

# Should the death penalty be allowed?

## Background

1,436 people were executed in the United States from 1977 through May 2016, primarily by means of lethal injection. Most death penalty cases involve the execution of murderers although capital punishment can also be applied for treason, espionage, and other crimes.

**Proponents** of the death penalty say it is an important tool for preserving law and order, deters crime, and costs less than life imprisonment. They argue that retribution or "an eye for an eye" honors the victim, helps console grieving families, and ensures that the perpetrators of heinous crimes never have an opportunity to cause future tragedy.

**Opponents** of capital punishment say it has no deterrent effect on crime, wrongly gives governments the power to take human life, and perpetuates social injustices by disproportionately targeting people of color (racist) and people who cannot afford good attorneys (classist). They say lifetime jail sentences are a more severe and less expensive punishment than death.

# 1. Morality

"[W]e reserve the death penalty in the United States for the most heinous murders and the most brutal and conscienceless murderers. This is not, as some critics argue, a kind of state-run lottery that randomly chooses an unlucky few for the ultimate penalty from among all those convicted of murder. Rather, the capital punishment system is a filter that selects the worst of the worst...

Put another way, to sentence killers like those described above to less than death would fail to do justice because the penalty – presumably a long period in prison – would be grossly disproportionate to the heinousness of the crime. Prosecutors, jurors, and the loved ones of murder victims understand this essential point...

Perhaps most importantly, in its supreme gravity it [the death penalty] promotes belief in and respect for the majesty of the moral order and for the system of human law that both derives from and supports that moral order."

[Edward Feser, PhD](#)

Associate Professor of Philosophy at Pasadena City College

[Joseph M. Bessette, PhD](#)

Alice Tweed Tuohy Professor of Government and Ethics at Claremont McKenna College

"Why the Death Penalty Is Still Necessary,"

[catholicworldreport.com](http://catholicworldreport.com)

July 21, 2016

"As superintendent of the Oregon State Penitentiary, I planned and carried out that state's only two executions in the last 54 years I used to support the death penalty. I don't anymore...

I was charged with executing two inmates on the penitentiary's death row, Douglas Franklin Wright and Harry Charles Moore...

Regardless of their crimes, the fact that I was now to be personally involved in their executions forced me into a deeper reckoning with my feelings about capital punishment. After much contemplation, I became convinced that, on a moral level, life was either hallowed or it wasn't. And I wanted it to be...

Since I retired from corrections in 2010, my mission has been to persuade people that capital punishment is a failed policy. America should no longer accept the myth that capital punishment plays any constructive role in our criminal justice system. It will be hard to bring an end to the death penalty, but we will be a healthier society as a result."

[Semon Frank Thompson](#)

Former Superintendent of the Oregon State Penitentiary

"What I Learned from Executing Two Men,"

[nytimes.com](http://nytimes.com)

Sep. 15, 2016

## 2. Constitutionality

"Petitioners, sentenced to die for the crimes they committed (including, in the case of one petitioner since put to death, raping and murdering an 11-month-old baby), come before this Court asking us to nullify their sentences as 'cruel and unusual' under the Eighth Amendment. They rely on this provision because it is the only provision they can rely on. They were charged by a sovereign State with murder. They were afforded counsel and tried before a jury of their peers—tried twice, once to determine whether they were guilty and once to determine whether death was the appropriate sentence. They were duly convicted and sentenced...

[N]ot once in the history of the American Republic has this Court ever suggested the death penalty is categorically impermissible. The reason is obvious: It is impossible to hold unconstitutional that which the Constitution explicitly contemplates. The Fifth Amendment provides that '[n]o person shall be held to answer for a capital...crime, unless on a presentment or indictment of a Grand Jury,' and that no person shall be 'deprived of life...without due process of law...

Historically, the Eighth Amendment was understood to bar only those punishments that added 'terror, pain, or disgrace' to an otherwise permissible capital sentence...

I would not presume to tell parents whose life has been forever altered by the brutal murder of a child that life imprisonment is punishment enough."

[Antonin Scalia, JD](#)

Former Associate Justice of the US Supreme Court  
Concurring opinion in *Glossip v. Gross*,  
supreme.justicia.com  
June 29, 2015

"[R]ather than try to patch up the death penalty's legal wounds one at a time, I would ask for full briefing on a more basic question: whether the death penalty violates the Constitution.

The relevant legal standard is the standard set forth in the Eighth Amendment. The Constitution there forbids the 'inflict[ion]' of 'cruel and unusual punishments.' Amdt. 8. The Court has recognized that a 'claim that punishment is excessive is judged not by the standards that prevailed in 1685... or when the Bill of Rights was adopted, but rather by those that currently prevail... Indeed, the Constitution prohibits various gruesome punishments that were common...

In 1976, the Court thought that the constitutional infirmities in the death penalty could be healed; the Court in effect delegated significant responsibility to the States to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed. Today's administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use...

For the reasons I have set forth in this opinion, I believe it highly likely that the death penalty violates the Eighth Amendment."

[Steven G. Breyer, JD](#)

Associate Justice of the US Supreme Court  
Dissenting opinion in *Glossip v. Gross*,  
supreme.justicia.com,  
June 29, 2015

### 3. Deterrence

"Some crimes are so heinous and inherently wrong that they demand strict penalties – up to and including life sentences or even death. Most Americans recognize this principle as just..."

Studies of the death penalty have reached various conclusions about its effectiveness in deterring crime. But... the majority of studies that track effects over many years and across states or counties find a deterrent effect.

Indeed, other recent investigations, using a variety of samples and statistical methods, consistently demonstrate a strong link between executions and reduced murder rates... In short, capital punishment does, in fact, save lives."

[David Muhlhausen, PhD](#)

Research Fellow in Empirical Policy Analysis at the Heritage Foundation  
"Capital Punishment Works: It Deters Crime,"  
dailysignal.com  
Oct. 4, 2014

"[T]here is not the slightest credible statistical evidence that capital punishment reduces the rate of homicide. Whether one compares the similar movements of homicide in Canada and the US when only the latter restored the death penalty, or in American states that have abolished it versus those that retain it, or in Hong Kong and Singapore (the first abolishing the death penalty in the mid-1990s and the second greatly increasing its usage at the same), there is no detectable effect of capital punishment on crime. The best econometric studies reach the same conclusion..."

[L]ast year roughly 14,000 murders were committed but only 35 executions took place. Since murderers typically expose themselves to far greater immediate risks, the likelihood is incredibly remote that some small chance of execution many years after committing a crime will influence the behaviour of a sociopathic deviant who would otherwise be willing to kill if his only penalty were life imprisonment. Any criminal who actually thought he would be caught would find the prospect of life without parole to be a monumental penalty. Any criminal who didn't think he would be caught would be untroubled by any sanction."

[John J. Donohue III, JD, PhD](#)

Professor of Law at Stanford University  
"There's No Evidence That Death Penalty Is a Deterrent against Crime,"  
theconversation.com  
Aug. 8, 2015

## 4. Retribution

"We have the responsibility to punish those who deserve it, but only to the degree they deserve it. Retributivists do not justify the death penalty by the general deterrence or safety it brings us. And we reject over-punishing no less than under-punishing. How obscene that aggravated murderers who behave well inside prison watch movies and play softball.

Regardless of future benefits, we justify punishment because it's deserved. Let the punishment fit the crime...

Opponents [of the death penalty] wrongly equate retribution and revenge, because they both would inflict pain and suffering on those who have inflicted pain and suffering on us.

Whereas revenge knows no bounds, retribution must be limited, proportional and appropriately directed: The retributive punishment fits the crime...

We should only execute those who most deserve it. And not randomly. Refine our death penalty statutes and review the sentences of everyone on death row. Release into general population those who don't really deserve to die. The rest we should execute — worst first."

[Robert Blecker, JD](#)

Professor of Law at New York Law School  
"Q&A: Death Penalty Proponent Robert Blecker,"  
dallasnews.com  
Apr. 2014

"No one can blame victims and their families for wanting revenge, including through the death penalty. In their pain and loss, they are entitled to that desire. However, laws exist to prevent individuals from pursuing vengeance and their own vision of justice. If they do anyway (if, for example, a victim kills a perpetrator) then they become perpetrators and pay the price, both legally and morally. Although we may feel empathy with such a victim seeking revenge, Nietzsche's warning—that when fighting monsters you must take care not to become one yourself—should be remembered. Killing by the state is wrong as well, potentially even worse than killing by an individual...

In my view, the death penalty is morally, socially and politically wrong. Morally, killing is wrong. Killing on behalf of a state is wrong as well. Some may believe that the death penalty is a just and moral punishment for the most serious of crimes; victims and their families are morally entitled to long for revenge. However, the social, political and economic costs of such retribution are, in my opinion, too high...

No national interest can justify human rights violations such as the death penalty or torture."

[Ivan Simonovic, PhD, LL.M](#)

Special Adviser to the United Nations Secretary-General on the Responsibility to Protect  
"Introduction: An Abolitionist's Perspective," in Moving Away from the Death Penalty  
ohchr.org  
Aug. 31, 2015

## 5. Irrevocable Mistakes

"Those in support of abolishing the death penalty point to the possibility of an innocent person being executed... The innocent can take solace in knowing that a unanimous jury of 12 citizens must render the death verdict after an exhaustive trial where the accused murderer is represented by two highly competent attorneys and overseen by an independent judge who ensures a fair trial.

Voters understand that the criminals on death row have been convicted of the most heinous crimes. Voters also realize that those left behind, grieving families throughout California and their loved ones, don't deserve anything less than justice.

Justice is a reformed, not eliminated death penalty."

[Michele Hanisee, JD](#)

Deputy District Attorney for the County of Los Angeles and President of the Association of District Attorneys  
"Justice Requires a Swift Death Penalty in California,"  
marinscope.com  
Sep. 27, 2016

"I want to get as many votes as I can to abolish this death penalty...

[O]ver 150 people in the last few years have been taken off death row because they were innocent. I know there are people who want to believe that no innocent person has ever been executed in this country. But when you have this many people conclusively proved by DNA evidence to be actually innocent, there is no escaping the conclusion that innocent people have been executed...

There are cases where prosecutors withheld exculpatory information. They knew that there were bogus pieces of evidence introduced. They knew that there were defendants who were coerced into entering a guilty plea to a crime they had not committed."

[Ernie Chambers, JD](#)

Nebraska State Senator  
Transcript of Nebraska legislature floor debate,  
legislature.ne.gov  
Apr. 16, 2015

## 6. Cost of Death vs. Life in Prison

"Much of the cost, indeed, much of the criticism of the death penalty, is attributed to 'decades of appeals.' It is unsurprising that the loudest complaints about death penalty delays come from death penalty opponents who have created them...

Claimed 'cost studies,' often performed by or at the behest of death penalty opponents, are frequently so incomplete as to be false and misleading. For example, they don't take into account the increase in the cost of life without parole cases if there were no death penalty. Criminal defendants who are facing the death penalty — which today must be pleaded by prosecutors up front — often want to make a deal by pleading guilty to first degree murder in exchange for a sentencing recommendation of life without parole. The existence of the death penalty as a possible sentence leads to guilty pleas that save the money spent on trials and limit the opportunity for appeals."

[Robert B. Evnen, JD](#)

Attorney and Co-founder of Nebraskans for the Death Penalty  
"Local View: Thoughts about the Death Penalty: Correcting the Record,"  
journalstar.com  
July 11, 2015

"One of the most common misperceptions about the death penalty is the notion that the death penalty saves money because executed defendants no longer have to be cared for at the state's expense. If the costs of the death penalty were to be measured at the time of an execution, that might indeed be true. But as every prosecutor, defense attorney, and judge knows, the costs of a capital case begin long before the sentence is carried out. Experienced prosecutors and defense attorneys must be assigned and begin a long period of investigation and pre-trial hearings. Jury selection, the trial itself, and initial appeals will consume years of time and enormous amounts of money before an execution is on the horizon...

[A]ll of the studies conclude that the death penalty system is far more expensive than an alternative system in which the maximum sentence is life in prison."

[Richard C. Dieter, MS, JD](#)

Former Executive Director of the Death Penalty Information Center  
"Testimony Submitted to the Nebraska Legislature,"  
deathpenaltyinfo.org  
Mar. 13, 2013

## 7. Race

"Death penalty opponents state it is inherently unfair and racially biased. The facts, I believe, are otherwise..."

The racial breakdown for those sentenced to death since 1977 is as follows: 48.6 percent white; 40.9 percent black; 8.9 percent Hispanic; and 1.6 percent other. The race of defendants executed in the U.S. since 1976 is 56 percent white; 35 percent black; 7 percent Hispanic; 2 percent other.

The reason for the discrepancy in the execution rate between blacks and whites is that juries deciding whether to impose the death penalty have concluded in more cases involving black defendants that there were extenuating circumstances militating in favor of a lesser penalty...

The American public still supports the death penalty, notwithstanding the hammering capital punishment receives each year... I'm glad the American public does."

[Edward Koch, LLB](#)

Former Mayor of New York City  
"Statistics Show Death Penalty Not Racist,"  
newsmax.com  
Sep. 27, 2011

"There is a particular, fundamental flaw in our justice system that other candidates appear to lack the commitment to address -- our failed reliance on the death penalty. This is a tragedy both because it is a racially biased punishment, and also ineffective in deterring crime..."

Our nation's legacy of slavery and racial injustice find continued offense in our use of the death penalty. Our death row population is more than 40% black -- nearly three times the proportion of the general population.

Reforming our criminal justice system to save and redeem more lives is not as simple as changing just one thing. But we should be able to admit that we must do more of what works to save lives, and we should stop doing things that do not work.

As a prosecutor, I saw that the death penalty's racial legacy could not be excused or explained away -- and that too many innocent lives were being taken by this profoundly flawed practice.

So I decided to fight for the death penalty's repeal."

[Martin O'Malley, JD](#)

Former Governor of Maryland  
"Why the Death Penalty Needs to Go,"  
cnn.com  
Nov. 6, 2015



## 8. Closure for Victims' Families

"Whatever your feelings are toward the death penalty, one thing most people will never know is the pain experienced when a family member, or in my case, family members are brutally tortured and murdered. In 1984, my mother, sister and two nephews were cold-heartedly shot to death by an 18-year-old gang member named Tiqueon Cox...

Tiqueon was sentenced to death by a jury of his peers and has been on death row for 30 years after exhausting all of his appeals at both the state and federal level... Cox, while on death row, attempted a violent takeover of the Super Max Adjustment Center at San Quentin with a goal to kill as many guards as possible.

I urge a no vote on Prop. 62 and yes on Prop. 66 to ensure the worst of the worst killers receive the strongest sentence. A yes on Prop. 66 brings closure to families while saving California taxpayers millions of dollars every year."

[Kermit Alexander](#)

Former NFL player and President of the NFL Players Association who lost his mother, sister and two nephews when they were murdered in 1984

"Letters to the Editor, Oct. 1,"  
sfchronicle.com  
Sep. 30, 2016

"To me, the death penalty also is something else — a sad reminder of how our justice system typically offers punishment instead of healing for the survivors of violent crime...

For a growing number of victims of violence, the thought of honoring our loved ones by killing another human being is not only counter-intuitive, but abhorrent. Perhaps more than others, I understand acutely that an execution would just visit pain on another family.

Moreover, the death penalty typically brings the opposite of what survivors of crime most need: accountability, healing and closure...

The death penalty also keeps us stuck in an angry stage of grief. The death penalty requires all of us, victims and spectators alike, to actively summon feelings of hatred and contempt in order to justify the murder of another human being. I have felt all of those things at various times towards my sister's killer...

While not all murder victim family members feel this way, many of us do. For all these reasons, I say to prosecutors who seek the death penalty: Not in my name."

[Tanya Coke, JD](#)

Senior Program Officer for Criminal Justice at the Ford Foundation and the sister of a murder victim

"Death Penalty Punishes Survivors Like Me: Column,"  
usatoday.com  
Aug. 28, 2016

## 9. Attorney Quality

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 and Criminology*  
Mar. 31, 2005

"Perhaps the most important factor in determining whether a defendant will receive the death penalty is the quality of the representation he or she is provided. Almost all defendants in capital cases cannot afford their own attorneys. In many cases, the appointed attorneys are overworked, underpaid, or lacking the trial experience required for death penalty cases. There have even been instances in which lawyers appointed to a death case were so inexperienced that they were completely unprepared for the sentencing phase of the trial. Other appointed attorneys have slept through parts of the trial, or arrived at the court under the influence of alcohol. The right to an attorney is a vital hallmark of the American judicial system. It is essential that the attorney be experienced in capital cases, be adequately compensated, and have access to the resources needed to fulfil his or her obligations to the client and the court."

[Death Penalty Information Center](#)

"Death Penalty Representation,"  
deathpenaltyinfo.org  
(accessed Sep. 29, 2016)

## 10. Physicians at Executions

"We expect physicians to offer comfort care to the dying, even if the treatment, like morphine to dampen end-stage cancer pain, will inevitably hasten death. These physicians are not killing their patients; they are comforting them in their final moments of life...

Death row inmates have certain parallels to dying patients. Death is coming. A physician can do nothing to change that. All that can be offered is professional care during the final moments of life. And that should be of comfort to the condemned...

The idea that physicians may participate in executions does not mean that they must do so. But it should be an option for those who believe that they have a duty to ease suffering and that this duty includes caring for those who will die at the hands of the state...

Physician involvement in lethal injection can make capital punishment less grotesque, more palatable, and even routine. But so long as the state uses the tools of the physician to kill its citizens, those who wish to step in to ensure that executions are, at the very least, competently handled should have the option to do so. Anything else is death penalty politics at the expense of the condemned. And no matter where you come out on capital punishment, no one should be sentenced to a botched execution."

[Kenneth F. Baum, MD, JD](#)

Partner at Goldman Ismail Tomaselli Brennan & Baum, LLP

[Julie Cantor, MD, JD](#)

Attorney Of Counsel at Goldman, Ismail, Tomaselli, Brennan & Baum, LLP

"Doctors Can Ease Suffering, Even in Executions,"

nytimes.com

Apr. 30, 2014

"No matter how one feels about capital punishment, it is disquieting for physicians to act as agents of the state in the assisting, supervising or contributing to a legally authorized execution. Physicians are fundamentally healers dedicated to preserving life when there is hope of doing so. The knowledge and skill of physicians must only be used for care, compassion and healing. To have the state mandate that physician skills be turned against a human being undermines a basic ethical foundation of medicine – first, do no harm.

The American Medical Association is troubled by continuous refusal of states to acknowledge the ethical obligations of physicians that strictly prohibit involvement in capital punishment. The AMA's policy is clear and unambiguous – requiring physicians to participate in executions violates their oath to protect lives and introduces deep ambiguity into the very definition of medical care.

Oklahoma and other states that continue to authorize lethal injections must honor the well-established principle of medical ethics that prohibits physician participation in capital punishment."

[Ardis Dee Hoven, MD](#)

Chair of the World Medical Association

"State Mandates for Physician Participation in Capital Punishment Violate Medical Ethics,"

ama-assn.org

May 2, 201