

Should We Have the Death Penalty?

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ABSTRACT

This paper argues that the state should not use capital punishment even when some crimes appear, in abstract retributive terms, to deserve death. The analysis combines moral philosophy, legal history, wrongful-conviction evidence, empirical research on deterrence and victim-family outcomes, and policy evaluation. It finds that the death penalty cannot be justified as a public institution because it is irreversible in a system marked by error, racial disparity, forensic uncertainty, prolonged appeals, high cost, and contested value for victims' families. The paper therefore supports abolition and recommends replacing capital punishment with non-capital sentences, rigorous innocence review, humane confinement standards, and sustained support for victims' families.

INTRODUCTION

There is a particular silence that follows the worst kinds of news. It is the silence of a country reading the same headline at the same hour and reaching, almost without choosing, for the same punishment. Someone has done something so far outside ordinary moral vocabulary that the word arrives before the argument does: execute them.

This is the question the death penalty asks of every society that keeps it. It is not, in the end, only a question about the worst people. It is a question about what the state may do in the name of the public, what punishment is for, and whether the difference between justice and revenge remains visible when the crime is unbearable. This paper argues that although some crimes may appear to deserve death in the abstract, the state should not use capital punishment because wrongful conviction, bias, forensic uncertainty, and institutional fallibility make irreversible punishment morally indefensible.

The argument is not that the worst crimes are forgivable or that life imprisonment is a light sanction. The stronger position is narrower and more difficult: even when retributive anger is understandable, the public institution entrusted with punishment must be judged by its actual operation rather than by the pure logic of desert. Data alone cannot settle the moral question, but empirical evidence is essential for judging whether the death penalty can be administered fairly.

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METHODOLOGY AND SOURCE SELECTION

This paper uses normative legal-policy analysis rather than original field research. It evaluates the death penalty by combining philosophical argument, legal precedent, official datasets, peer-reviewed social science, and documented wrongful-conviction case studies. Sources were selected according to four criteria: relevance to capital punishment; preference for primary legal, governmental, or peer-reviewed sources where available; direct connection to a claim made in the paper; and inclusion of both retributive arguments and abolitionist objections. The evidence base therefore includes moral theory, United States Supreme Court doctrine, European human-rights law, Bureau of Justice Statistics data, Death Penalty Information Center innocence data, The Sentencing Project's life-imprisonment census, and empirical studies on deterrence and homicide-survivor outcomes.

The paper treats empirical evidence as a test of institutional capacity, not as a substitute for moral judgment. The central question is whether any modern legal system can identify, sentence, review, and execute people with enough accuracy and equality to justify an irreversible punishment.

Table 1. Selected empirical sources used in the analysis

Source / dataset	Relevant finding	Use in this paper
Death Penalty Information Center innocence data	At least 202 death-row exonerations since 1973	Shows that capital proceedings can produce wrongful death sentences.
Gross et al., Proceedings of the National Academy of Sciences	Estimated at least 4.1% false-conviction rate among death-sentenced defendants if they remained under sentence of death indefinitely	Supports the irreversibility argument with a statistical estimate.
The Sentencing Project, No End in Sight	55,945 people serving life without parole in the United States in 2020	Frames the real replacement punishment and its moral costs.
National Research Council, Deterrence and the Death Penalty	Existing studies are not informative on whether capital punishment changes homicide rates	Weakens deterrence as a policy justification.
Bureau of Justice Statistics, Capital Punishment, 2020	Prisoners under death sentence at year-end 2020 had spent an average of 19.4 years on death row	Explains why promised finality often becomes decades of litigation.

The Hunger for the Ultimate Punishment

The case for capital punishment is strongest in the cases hardest to look at. Timothy McVeigh detonated a truck bomb outside the Alfred P. Murrah Federal Building in Oklahoma City in April 1995, killing 168

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people. The federal government executed him in June 2001, the first federal execution after a long gap in federal practice (Federal Bureau of Investigation, n.d.; Death Penalty Information Center, n.d.-a). If anyone deserves the ultimate punishment, the argument runs, it is the person who commits an act of that scale.

The argument from desert is older than the modern state. Immanuel Kant, writing in 1797, argued that punishment is not primarily a tool of social engineering but a matter of moral accountability; for Kant, a murderer ought to die because the punishment should answer the moral weight of the act (Kant, 1797/1996). That intuition remains powerful. It is not merely bloodthirst. It is a claim that the victim's life mattered and that the community must not allow the killer to have the last sentence in the story.

But the same argument carries its own problem. Cesare Beccaria, writing in 1764, did not deny that some crimes are monstrous. He denied that the state, by killing in response, proves anything other than its capacity to imitate the violence it condemns with legal authority attached to it (Beccaria, 1764/1986). One tradition sees execution as moral proportion. The other sees it as vengeance administered through procedure. The act itself does not resolve the dispute.

Public outrage after grievous crimes is real, and a serious argument against capital punishment should not pretend otherwise. After the December 2012 Delhi gang rape, public anger in India became inseparable from demands for the harshest available punishment. Yet the Justice Verma Committee, convened after the case, did not recommend death as the answer for rape; it concluded that death should not be awarded for rape and recommended life imprisonment instead (Justice Verma Committee, 2013; PRS Legislative Research, 2013). The point is not that public grief is illegitimate. The point is that grief and legal design are not the same thing.

The death penalty is often defended as a form of closure for victims' families, but the empirical record complicates that claim. Armour and Umbreit's two-state study of homicide survivors compared families in Texas, a death-penalty state, with families in Minnesota, a life-without-parole state. Their study found better physical, psychological, and behavioral-health outcomes among survivors in the life-without-parole state, while death-penalty proceedings often prolonged the case and kept the offender publicly present for years (Armour & Umbreit, 2012).

This evidence does not invalidate every family member who wants an execution. It does, however, weaken the public claim that execution is what victims as a group need. Some families support capital punishment; others oppose it precisely because they have lived through the delays, hearings, publicity, and repeated reopening of the case. To say that the death penalty serves victims is therefore to choose, often silently, which victims are being heard.

The honest defender of capital punishment is right about one thing: there are crimes for which life imprisonment can feel insufficient. To ignore that emotional and moral reaction is to flatten the scale of the crime. But granting that some offenders may deserve death in an abstract retributive sense is not the same as granting that any actual courtroom can be trusted to identify them without error, sentence them without bias, and execute them without killing the wrong person.

The Problem of Being Wrong

The legal standard for conviction in criminal cases is proof beyond a reasonable doubt. The phrase sounds precise, but it has never meant certainty. It is a standard of proof, not a guarantee against error. For most punishments, this is tragic but not conceptually fatal: a person wrongly imprisoned can be released, compensated in some measure, and heard. A person wrongly executed cannot be restored.

Since 1973, at least 202 former death-row prisoners in the United States have been exonerated of all charges related to the wrongful convictions that placed them on death row (Death Penalty Information Center, n.d.-b). A 2014 study in the Proceedings of the National Academy of Sciences, led by Samuel Gross, estimated that if all death-sentenced defendants remained under sentence of death indefinitely, at least 4.1% would be exonerated; the authors described this as a conservative estimate of false convictions among death sentences (Gross et al., 2014).

That figure matters because death is different in kind, not only in degree. An error rate that might be tolerated in a reversible system becomes morally intolerable when the sanction cannot be undone. The death penalty does not merely risk punishing the innocent. It risks making the state itself the author of an irreversible injustice.

The problem is not limited to one category of mistake. False confessions, especially from juveniles and people with cognitive disabilities, can be produced by interrogation practices designed to obtain admissions rather than test truth. Eyewitness identifications, though compelling to juries, are vulnerable to suggestion and memory distortion. Forensic disciplines once presented as near-certain have been retracted, revised, or limited by later scientific review. These are not exotic failures. They are ordinary features of criminal process.

Anthony Ray Hinton spent thirty years on Alabama's death row after being convicted in a case built around the assertion that a revolver taken from his mother's home matched bullets from two murders. New examination later failed to support that match, and Hinton was released in 2015 (Equal Justice Initiative, n.d.). His case illustrates how expert testimony, poor defense resources, and the authority of forensic language can combine to create the appearance of certainty.

Henry McCollum and Leon Brown, half-brothers from North Carolina, were teenagers with intellectual disabilities when they were convicted in a case involving confessions and later DNA evidence that implicated another man. They were exonerated after three decades, much of that time under death sentences or severe imprisonment (Center for Death Penalty Litigation, 2015). Their case shows how procedural safeguards can exist on paper while failing vulnerable defendants in practice.

Cameron Todd Willingham's case is more difficult because he was executed. He was convicted in Texas for an arson-murder, but later reviews of the fire evidence concluded that the original arson investigation relied on indicators that modern fire science had seriously questioned or rejected. The Death Penalty Information Center lists Willingham among executed prisoners with substantial innocence concerns, and the Texas Forensic Science Commission's later work identified serious problems in the forensic basis of the case (Death Penalty Information Center, n.d.-c; Texas Forensic Science Commission, 2011).

The common feature of these cases is not that the system ignored procedure. Juries deliberated. Courts reviewed. Appeals were filed. The deeper point is that procedure did not prevent profound error. The death penalty asks society to trust not only juries and judges, but also investigators, forensic assumptions, defense funding, prosecutorial disclosure, appellate rules, and political actors. Any one of those can fail.

The danger of error increases when forensic evidence is overstated. In 2015, the Federal Bureau of Investigation acknowledged that testimony involving microscopic hair comparison contained erroneous statements in at least 90% of trial transcripts reviewed in an ongoing FBI, Department of Justice, Innocence Project, and NACDL review (Federal Bureau of Investigation, 2015).

Race also shapes who receives death. In *McCleskey v. Kemp*, the United States Supreme Court considered the Baldus study of Georgia capital sentencing. The study found a substantial race-of-victim effect, with defendants charged with killing white victims more likely to receive death sentences than defendants charged with killing Black victims, even after controlling for numerous variables (Baldus et al., 1990; *McCleskey v. Kemp*, 1987). The Court did not treat the statistical evidence as sufficient to overturn *McCleskey's* sentence, but the case remains central because it exposed the gap between documented disparity and constitutional remedy.

Together, forensic uncertainty and racial disparity show why the death penalty cannot be defended only at the level of individual desert. The institution that would execute the clearly guilty is the same institution that must sort uncertain evidence, unequal defense resources, race-of-victim disparities, and later-discredited forensic methods. There is no clean institutional mechanism that produces the first category without risking the second.

The Prison That Replaces the Gallows

Abolition is not a claim that the most serious offenders should be released. In contemporary American practice, the ordinary replacement for the death penalty is life imprisonment without parole. That punishment is severe. In 2020, The Sentencing Project recorded 55,945 people serving life without parole in the United States (Nellis, 2021).

That number matters because abolitionists must be honest about what replaces the gallows. Life without parole can become death by incarceration: a punishment in which the person is not executed, but is expected to die in prison. Pope Francis has criticized life imprisonment as a secret death penalty and linked opposition to execution with concern for prison conditions and human dignity (Francis, 2020). The moral case against execution should therefore not become an uncritical defense of hopeless imprisonment.

The comparison nevertheless does not collapse. Life imprisonment can be reviewed. It can be modified. It can be accompanied by innocence commissions, post-conviction DNA testing, conviction-integrity units, improved defense funding, and humane prison standards. Execution forecloses all of those corrections. The relevant replacement is not careless incarceration; it is non-capital punishment under strict review, with attention to both public safety and the possibility of institutional error.

Deterrence is one of the most common policy arguments for capital punishment, but the empirical foundation is weak. The National Research Council's 2012 review concluded that existing research was not informative about whether capital punishment decreases, increases, or has no effect on homicide rates, and recommended that such studies not be used to guide policy judgments about deterrence (National Research Council, 2012). A survey of leading criminologists by Radelet and Lacrook found that 88% did not believe the death penalty was an effective deterrent (Radelet & Lacrook, 2009).

Cost also weakens the policy case. Alarcon and Mitchell's study of California estimated that the state had spent more than \$4 billion on its death-penalty system since 1978, with only thirteen executions, and that death-row prisoners cost \$184 million more per year than comparable life-without-parole prisoners (Alarcon & Mitchell, 2012). The exact figures vary by jurisdiction, but the structural reason is consistent: capital trials, automatic appeals, habeas litigation, expert work, and death-row confinement make the sanction unusually expensive.

Nor does capital punishment reliably produce finality. Bureau of Justice Statistics data show that prisoners under sentence of death at year-end 2020 had spent an average of 19.4 years on death row (Bureau of Justice Statistics, 2021). A system defended as swift moral closure often becomes a decades-long administrative process. Those decades matter to defendants, victims' families, witnesses, courts, correctional staff, and the public budget.

Abolition is not a fringe legal position. Twenty-three United States states and the District of Columbia have abolished the death penalty (Death Penalty Information Center, n.d.-d). Internationally, the European Court of Human Rights held in *Soering v. United Kingdom* that extradition exposing a person to the death-row phenomenon could violate Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment (*Soering v. United Kingdom*, 1989).

The United Kingdom abolished the death penalty for murder through the Murder (Abolition of Death Penalty) Act 1965, later completing abolition for all offenses. The historical context included controversy over wrongful and disputed executions such as Timothy Evans and Derek Bentley (The Death Penalty Project, 2015). The British example does not prove that every society must follow the same path, but it demonstrates that a legal order can abandon execution without abandoning serious punishment.

LIMITATIONS

This paper has several limitations. First, it is not an original quantitative study; it relies on published datasets, legal sources, and secondary case analyses. Second, much of the empirical evidence is drawn from the United States, with India, Europe, Norway, and the United Kingdom used comparatively rather than as full independent case studies. Third, wrongful-conviction data are necessarily incomplete because undiscovered wrongful convictions cannot be fully counted. Fourth, deterrence research is difficult because homicide rates are affected by many factors beyond sentencing policy, including policing, firearms availability, economic conditions, and social trust. Finally, victims' families do not hold one uniform view; empirical averages cannot erase individual moral experience.

These limitations do not defeat the argument. They narrow it. The claim is not that every empirical question is settled. The claim is that the combination of irreversibility, documented error, unequal

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administration, weak deterrence evidence, high cost, and moral uncertainty makes the death penalty too dangerous for a fallible state to use.

CONCLUSION

The strongest case for capital punishment is the retributive case. Some crimes seem to demand more than confinement. The worst killers have done acts that cannot be made proportional by ordinary punishment. A serious abolitionist argument should admit that force rather than pretend it does not exist.

But the legal question is not whether a perfectly informed moral judge could ever conclude that death is deserved. The legal question is whether real institutions, using real police work, real forensic testimony, real prosecutors, real defense lawyers, real juries, and real appellate procedures, can be trusted with an irreversible power. The evidence says they cannot. Death-row exonerations, documented false-conviction risk, forensic overstatement, race-of-victim disparities, prolonged litigation, and uncertain deterrence all point to the same institutional limit.

A society that keeps an executioner has decided in advance that some of its errors will be paid for in lives. The argument for abolition is not that the worst killers are innocent or that their crimes are forgivable. It is that the state is not, and has never been, infallible. A just replacement for capital punishment should be life imprisonment or another severe non-capital sentence, combined with strong innocence review, access to forensic retesting, humane prison conditions, proportional sentencing oversight, and direct long-term support for victims' families. The serious answer is not to excuse violence. It is to stop the state from making irreversible mistakes in the name of justice.

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