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## The Death Penalty

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The death penalty—executing criminals, usually murderers—is more controversial than imprisonment because it inflicts a more significant injury, perhaps *the* most serious injury, and its effects are irreversible.<sup>[1]</sup>

Some advocates of the death penalty, or *capital punishment*, argue that it is justified because murder is so bad that death is the only appropriate response. Others defend capital punishment on the grounds that it has important benefits for society.

This essay surveys both types of arguments and critical responses.

### 1. Deontological Justifications

*Deontological* defenses of capital punishment see execution as a morally “fitting” response to murderers’ horrible deeds.<sup>[2]</sup> There are two main varieties.

#### 1.1. Retributivist Justifications

The idea that punishments should be equal in severity to their crimes underlies *retributivist* defenses of capital punishment. Retributivists argue that execution is justified because it matches the badness or wrongness of murder—i.e., it is a *proportionate* punishment for murder.<sup>[3]</sup>

How is proportionality established? “Eye for an eye” principles suggest that execution is proportional to murder because it involves the same *kind* of act (killing).<sup>[4]</sup> More sophisticated approaches begin with the idea that life is uniquely valuable: it is the precondition of everything else good for someone. Because being murdered prevents the victim from having *any* valuable experiences, murderers are

punished too lightly if they can enjoy even the limited goods life in prison allows.<sup>[5]</sup>

#### 1.2. Purgative Justifications

Some argue for a duty to *purge* exceptionally evil offenders from society by executing them.<sup>[6]</sup> On this view, the continued existence of such offenders morally stains society: by expending resources on them, society takes on responsibility for their violation of human dignity. Execution dissolves that responsibility.<sup>[7]</sup>

### 2. Consequentialist Justifications

Many defend the death penalty *not* as a response to criminals for their past evil deeds, but by arguing that executing murderers produces better overall social consequences than not doing so.<sup>[8]</sup> Two consequences are frequently discussed.

#### 2.1. Deterrence

Common sense suggests that the fear of being executed prevents, or *deters*, potential murderers from killing. For *deterrent* justifications of capital punishment, the beneficial consequences of executions—innocent lives saved—outweigh the costs to the legal system and the executed person.<sup>[9]</sup>

#### 2.2. Incapacitation

Deterrence is about reducing murder rates overall. *Incapacitation* aims at preventing specific offenders from reoffending: some murderers might be so dangerous, only death ensures they won’t kill again.<sup>[10]</sup>

### 3. Criticisms of Deontological Justifications

Let’s consider some objections to the above arguments.

“Eye for an eye” retributivism seems to mandate immoral punishments like raping rapists or torturing torturers.

Proportionality-based retributivism also faces challenges. Capital punishment is sometimes judged to be *disproportionately harsh* because murderers suffer from prison time, from knowing their execution date, and from losing their lives, whereas murder victims only lose their lives.<sup>[11]</sup> More often, critics argue that life in prison, the longest sentence possible, is just as proportionate as execution and less morally controversial.<sup>[12]</sup>

### 4. Criticisms of Consequentialist Justifications

Deterrence theorists presume that execution is more “persuasive” than imprisonment. But researchers have found no evidence of execution’s *marginal* deterrent effect—i.e., a deterrent impact on murder rates *exceeding that of imprisonment*.<sup>[13]</sup> It is not enough for proponents to show that execution deters murder. Execution must deter murder *better* than imprisonment for its costs to be justified.<sup>[14]</sup>

An objection to both theories is that they permit punishing people for actions they didn’t perform.<sup>[15]</sup> Most believe that only those guilty of criminal acts should be punished. But deterrence theories could allow executing the innocent: if executing an innocent person would prevent future murders and authorities could keep her innocence secret, the benefits would plausibly outweigh the costs and deterrence theories would support killing her.<sup>[16]</sup> And incapacitation theories punish offenders for what they might do in the future, rather than any wrongs actually committed.<sup>[17]</sup>

## 5. General Objections to Capital Punishment

Death penalty *abolitionists* raise a number of general objections to capital punishment.

### 5.1. The Right to Life

Abolitionists argue that execution violates murderers’ inviolable right to life.

Advocates respond that offenders forfeit their right to life by committing murder. And assertions of an *absolute* right to life have the implausible consequence of prohibiting killing in justified self-defense.

### 5.2. Dignity

Dignity arguments against capital punishment focus on whatever basic human capacity (e.g., rationality) imparts *dignity*, that in virtue of which persons are owed respect. Actions that violate dignity, like torture, are widely condemned. Abolitionists argue that because execution destroys the capacity for dignity, it violates dignity and is thus immoral.

Advocates question whether eliminating the condition of some valuable feature actually offends against that feature: e.g., killing people annihilates their ability to practice religion, yet it’s odd to characterize execution as violating religious freedom.

## 5.3. Procedural Problems

Capital punishment is often rejected on account of flaws in the legal procedures leading to death sentences. Some reject the death penalty *in practice* for these procedural reasons, even though they believe it is justified *in theory*.

### 5.3.1. Arbitrariness

In the U.S., capital juries may sentence a convicted murderer to life in prison, instead of execution, for almost any reason whatsoever. There is little consistency in who is sentenced to death and who is sent to prison, and so the death penalty is condemned as being intolerably arbitrary.<sup>[18]</sup>

### 5.3.2. Discrimination

One pattern in capital sentencing is that those who murder white people are more likely to be sentenced to death than those who murder black people (blacks who murder whites are the most likely to face execution).<sup>[19]</sup> It can seem deeply unfair, if not racist, for the likelihood of a death sentence to depend on racial factors.<sup>[20]</sup>

Death penalty advocates respond by insisting that what an individual murderer deserves is unaffected by how other murderers are treated. They add that arbitrariness and discrimination are reasons to *reform*, not abolish, sentencing procedures.

### 5.3.3. Irrevocability

If someone is wrongly executed—either because she is innocent, or subject to procedural injustice at trial—there is no way to right the wrong. Some abolitionists argue that because a just state is obliged to undo its serious mistakes, it mustn’t impose irrevocable punishments like the death penalty.<sup>[21]</sup> The irrevocability of execution is, however, philosophically controversial.<sup>[22]</sup>

## 6. Conclusion

Retributivist justifications dominate contemporary politics, but have recently suffered some recent legislative defeats to proceduralist arguments.<sup>[23]</sup> Determining whether *practical* worries about capital punishment trump concerns about potentially treating murders too leniently is thus of great legal and moral significance.

## Notes

[1] For a general introduction to the debates about what justifies punishments in general and what makes particular punishments appropriate,

see [Theories of Punishment](#) by Travis Joseph Rodgers.

In the U.S., twenty-nine states, the federal government, and the military allow for the death penalty. State and federal death rows are populated solely by murderers and accomplices to murder. Some states and the federal government permit execution for treason and other crimes, but these laws have never been tested in court.

Fifty-five other countries permit capital punishment, while more than one hundred nations have abolished it or no longer use it. In countries with an active death penalty, death-eligible crimes include kidnapping, drug trafficking, treason, and sexual immorality. For detailed information on capital punishment by U.S. [state](#) and [country](#), see the [Death Penalty Information Center](#).

[2] Deontologists see murder as the only crime for which capital punishment is appropriate, because murder is uniquely bad, and so only murderers deserve death.

[3] Proportionality is sometimes called *commensurability*. Some retributivists claim that proportionate punishments are justified because they give wrongdoers what they deserve.

[4] The “eye for an eye” principle is called the *lex talionis*. The most famous *lex talionis* defense of the death penalty can be found in Immanuel Kant’s *Metaphysics of Morals*, vi: 332–333. For more on Kant’s view, see Yost (2010). For an introduction to Kant’s ethics see Deontology: Kantian Ethics by Andrew Chapman.

[5] Sorell (1993).

[6] The purgative rationale applies only to extraordinarily evil offenders, not to garden-variety first-degree murderers (Kramer 2011). That is, it applies only to people like Adam Lanza, the Sandy Hook Elementary School shooter, who in 2012 shot to death twenty six- and seven-year old students and six school staff.

[7] These purgative theorists regard executing evil offenders as morally *obligatory*, whereas retributivists typically consider it merely *permissible*.

[8] See Shane Gronholz’s Consequentialism for discussion of the ethical theory known as “consequentialism” that these arguments often depend on.

[9] John Stuart Mill defends capital punishment in these terms (1868).

[10] This rationale best applies to countries other than the U.S., which has invested in technologically advanced maximum-security prison divisions, where inmates are (inhumanely) restricted to solitary confinement and under constant supervision.

[11] Camus (1963).

[12] Bedau (2002); Finkelstein (2002). Critics of retributivism as a general theory of punishment often raise a related objection: it is hard to know how much punishment to assign to a given offense. Does armed robbery merit a year in jail? A year and a month? A year and one hundred days?

[13] State of the art research neither establishes nor disproves a marginal deterrent effect; see Nagin and Pepper (2012).

[14] Although the cost varies from state to state, the price for executing a murderer in the U.S. is always higher than keeping him in prison for life.

[15] Pure deterrence theories can be contrasted with two-level theories. Two-level theories of punishment endorse deterrence as the general justifying aim of punishment, but maintain that the determination of who and how much to punish is governed by retributive principles (see, e.g., Hart 1968). These views sidestep the innocence objection, but inherit the problems of deontological approaches.

[16] A related worry is that deterrence theories condone execution for crimes far less serious than murder: if executing one or two burglars would eliminate property crimes, deterrence rationales might allow such a punishment.

[17] See, e.g., Nadelhoffer, *et al.* (2012).

[18] See Justice Blackmun’s dissent in *Callins v. Collins*. For a more philosophical approach, see Nathanson (2001).

[19] Poor people are more likely to be executed than well-off people, though the research on this comparison is scant. But when we consider that litigating capital cases is difficult and time-consuming, and poor defendants must rely on overworked public defenders, many of whom have no experience with capital trials, the consequences seem clear. For harrowing stories of how bad lawyering leads to death sentences, see Bright (1994).

[20] Cholbi (2006).

[21] Yost (2019).

[22] Davis argues that authorities can compensate a wrongly executed person by advancing her interests or values (1984). For example, the state could send her son to college or donate five million dollars to her favorite charity. Davis concludes that compensation of this sort counts as revoking the wrongful execution.

[23] For example, in 2018 the Washington Supreme Court struck down the death penalty, citing its arbitrary and discriminatory nature.

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## For Further Reading

Hoag, Robert. "Capital Punishment." *Internet Encyclopedia of Philosophy*.

## Related Essays

[Theories of Punishment](#) by Travis Joseph Rodgers

[Deontology: Kantian Ethics](#) by Andrew Chapman

[Consequentialism](#) by Shane Gronholz

## About the Author

Benjamin S. Yost is Professor of Philosophy at Providence College and Adjunct Professor of Philosophy at Cornell University. His specializations include the philosophy of punishment and Kant's practical philosophy. His book *Against Capital Punishment* was published by Oxford University Press (2019), and he has a co-edited volume titled *The Movement for Black Lives: Philosophical Perspectives* forthcoming from Oxford. His papers appear in journals such as *Utilitas*, *Journal of the American Philosophical Association*, *Kantian Review*, and *Continental Philosophy Review*. <https://benjaminsyost.net>

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