. The death penalty was on the statute books of all the states of the U.S. when the Constitution was adopted. It is far more unusual to have no death penalty than to have a death penalty.

**FOUNDING FATHERS, CREATORS OF THE CRUEL AND UNUSUAL STANDARD, SUPPORTED THE DEATH PENALTY-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

More importantly, the Founding Fathers who adopted the Bill of Rights banning "cruel and unusual punishment" had no problem with implementing the death penalty.



**CAPITAL PUNISHMENT DOES NOT COME FROM INEFFECTIVE COUNSEL**

**CLAIMS OF INEFFECTIVE COUNSEL CANNOT JUSTIFY ENDING CAPITAL PUNISHMENT- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The conclusion does not follow from the factual premises. Ineffective assistance of counsel in a particular case calls for reversal of the conviction — something already required by Supreme Court precedents. 63 But to make a persuasive argument for completely abolishing capital punishment, the abolitionists would need to demonstrate that defendants in capital cases are represented by inadequate counsel (1) frequently, (2) throughout the United States, and (3) under current appointment procedures. The abolitionists cannot begin to make such a showing on any of these three points.

**CLAIMS OF INEFFECTIVE COUNSEL ARE ANECDOTAL AT BEST- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

For starters, the abolitionists do not show the ineffectiveness is widespread. Instead, their inevitable tactic is to recite various anecdotal examples of defense ineffectiveness. The reader should assess those few examples against the backdrop of about 3,500 persons currently on death row 64 — all of whom have had, or will soon have, their cases reviewed by appellate courts to insure that their trial counsel was effective. The abolitionists never explain why a handful of anecdotes justify setting aside literally thousands of capital sentences.

**CLAIMS OF INEFFECTIVE COUNSEL ARE GROSSLY OUTDATED- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

The evidence of inadequacy of counsel suffers another serious flaw — it is grossly outdated. It is striking how many of the examples are more than 10 and even 20 years old. Perhaps such timeworn anecdotes would be instructive if attorney appointment procedures had remained the same. They have not. In recent years, nearly all of the states authorizing capital punishment have created specific competency standards for appointed counsel. 69 Most of those standards exceed the exacting qualifications that Congress required for appointment of counsel in federal cases.



**INEFFECTIVE COUNSEL IN TEXAS**

**TEXAS HAS DEVELOPED A PROGRAM TO PROVIDE COUNSEL IN CAPITAL CASES- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Recent reforms in the leading death penalty state of Texas will serve to illustrate the point. In 1995, Texas created local selection committees to handle appointment of counsel in capital cases and set a variety of competence standards for capital defense attorneys. 71 As part of the continuing effort to monitor defense counsel in capital cases, in 2001, Texas established a Task Force on Indigent Defense to develop further standards and policies for the appointment of defense counsel.

**TEXAS HAS CREATED AN OFFICE TO PROTECT RIGHTS OF THOSE ON DEATH ROW-Grissom '10**

[Brandi; staff writer; Trying to Restore Integrity to Death Row Defense; The Texas Tribune; 06 Jul 2010; <http://www.texastribune.org/texas-dept-criminal-justice/death-penalty/trying-to-restore-integrity-to-death-row-defense/>; retrieved 29 Aug 2011]

Texas lawmakers created the office in 2009 after a series of investigative reports and studies of the criminal justice system revealed serious problems with the quality of legal representation for indigent defendants on death row. Some of the lawyers whom judges had appointed to represent capital defendants had no death row experience, some had mental illness, some had abandoned their death row clients, and some of the lawyers chosen by judges were dead.

So lawmakers created the Office of Capital Writs to provide better representation for people on death row who can't afford to pay their own lawyers to challenge their sentences. Levenson, who has extensive experience with post-conviction cases in California, has only tried one such case in Texas, which has the busiest death row in the nation. And even before he's opened his office, he must deal with a 5 percent budget cut. He'll have to hire about 10 staffers and work about a dozen cases a year with \$991,000, down from what was supposed to be a \$1 million budget. But Levenson said he's up for the challenge.



**PUBLIC SUPPORT JUSTIFIES CAPITAL PUNISHMENT**

**BY A WIDE MARGIN, AMERICAN SUPPORT THE DEATH PENALTY FOR MURDERERS-- Jones '05**

[Jeffrey M.; "Americans' Views of Death Penalty More Positive This Year;" Gallup Poll News Service; 19 May 2005; Gale Group]

The May 2-5, 2005, Gallup Poll finds 74% of Americans saying they favor the death penalty for a person convicted of murder, while 23% are not in favor. That represents a recent high in support, tied with a 74% reading in May 2003. Gallup has asked this version of the death penalty question since 1936, with a high water mark in support of 80% in 1994, and a low of 42% in 1966.

A second question on death penalty support — asking respondents whether the death penalty or life imprisonment with no possibility of parole is the better penalty for murder — also shows an increase in pro-death penalty sentiment. Fifty-six percent of Americans say the death penalty is the better punishment, while 39% choose life imprisonment. The last time support for the death penalty was this high was in 1999, when 56% also said they preferred that option. The highest support for the death penalty that Gallup has measured on this question (dating back to 1985) was 61% in August 1997.

**AMERICANS FEEL THE DEATH PENALTY ISN'T APPLIED ENOUGH-- Jones '05**

[Jeffrey M.; "Americans' Views of Death Penalty More Positive This Year;" Gallup Poll News Service; 19 May 2005; Gale Group]

For the first time since Gallup began asking about the application of the death penalty in 2001, a majority of Americans say the death penalty is not imposed often enough. Fifty-three percent hold this view, while 24% say it is imposed the right amount of time, and 20% say it is imposed too often. Last year [2004], 48% said the death penalty was not imposed often enough, 25% the right amount of time, and 23% too often. In 2001, public opinion on this matter was very different. At that time, just 38% said the death penalty was not used enough, 34% said the right amount of time, and 21% too often.

**TIMOTHY MCVEIGH'S EXECUTION WAS SUPPORTED BY THE VAST MAJORITY OF AMERICANS-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

Even some of those traditionally against capital punishment have decided that some crimes are justly punished with death. Timothy McVeigh's 2001 execution was thought a just punishment by 81 percent of the American people, reflecting an all-time high of support.<sup>1</sup> When 168 innocents were murdered, including 19 children whom McVeigh described as "collateral damage," the collective conscience of the American people reached an overwhelming consensus. A Gallup poll, released on May 20 [2002] shows that 72 percent supported the death penalty, with nearly half those polled saying the sanction is not imposed enough.



**AMERICANS APPROVE THE USE OF CAPITAL PUNISHMENT-- Tremonglie '03**

[Michael; Former Police Officer; "Capital Punishment Canards;" Insight on the News; 4 March 2003; Gale Group]

Ironically, despite the deceit, Americans approve of capital punishment. A Gallup poll in October 2002 indicated that Americans favor the death penalty by a ratio of almost 3-to-1 (70 percent in favor compared with 25 percent in opposition). A 2000 Zogby poll revealed that 78 percent of Italian-Americans and 75 percent of Asian-Americans favored capital punishment. Among Hispanics, Zogby found 73 percent supported the death penalty, while 71 percent of Arab-Americans advocated capital punishment. Even 64 percent of this country's African-Americans, the group supposedly most "discriminated" against by capital punishment, favor it.

**AMERICANS INCREASING THEIR SUPPORT FOR THE DEATH PENALTY-- Jones '05**

[Jeffrey M.; "Americans' Views of Death Penalty More Positive This Year;" Gallup Poll News Service; 19 May 2005; Gale Group]

Gallup's annual Moral Values and Beliefs poll finds that Americans are more positive in their orientation toward the death penalty than they have been in the past several years. Across a wide range of questions on the topic, Americans show a slight but noticeable increase in death penalty support. Compared with a year ago, more Americans say they support the death penalty as punishment for murder, more choose it over life imprisonment as the preferred punishment for murder, and more Americans believe the death penalty is applied fairly in this country.

Additionally, a majority of Americans now say the death penalty is not imposed often enough. There has also been a significant decline since 2003 in the percentage who believe that innocent people have been executed under the death penalty in the past five years. The increase in support for the death penalty is apparent across most societal subgroups.

**THE EXISTENCE OF THE DEATH PENALTY AFFIRMS DEMOCRATIC VALUES- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

In fact, the death penalty is abolished in these countries primarily because these countries are less democratic than we are. 38 Canadians are evenly split on the death penalty, while in Britain, a majority of the public supports the death penalty. 39 In France, a majority of the population backed capital punishment long after it was abolished in 1981. And even in Italy, where the Colosseum is bathed in light whenever a death sentence is commuted, a sizeable percentage of the population supports the death penalty. Liberal columnist Joshua Marshall nicely summarized things recently:

Basically, then, Europe doesn't have the death penalty because its political systems are less democratic, or at least more insulated from populists' impulses, than the U.S. government.



**CAPITAL PUNISHMENT APPLIES JUST PUNISHMENT**

**THE DEATH PENALTY PROVIDES A JUST PENALTY FOR THE MOST SERIOUS CRIMES- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

A final justification for the death penalty is that it constitutes just punishment for the most serious homicides. Capital punishment's retributive function vindicates the fundamental moral principles that a criminal should receive his or her just deserts. Even if capital punishment had no incapacitative or deterrent utility, its use would be justified on this basis alone. As Immanuel Kant persuasively explained, "[e]ven if a civil society resolved to dissolve itself ... the last murderer lying in the prison ought to be executed ..." 34 This act of punishment, which can provide no utilitarian benefit, is required because of the "desert of [the murderer's] deeds." More contemporary philosophers have echoed the argument. For example, noted philosopher Michael Moore of the University of Illinois College of law, asks us whether we would punish a brutal rapist, even if he has gotten into some sort of accident so that his sexual desires are dampened and we are certain that he no longer poses a threat of recidivism (no need for specific deterrence) and if we could pretend that he was punished, so that others would not be encouraged to commit crimes (no need for general deterrence). Moore suggests that our intuitions still would demand punishment—an intuition that reflects the needs for our criminal justice system to impose just punishment.

**RETRIBUTION IS RATIONALLY SUPPORTED JUSTICE, ENTIRELY DISTINCT FROM VENGEANCE- Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

People often confuse retribution with revenge. Governor George Ryan, who recently commuted the sentences of all the prisoners on death row in the State of Illinois, in his essay in this volume quotes a letter from the Reverend Desmond Tutu that "to take a life when a life has been lost is revenge, it is not justice." 7 This is simply false. While moral people will feel outrage at acts of heinous crimes, such as those described above by Mike Royko, the moral justification of punishment is not vengeance, but desert. Vengeance signifies inflicting harm on the offender out of anger because of what he has done. Retribution is the rationally supported theory that the criminal deserves a punishment fitting the gravity of his crime.

**CAPITAL PUNISHMENT IS PROPORTIONATE TO THE OFFENSE OF PREMEDITATED MURDER AND NECESSARY TO PROTECT LIFE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Capital punishment is proportionate to the offense of the intentional and unjustified taking of an innocent person's life. Murder does not simply differ in magnitude from other crimes like robbery and burglary. It differs in kind. As a result, the available punishments for premeditated murder must also differ in kind. The available punishment must reflect the inviolability of human life. As Professor Walter Berns has explained:

In a country whose principles forbid it to preach, the criminal law is one of the few available institutions through which it can make a moral statement .... To be successful, what it says—and it makes this moral statement when it punishes—must be appropriate to the offense and, therefore, to what has been offended. If human life is to be held in awe, the law forbidding the taking of it must be held in awe; and the only way it can be made awful or awe inspiring is to entitle it to inflict the penalty of death.



**RETRIBUTIVISM HOLDS THAT JUSTICE DEPENDS ON APPLICATION OF A PUNISHMENT COMMENSURATE WITH THE CRIME- Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

The nineteenth-century British philosopher James Fitzjames Stephens thought vengeance was a justification for punishment, arguing that punishment should be inflicted “for the sake of ratifying the feeling of hatred—call it revenge, resentment, or what you will—which the contemplation of such [offensive] conduct excites in healthily constituted minds.”<sup>8</sup> But retributivism is not based on hatred for the criminal (though a feeling of vengeance may accompany the punishment). Retributivism is the theory that the criminal deserves to be punished and deserves to be punished in proportion to the gravity of his or her crime, whether or not the victim or anyone else desires it. We may all deeply regret having to carry out the punishment, but consider it warranted.

**FAILURE TO APPLY RETRIBUTIVE JUSTICE WILL LEAD TO AN ANARCHIC INSECURE STATE OF JUSTICE- Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty : Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

On the other hand, people do have a sense of outrage and passion for revenge directed at criminals for their crimes. Imagine that someone in your family was on the receiving end of Stephen Judy’s violent acts. Stephens was correct in asserting that “[t]he criminal law stands to the passion for revenge in much the same relation as marriage to the sexual appetite.”<sup>9</sup> Failure to punish would no more lessen our sense of vengeance than the elimination of marriage would lessen our sexual appetite. When a society fails to punish criminals in a way thought to be proportionate to the gravity of the crime, the danger arises that the public would take the law into its own hands, resulting in vigilante justice, lynch mobs, and private acts of retribution. The outcome is likely to be an anarchistic, insecure state of injustice. As such, legal retribution stands as a safeguard for an orderly application of punitive desert.

**BY IMPOSING JUST PUNISHMENT, SOCIETY IS ABLE TO CONDEMN THE MOST HEINOUS CRIMES- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

By imposing just punishment, civilized society expresses its sense of revulsion toward those who, by violating its laws, have not only harmed individuals but also weakened the bonds that hold communities together. Certain crimes constitute such outrageous violations of human and moral values that they demand retribution. It was to control the natural human impulse to seek revenge and, more broadly, to give expression to the deeply held view that some conduct deserves punishment that criminal laws administered by the state were established. The rule of law does not eliminate feelings of outrage, but does provide controlled channels for expressing such feelings. As the Supreme Court has recognized, society has withdrawn,

both from the victim and the vigilante the enforcement of criminal laws, but [it] cannot erase from people’s consciousness the fundamental, natural yearning to see justice done—or even the urge for retribution.



**OUR LEGAL SYSTEM IS BASED ON THE CONCEPT OF CRIMES AND PUNISHMENTS BEARING SOME SIMILARITY-- Leiser '01**

[Burton M.; "Capital Punishment and Retributive Justice;" Free Inquiry; Summer 2001; Gale Group]

There is general agreement, for example, that the proper penalty for overtime parking is a relatively small fine. The amount of such fines may vary from city to city because the seriousness of the offense varies. In the little village in which I live, the village council has determined that a ten-dollar fine is appropriate. In New York City, on the other hand, an overtime parking ticket may result in a fine of sixty dollars or more. Many factors enter into these calculations, including the relative difficulty of finding parking space in a particular community, the price of real estate and off-street parking (for it would hardly do to impose a fine so low that it is cheaper to pay the fine than to pay the fee of a parking lot or garage), and the desirability of encouraging people to patronize local merchants without making it too onerous for them to find suitable parking while they do so. On the other hand, everyone would surely agree that prison terms often to twenty years would be utterly disproportionate to the seriousness of the offense of overtime parking. Such prison terms would effectively discourage most overtime parkers and would get them off the streets. They would be seen, however, as a despotic abuse of governmental power disproportionate to our sense of justice.

Similarly, a fine of ten or twenty dollars for rape would be viewed as utterly inappropriate to the gravity of the crime. Indeed, such a "penalty" would amount to a license to commit the crime; it would even be less expensive than the going price of streetwalkers. Women would rightly feel outraged by a legislature that valued their bodily integrity so little as to create open season for sexual predators willing to pay a piddling fee. Because we feel that sexual violence causes such grievous injury and is so utterly despicable, we unhesitatingly impose heavy penalties upon those who engage in it.

Notice that this has little or nothing to do with deterrence, though fines and prison terms generally tend to deter such offenses, at least with most normal persons. If deterrence were our only object in setting penalties, we would make them as heavy as possible in order to deter potential violators. But we don't do that, because our sense of justice—our sense of proportionality—would be outraged by such a policy. Retribution is based, then, upon the sense that particular crimes warrant the imposition of certain penalties. Those that are more severe in the harm they inflict upon their victims and upon society deserve harsher penalties than those that cause less damage or are perceived to be less morally iniquitous.

**DEATH PENALTY IS APPROPRIATE FOR THE VILEST OF CRIMES-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

Sometimes, the death penalty is simply the most appropriate punishment for the vile crime committed. In such cases, jurors are given the choice between a death sentence and a variety of life sentences, depending upon the jurisdiction. It is never easy for juries to give a death sentence. Neither hatred nor revenge is part of their deliberations. The search for justice determines the punishment.

The murder of the innocent is undeserved. The punishment of murderers has been earned by the pain and suffering they have imposed on their victims. Execution cannot truly represent justice, because there is no recompense to balance the weight of murder. For some crimes, it represents the only just punishment available on earth.



**STATE HAS THE RIGHT TO TAKE LIFE WITH DUE PROCESS OF LAW-- Leiser '01**

[Burton M.; "Capital Punishment and Retributive Justice;" Free Inquiry; Summer 2001; Gale Group]

We have long taken it for granted that people are entitled to certain fundamental rights, enumerated in various political and philosophical works and in the founding documents of the United States as life, liberty, and property (or the pursuit of happiness). Possession of these rights implies a corresponding duty by the government not to interfere with them. However, under appropriate circumstances the Constitution (in the fifth and fourteenth amendments) recognizes that each of those fundamental rights may be forfeited, and provides that no person may be deprived of life, liberty, or property without due process of law. The obvious corollary of this provision is that with due process of law, a person may be deprived of property (e.g., by imposing a fine), liberty (e.g., by imprisonment), or life.

**CHOOSING TO NOT USE THE DEATH PENALTY SAYS THAT SOCIETY DOESN'T THINK MURDER IS A TERRIBLE CRIME-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

When a vicious killer is sent to the electric chair or strapped onto a gurney for a lethal injection, society is condemning his crime with a seriousness and intensity that no other punishment achieves. By contrast, a society that sentences killers to nothing worse than prison—no matter how depraved the killing or how innocent the victim—is a society that doesn't really think murder is so terrible.

**CRIMES THAT HAVE CAPITAL PUNISHMENT ARE THE MOST SERIOUS OFFENSES IN LAW-- Leiser '01**

[Burton M.; "Capital Punishment and Retributive Justice;" Free Inquiry; Summer 2001; Gale Group]

Our sense of justice and proportionality in punishment is embodied in the penal laws enacted by our state and federal legislatures, which have affixed varying degrees of penalties for the many varieties of harm that people can inflict upon the state. These penalties range from the least severe fines for minor violations to periods of incarceration for more serious crimes, and finally to the penalty of death for the gravest of all. Although many crimes once earned the perpetrator the penalty of death, relatively few such crimes remain on the books, at least in this country. Those few are among the most outrageous crimes known: the deliberate, premeditated, wanton taking of innocent human life, terrorism, and others that entail gross violations of human rights and the security of the state and its citizens.

**THE JURY SYSTEM PROVIDES JUSTICE- Cassell '08**

[Paul; professor of law, University of Utah; In Defense of the Death Penalty; IACJ Journal; Summer 2008; [http://www.da-tulareco.org/PDF/In\\_defense\\_of\\_the\\_DP.pdf](http://www.da-tulareco.org/PDF/In_defense_of_the_DP.pdf); retrieved 01 Sep 2011]

Our legal system, of course, has a procedure in place for hearing these voices. A jury of 12 persons, selected for their ability to be impartial in evaluating the facts, reviews all of the evidence, including whatever evidence a defendant might choose to present, before determining whether a defendant has committed an aggravated, capital murder, and, if so, whether death is the appropriate penalty. No death penalty is ever imposed unless the jury (or, in some states, a judge) decides that the ultimate penalty is justified by the facts of the case.



**NO WAY TO CONTRAVENE THE LOGIC OF MURDER WITHOUT THE DEATH PENALTY-- Tucker '03**

[William; Freelance Writer; "Deterring Homicides with the Death Penalty;" Human Events 7 April 2003; Gale Group]

From the criminal's point of view, the logic is fairly simple. When you are committing a felony—either a rape or robbery—there is a certain calculated advantage in murdering your victim. The victim, after all, is also the principal witness to the crime. He or she is the person most likely to put you in jail, but screaming or calling for others, by going to the police immediately after you leave, by identifying you, by testifying against you in court. Murdering the victim "leaves no witnesses."

Sometimes this is premeditated. Particularly cold, heartless killers will enter a situation knowing they must kill their victims. John Taylor, now under death sentence in New York for the "Wendy's Massacre," was a former employee who gained entrance to the store to commit an after-hours robbery only because his victims knew him and let him in. Taylor and an accomplice then lined them up and shot them. He went into the store knowing he would have to kill each of his victims to avoid identification.<sup>1</sup>

But far more often the killer is an amateur who doesn't realize until the robbery has begun that the victim has "had a good look at him" and must be eliminated.

There is no way to contravene this logic of murder except through the death penalty. No amount of pleading or cajoling—no promises that "I won't tell"—will ever convince a robber or rapist that there isn't an advantage to escalating the crime to murder. The only plausible deterrent is a qualitatively different punishment. If the punishment for robbery is a few years in jail and the punishment for murder is a few more years after that, there is very little if any deterrence. But if the punishment for robbery is jail time and the punishment for murder is death, there is reason to think twice.

**MUST EMBRACE THE DEATH PENALTY TO STAY OFF VIGILANTE JUSTICE-- Clark '01**

[Neil; Teacher and Freelance Writer; "Bring Back the Rope;" The Spectator; 9 June 2001; Gale Group]

It is always satisfying when reading crime fiction from the 'Golden Age' that at the end of the novel, the murderer, having been detected by the likes of M. Poirot or Miss Marple, is led off to meet his or her deserved fate on the gallows. Justice was always served. However, if the Queen of Crime [Agatha Christie] were writing today, her convicted murderer would probably be out on appeal after four years and suing the prison authority for denying him cable television in his cell. Inadequately protected by the government, police and judiciary, more and more people are seeking to take the law into their own hands. The vigilante state is fast approaching, if it has not arrived already, and cases such as those of the Norfolk farmer Tony Martin<sup>3</sup> will become more and more common.



**RISK OF INNOCENT EXECUTION DOES NOT MAKE CAPITAL PUNISHMENT UNJUST**

**THE FACT THAT THE INNOCENT CAN BE EXECUTED IS AN ARGUMENT FOR A BETTER LEGAL SYSTEM, NOT FOR ABOLISHING THE DEATH PENALTY- Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

Sometimes the objection is framed this way: It is better to let ten criminals go free than to execute one innocent person. If this dictum is a call for safeguards, then it is well taken; but somewhere there seems to be a limit on the tolerance of society toward capital offenses. Would these abolitionists argue that it is better that 50 or 100 or 1,000 murderers go free than that one innocent person be executed? Society has a right to protect itself from capital offenses even if this means taking a finite chance of executing an innocent person. If the basic activity or process is justified, then it is regrettable, but morally acceptable, that some mistakes are made. Fire trucks occasionally kill innocent pedestrians while racing to fires, but we accept these losses as justified by the greater good of the activity of using fire trucks. We judge the use of automobiles to be acceptable even though such use causes an average of 50,000 traffic fatalities each year. We accept the morality of a defensive war even though it will result in our troops accidentally or mistakenly killing innocent people.

The fact that we can err in applying the death penalty should give us pause and cause us to build a better appeals process into the judicial system. Such a process is already in most places in the American and British legal systems. That an occasional error may be made, regrettable though this is, is not a sufficient reason for us to refuse to use the death penalty, if on balance it serves a just and useful function.

**ABILITY TO PUNISH THE WORST OF ALL CRIMINALS OUTWEIGHS THE POTENTIAL THAT AN INNOCENT PERSON MIGHT BE PUT TO DEATH-- Jacoby '03**

[Jeff; Columnist; "When Murderers Die, Innocents Live;" Boston Globe; 28 September 2003; Gale Group]

To make the perfect the enemy of the good is irrational and counterproductive. The benefits of surgery, air travel, and prescription drugs are enormous — far too valuable to give up even though we know that people will die because of the fallibility of doctors and pilots and people who handle medicine. The same is true of capital punishment: The benefits of a legal system in which judges and juries have the option of sentencing the cruelest or coldest murderers to death far outweigh the potential risk of executing an innocent person. And there is this added reassurance: The risk of an erroneous execution is infinitesimal, and getting smaller all the time.

And the benefits? First and foremost, the death penalty makes it possible for justice to be done to those who commit the worst of all crimes. The execution of a murderer sends a powerful moral message: that the innocent life he took was so precious, and the crime he committed so horrific, that he forfeits his own right to remain alive.



**THE DEATH PENALTY DOES NOT HAVE A UNIQUE RISK WHEN IT COMES TO INNOCENT-Pojman '04**

[Louis; professor of philosophy and author of over 100 books; *Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Case*; 2004; Kindle Edition]

The abolitionist is incorrect in arguing that death is different from long-term prison sentences because it is irrevocable. Imprisonment also takes good things away from us that may never be returned. We cannot restore to the inmate the freedom or opportunities he or she lost. Suppose an innocent 25-year-old man is given a life sentence for murder. Thirty years later the error is discovered and he is set free. Suppose he values three years of freedom to every one year of life. That is, he would rather live 10 years as a free man than 30 as a prisoner. Given this man's values, the criminal justice system has taken the equivalent of 10 years of life from him. If he lives until he is 65, he has, as far as his estimation is concerned, lost 10 years, so that he may be said to have lived only 55 years. The numbers in this example are arbitrary, but the basic point is sound. Most of us would prefer a shorter life of higher quality to a longer one of low quality. Death prevents all subsequent quality, but imprisonment also irrevocably harms one by diminishing the quality of life of the prisoner.



**LIFE WITHOUT PAROLE IS INSUFFICIENT**

**LACK OF GOOD ALTERNATIVES DEMANDS CAPITAL PUNISHMENT-- van den Haag '02**

[Ernest; Psychoanalyst and Professor of Jurisprudence and Public Policy; "The Ultimate Penalty ... and a Just One: The Basics of Capital Punishment;" The National Review; 11 June 2001; Gale Group]

Why execute anyone? Why not avoid the risk of miscarriages of justice by abolishing capital punishment altogether? Simply because there are no fully satisfactory alternatives. Life imprisonment is not necessarily lifelong; life imprisonment without parole still allows governors to pardon prisoners. The finality of death is both the weakness and the strength of capital punishment. We are not ready to do without it, yet hesitate to use it: There are many convicts on death row, but only a few are actually executed. Between 1973 and 1995, 5,760 death sentences were imposed; as of 1995, only 313 had been executed, and only some 400 have been executed since. Gary Graham, executed in June 2000, spent 19 years on death row exhausting his appeals, which were reviewed by more than 30 different judges. His case is far from exceptional.



**CAPITAL PUNISHMENT DOES NOT HURT VALUE OF LIFE**

**VALUE OF LIFE ARGUMENTS ACTUALLY JUSTIFY THE DEATH PENALTY-- Sharp '02**

[Dudley; Vice President of Justice for All; "Do We Need the Death Penalty? It Is Just and Right;" World & I; September 2002; Gale Group]

This brings me back to where I started: justice. Some say that executions show a contempt for human life, but the opposite is true. We would hope that a brutal rape may result in a life sentence. Why? We value freedom so highly that we take freedom away as punishment. If freedom were not valued, taking it away would be no sanction.

Life is considered even more precious. Therefore, the death penalty is considered the severest sanction for the most horrible of crimes. Even murderers tell us that they value life (their own) more than freedom. That is why over 99 percent of convicted capital murderers seek a life sentence, not a death sentence, during the punishment phase of their trials.

**CULTURE OF LIFE ARGUMENTS ARE LOGICAL FALLACIES-- Eddlem '02**

[Thomas; Editor of the Hanson Express of Massachusetts; "Ten Anti-Death Penalty Fallacies;" The New American; 3 June 2002; Gale Group]

If capital punishment teaches that it's permissible to kill, do prison sentences teach that it's permissible to hold someone against his will, and do fines teach that it's permissible to steal? In actuality, this fallacy confuses killing the innocent with punishing the guilty. To punish the guilty via the death penalty is not to condone the shedding of innocent blood. Just the opposite, in fact, since capital punishment sends a strong message that murder and other capital crimes will not be tolerated.

A related fallacy is that the pro-lifer who defends the right to life of an unborn baby in the mother's womb, but who does not defend the right to life of a convicted murderer on death row, is being morally inconsistent. But there is no inconsistency here: The unborn baby is innocent; the convicted murderer is not. It is the pro-abortion/anti-death penalty liberal who is morally inconsistent, since he supports putting to death only the innocent.

**CULTURE OF LIFE ARGUMENT WOULD ALSO MEAN NOT TAKING LIFE DURING TIMES OF WAR-- Clark '01**

[Neil; Teacher and Freelance Writer; "Bring Back the Rope;" The Spectator; 9 June 2001; Gale Group]

Opponents of the death penalty argue that it is wrong for the state to take life. This is a line that Tony Blair takes. Yet, to be consistent, holders of this view would also have to be against the state taking life in times of war. As Aldous Huxley once wrote, 'It is impossible to be an 85 per cent pacifist, it is all or nothing.' It is interesting in this context to think back to the 1999 war against Yugoslavia. Then, by and large, the most enthusiastic supporters of the NATO bombing campaign on Belgrade were those politicians and journalists ... who are fierce in their opposition to any reintroduction of the death penalty in Britain. It seems to me a rather strange morality that justifies the killing of innocent make-up girls and cleaners in a Yugoslav television studio, but not of convicted serial killers at home.