






Death Penalty

PRO Death Penalty	CON Death Penalty
1. Morality	
<p>PRO: "The crimes of rape, torture, treason, kidnapping, murder, larceny, and perjury pivot on a moral code that escapes apodictic [indisputably true] proof by expert testimony or otherwise. But communities would plunge into anarchy if they could not act on moral assumptions less certain than that the sun will rise in the east and set in the west. Abolitionists may contend that the death penalty is inherently immoral because governments should never take human life, no matter what the provocation. But that is an article of faith, not of fact. The death penalty honors human dignity by treating the defendant as a free moral actor able to control his own destiny for good or for ill; it does not treat him as an animal with no moral sense."</p> <p style="text-align: right; margin-right: 20px;"> Bruce Fein, JD ★★☆☆ <i>Constitutional Lawyer and General Counsel to the Center for Law and Accountability</i> <i>"Individual Rights and Responsibility - The Death Penalty, But Sparingly," www.aba.org</i> <i>June 17, 2008</i> </p>	<p>CON: "Ultimately, the moral question surrounding capital punishment in America has less to do with whether those convicted of violent crime deserve to die than with whether state and federal governments deserve to kill those whom it has imprisoned. The legacy of racial apartheid, racial bias, and ethnic discrimination is unavoidably evident in the administration of capital punishment in America. Death sentences are imposed in a criminal justice system that treats you better if you are rich and guilty than if you are poor and innocent. This is an immoral condition that makes rejecting the death penalty on moral grounds not only defensible but necessary for those who refuse to accept unequal or unjust administration of punishment."</p> <p style="text-align: right; margin-right: 20px;"> Bryan Stevenson, JD ★★☆☆ <i>Professor of Law at New York University School of Law</i> <i>"Close to Death: Reflections on Race and Capital Punishment in America," from Debating the Death Penalty: Should America Have Capital Punishment? The Experts on Both Sides Make Their Best Case</i> <i>2004</i> </p>
2. Constitutionality	
<p>PRO: "Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' [quoting the opinion of the Court from <i>Farmer v. Brennan</i>, 511 U. S. 825, 842, 846 (1994)] that qualifies as cruel and unusual... Kentucky has adopted a method of execution believed to be the most humane available, one it shares with 35 other States... Kentucky's decision to adhere to its protocol cannot be viewed as probative of the wanton infliction of pain under the Eighth Amendment... Throughout our history, whenever a method of execution has been challenged in this Court as cruel and unusual, the</p>	<p>CON: "Death is... an unusually severe punishment, unusual in its pain, in its finality, and in its enormity... The fatal constitutional infirmity in the punishment of death is that it treats 'members of the human race as nonhumans, as objects to be toyed with and discarded. [It is] thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity.' [quoting himself from <i>Furman v. Georgia</i>, 408 U.S. 238, 257 (1972)] As such it is a penalty that 'subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the [Clause].' [quoting C.J. Warren from <i>Trop v. Dulles</i>, 356 U.S. 86, 101 (1958)] I therefore would hold, on that</p>

Court has rejected the challenge. Our society has nonetheless steadily moved to more humane methods of carrying out capital punishment."




[Baze v. Rees](#) (529 KB) 
US Supreme Court, in a decision written by Chief Justice John G. Roberts
Apr. 16, 2008

ground alone, that death is today a cruel and unusual punishment prohibited by the Clause... I would set aside the death sentences imposed... as violative of the Eighth and Fourteenth Amendments."


William J. Brennan, JD   
Justice of the US Supreme Court
Dissenting opinion in *Gregg v. Georgia* (347 KB) 
July 2, 1976

3. Deterrence

PRO: "Common sense, lately bolstered by statistics, tells us that the death penalty will deter murder... People fear nothing more than death. Therefore, nothing will deter a criminal more than the fear of death... life in prison is less feared. Murderers clearly prefer it to execution -- otherwise, they would not try to be sentenced to life in prison instead of death... Therefore, a life sentence must be less deterrent than a death sentence. And we must execute murderers as long as it is merely possible that their execution protects citizens from future murder."




[Ernest Van Den Haag, PhD](#)   
Late Professor of Jurisprudence at Fordham University
"For the Death Penalty," *New York Times*
Oct. 17, 1983

CON: "[T]here is no credible evidence that the death penalty deters crime more effectively than long terms of imprisonment. States that have death penalty laws do not have lower crime rates or murder rates than states without such laws. And states that have abolished capital punishment show no significant changes in either crime or murder rates. The death penalty has no deterrent effect. Claims that each execution deters a certain number of murders have been thoroughly discredited by social science research."




[American Civil Liberties Union \(ACLU\)](#) 
"The Death Penalty: Questions and Answers,"
ACLU.org
Apr. 9, 2007

4. Retribution

PRO: "Society is justly ordered when each person receives what is due to him. Crime disturbs this just order, for the criminal takes from people their lives, peace, liberties, and worldly goods in order to give himself undeserved benefits. Deserved punishment protects society morally by restoring this just order, making the wrongdoer pay a price equivalent to the harm he has done. This is retribution, not to be confused with revenge, which is guided by a different motive. In retribution the spur is the virtue of indignation, which answers injury with injury for public good... Retribution is the primary purpose of just punishment as such... [R]ehabilitation, protection, and deterrence have a lesser status in punishment than retribution."

[J. Budziszewski, PhD](#)   
Professor of Government and Philosophy at the University of Texas at Austin
"Capital Punishment: The Case for

CON: "Retribution is just another word for revenge, and the desire for revenge is one of the lowest human emotions — perhaps sometimes understandable, but not really a rational response to a critical situation. To kill the person who has killed someone close to you is simply to continue the cycle of violence which ultimately destroys the avenger as well as the offender. That this execution somehow give 'closure' to a tragedy is a myth. Expressing one's violence simply reinforces the desire to express it. Just as expressing anger simply makes us more angry. It does not drain away. It contaminates the otherwise good will which any human being needs to progress in love and understanding."

[Raymond A. Schroth, SJ](#)   
Jesuit Priest and Community Professor of the Humanities at St. Peter's College
Email to ProCon.org

5. Irrevocable Mistakes

PRO: "...No system of justice can produce results which are 100% certain all the time. Mistakes will be made in any system which relies upon human testimony for proof. We should be vigilant to uncover and avoid such mistakes. Our system of justice rightfully demands a higher standard for death penalty cases. However, the risk of making a mistake with the extraordinary due process applied in death penalty cases is very small, and there is no credible evidence to show that any innocent persons have been executed at least since the death penalty was reactivated in 1976... The inevitability of a mistake should not serve as grounds to eliminate the death penalty any more than the risk of having a fatal wreck should make automobiles illegal..."

Steven D. Stewart, JD ★★ ★
Prosecuting Attorney for Clark County Indiana
Message on the Clark County Prosecutor website
accessed
Aug. 6, 2008

CON: "...Since the reinstatement of the modern death penalty, 87 people have been freed from death row because they were later proven innocent. That is a demonstrated error rate of 1 innocent person for every 7 persons executed. When the consequences are life and death, we need to demand the same standard for our system of justice as we would for our airlines...It is a central pillar of our criminal justice system that it is better that many guilty people go free than that one innocent should suffer... Let us reflect to ensure that we are being just. Let us pause to be certain we do not kill a single innocent person. This is really not too much to ask for a civilized society."

Russ Feingold, JD ★★ ★
US Senator (D-WI)
introducing the "National Death Penalty
Moratorium Act of 2000"
April 26, 2000

6. Cost of Death vs. Life in Prison

PRO: "Many opponents present, as fact, that the cost of the death penalty is so expensive (at least \$2 million per case?), that we must choose life without parole ('LWOP') at a cost of \$1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA [Justice for All] estimates that LWOP cases will cost \$1.2 million-\$3.6 million more than equivalent death penalty cases. There is no question that the up front costs of the death penalty are significantly higher than for equivalent LWOP cases. There also appears to be no question that, over time, equivalent LWOP cases are much more expensive... than death penalty cases. Opponents ludicrously claim that the death penalty costs, over time, 3-10 times more than LWOP."

Dudley Sharp ★
Director of Death Penalty Resources at Justice for All
"Death Penalty and Sentencing
Information," Justice for All website
Oct. 1, 1997

CON: "In the course of my work, I believe I have reviewed every state and federal study of the costs of the death penalty in the past 25 years. One element is common to all of these studies: They all concluded that the cost of the death penalty amounts to a net expense to the state and the taxpayers. Or to put it differently, the death penalty is clearly more expensive than a system handling similar cases with a lesser punishment. [It] combines the costliest parts of both punishments: lengthy and complicated death penalty trials, followed by incarceration for life... Everything that is needed for an ordinary trial is needed for a death penalty case, only more so:

- More pre-trial time...
- More experts...
- Twice as many attorneys...
- Two trials instead of one will be conducted: one for guilt and one for punishment.
- And then will come a series of appeals during which the inmates are held in the high security of death row."

Richard C. Dieter, MS, JD ★★☆☆
Executive Director of the Death Penalty
Information Center
Testimony to the Judiciary Committee of the
Colorado State House of Representatives
regarding "House Bill 1094 - Costs of the Death
Penalty and Related Issues"
Feb. 7, 2007

7. Race

PRO: "[T]he fact that blacks and Hispanics are charged with capital crimes out of proportion to their numbers in the general population may simply mean that blacks and Hispanics commit capital crimes out of proportion to their numbers. Capital criminals don't look like America... No one is surprised to find more men than women in this class. Nor is it a shock to find that this group contains more twenty-year-olds than septuagenarians. And if — as the left tirelessly maintains — poverty breeds crime, and if — as it tiresomely maintains — the poor are disproportionately minority, then it must follow — as the left entirely denies — that minorities will be 'overrepresented' among criminals."

Roger Clegg, JD ★★☆☆
General Counsel at the Center for Equal
Opportunity
"The Color of Death: Does the Death Penalty
Discriminate?," *National Review Online*
June 11, 2001

CON: "Despite the fact that African Americans make up only 13 percent of the nation's population, almost 50 percent of those currently on the federal death row are African American. And even though only three people have been executed under the federal death penalty in the modern era, two of them have been racial minorities. Furthermore, all six of the next scheduled executions are African Americans. The U.S. Department of Justice's own figures reveal that between 2001 and 2006, 48 percent of defendants in federal cases in which the death penalty was sought were African Americans... the biggest argument against the death penalty is that it is handed out in a biased, racially disparate manner."

National Association for the Advancement of
Colored People (NAACP)
"NAACP Remains Steadfast in Ending Death
Penalty & Fighting Injustice in America's Justice
System," *NAACP website*
June 28, 2007

8. Income Level

PRO: "The next urban legend is that of the threadbare but plucky public defender fighting against all odds against a team of sleek, heavily-funded prosecutors with limitless resources. The reality in the 21st century is startlingly different... the past few decades have seen the establishment of public defender systems that in many cases rival some of the best lawyers retained privately... Many giant silk-stocking law firms in large cities across America not only provide pro-bono counsel in capital cases, but also offer partnerships to lawyers whose sole job is to promote indigent capital defense."

Joshua Marquis, JD ★★☆☆
District Attorney of Clatsop County, Oregon
"The Myth of Innocence," *Journal of Criminal Law*

CON: "Who pays the ultimate penalty for crimes? The poor. Who gets the death penalty? The poor. After all the rhetoric that goes on in legislative assemblies, in the end, when the net is cast out, it is the poor who are selected to die in this country. And why do poor people get the death penalty? It has everything to do with the kind of defense they get. Money gets you good defense. That's why you'll never see an O.J. Simpson on death row. As the saying goes: 'Capital punishment means them without the capital get the punishment.'"

Helen Prejean, MA ★
Anti-death penalty activist and author of *Dead Man
Walking*
"Would Jesus Pull the Switch?," *Salt of the Earth*
1997

and Criminology
Mar. 31, 2005

9. Attorney Quality

PRO: "Defense attorneys... routinely file all manner of motions and objections to protect their clients from conviction. Attorneys know their trial tactics will be thoroughly scrutinized on appeal, so every effort is made to avoid error, ensuring yet another level of protection for the defendant. They [death penalty opponents]... have painted a picture of incompetent defense lawyers, sleeping throughout the trial, or innocent men being executed. Their accusations receive wide media coverage, resulting in a near-daily onslaught on the death penalty. Yet, through all the hysteria, jurors continue to perform their responsibilities and return death sentences."

California District Attorneys Association
(CDA) ★
"Prosecutors' Perspective on California's Death
Penalty," www.cdaa.org
Mar. 2003

CON: "[A] shocking two out of three death penalty convictions have been overturned on appeal because of police and prosecutorial misconduct, as well as serious errors by incompetent court-appointed defense attorneys with little experience in trying capital cases. How can we contend that we provide equal justice under the law when we do not provide adequate representation to the poor in cases where a life hangs in the balance? We, the Congress, must bear our share of responsibility for this deplorable situation. In short, while others, like Governor Ryan in Illinois, have recognized the flaws in the death penalty, the Congress still just doesn't get it. This system is broken."

John Conyers, Jr., JD ★★ ★
US Congressman (D-MI)
Hearing for the Innocence Protection Act of 2000
before the Subcommittee on Crime of the
Committee on the Judiciary of the House of
Representatives
June 20, 2000

10. Physicians at Executions

PRO: "Accepting capital punishment in principle means accepting it in practice, whether by the hand of a physician or anyone else... If one finds the practice too brutal, one must either reject it in principle or seek to mitigate its brutality. If one chooses the latter option, then the participation of physicians seems more humane than delegating the deed to prison wardens, for by condoning the participation of untrained people who could inflict needless suffering that we physicians might have prevented, we are just as responsible as if we had inflicted the suffering ourselves. The AMA [American Medical Association] position should be changed either to permit physician participation or to advocate the abolition of capital punishment. The hypocritical attitude of 'My hands are clean — let the spectacle proceed' only leads to needless human suffering."

Bruce E. Ellerin, MD, JD ★★ ★
Doctor of Oncology Radiation at Sierra Providence Health Network
Response letter to the New England Journal of Medicine regarding an article
titled "When Law and Ethics Collide — Why Physicians Participate in
Executions," by Atul Gawande, MD
July 6, 2006

CON: "The American Medical Association's policy is clear and unambiguous... requiring physicians to participate in executions violates their oath to protect lives and erodes public confidence in the medical profession. A physician is a member of a profession dedicated to preserving life... The use of a physician's clinical skill and judgment for purposes other than promoting an individual's health and welfare undermines a basic ethical foundation of medicine — first, do no harm. The guidelines in the AMA Code of Medical Ethics address physician participation in executions involving lethal injection. The ethical opinion explicitly prohibits selecting injection sites for executions by lethal injection, starting intravenous lines, prescribing, administering, or supervising the use of lethal drugs, monitoring vital signs, on site or remotely, and declaring death."

American Medical Association (AMA) ★
"AMA: Physician Participation in Lethal Injection
Violates Medical Ethics," press release from the
AMA website
July 17, 2006

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