Negative: Death Penalty - good

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

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Negative: Death Penalty - good

INHERENCY

1. Biden Moratorium

DP is on hold indefinitely while the Biden Justice Department reviews policies & procedures

Associated Press 2021. (journalists Michael Balsamo, Colleen Long and Michael Tarm) 1 July 2021 “Federal executions halted; Garland orders protocols reviewed” <https://apnews.com/article/joe-biden-executions-government-and-politics-9daf230ef2257b901cb0dfeeeb60be44> (accessed 6 July 2021)

The Justice Department is halting federal executions after a historic use of capital punishment by the Trump administration, which carried out 13 executions in six months. Attorney General Merrick Garland made the announcement Thursday night, saying he was imposing a moratorium on federal executions while the Justice Department conducts a review of its policies and procedures. He gave no timetable. “The Department of Justice must ensure that everyone in the federal criminal justice system is not only afforded the rights guaranteed by the Constitution and laws of the United States, but is also treated fairly and humanely,” Garland said. “That obligation has special force in capital cases.”

MINOR REPAIR

Reform application of the DP, don’t abolish it

Charles Stimson 2019 (law degree from the George Mason University School of Law, where he later taught as an Adjunct Professor of Law; senior legal fellow at The Heritage Foundation since 2007, Stimson became Manager of the National Security Law Program in Heritage’s Institute for Constitutional Government ) 20 Dec 2019 “The Death Penalty Is Appropriate” <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate> (accessed 5 July 2021)

But for the death penalty to be applied fairly, we must strive to make the criminal justice system work as it was intended. We should all agree that all defendants in capital cases should have competent and zealous lawyers representing them at all stages in the trial and appeals process. Any remnant of racism in the criminal justice system is wrong, and we should work to eliminate it. Nobody is in favor of racist prosecutors, bad judges or incompetent defense attorneys. If problems arise in particular cases, they should be corrected—and often are.

Justice requires we do DP fairly and remember the victims

Charles Stimson 2019 (law degree from the George Mason University School of Law, where he later taught as an Adjunct Professor of Law; senior legal fellow at The Heritage Foundation since 2007, Stimson became Manager of the National Security Law Program in Heritage’s Institute for Constitutional Government ) 20 Dec 2019 “The Death Penalty Is Appropriate” <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate> (accessed 5 July 2021)

Today, there are built-in checks and balances in the criminal justice system, from jury selection to the penalty phase to the appeals process that are designed to provide fair process for each defendant. The system is not perfect, and we must work to make it better for everyone involved. But we cannot forget the victims either.

HARMS / SIGNIFICANCE

1. DP justified in at least some cases

DP is justified by society’s right to retribution and the moral judgment that some crimes deserve it

Charles Stimson 2019 (law degree from the George Mason University School of Law, where he later taught as an Adjunct Professor of Law; senior legal fellow at The Heritage Foundation since 2007, Stimson became Manager of the National Security Law Program in Heritage’s Institute for Constitutional Government ) 20 Dec 2019 “The Death Penalty Is Appropriate” <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate> (accessed 5 July 2021)

The third penological goal, retribution, is an expression of society’s right to make a moral judgment by imposing a punishment on a wrongdoer befitting the crime he has committed. Twenty-nine states, and the people’s representatives in Congress have spoken loudly; the death penalty should be available for the worst of the worst.

2. A/T “Mistakes & Exonerations”

Mistakes in the DP don’t justify abolition any more than mistakes in non-capital cases justify abolishing prison sentences

Charles Stimson 2019 (law degree from the George Mason University School of Law, where he later taught as an Adjunct Professor of Law; senior legal fellow at The Heritage Foundation since 2007, Stimson became Manager of the National Security Law Program in Heritage’s Institute for Constitutional Government ) 20 Dec 2019 “The Death Penalty Is Appropriate” <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate> (accessed 5 July 2021)

Death penalty opponents, quite understandably, note that there have been a number of death row inmates who have been exonerated through groups like the Innocence Project. Sadly, mistakes can happen. Indeed mistakes can happen on both sides when it comes to the death penalty.  However, acknowledging that mistakes can occasionally occur in capital cases does not render the death penalty unjust any more than imposing a sentence of incarceration for a term of years is not rendered unjust simply because mistakes occasionally occur in non-capital cases.

Possibility of mistakes justifies reform of the DP, not abolition

[Michele Hanisee 2016 (JD](https://deathpenalty.procon.org/source-biographies/michele-hanisee/); Deputy District Attorney for the County of Los Angeles and President of the Association of District Attorneys) 27 Sept 2016 “Justice Requires a Swift Death Penalty in California” <https://deathpenalty.procon.org/top-10-pro-con-arguments/#5>

“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.”

Safeguards are reducing the risk of erroneous conviction, and loss of deterrence outweighs risk of wrongful execution

Dr. Gary Becker 2006 (PhD; won the Nobel Prize in 1992;Senior Fellow at the Hoover Institution; University Professor of Economics and Sociology at the Univ of Chicago) March 2006 ECONOMISTS VOICE “On the Economics of Capital Punishment” <http://athena.uwindsor.ca/users/m/mfc/41-240.nsf/831fc2c71873e46285256d6e006c367a/10ff8b04ff3a317885256d88005720f6/$FILE/Becker_CapitalPun.pdf> (accessed 6 July 2021)

Of course I am worried about the risk of executing innocent persons for murders committed by others. In any policy toward crime, including capital punishment, one has to compare errors of wrongful conviction with errors of failing to convict guilty persons. My support for capital punishment would weaken greatly if the rate of killing innocent persons were as large as that claimed by many. However, I believe along with Posner that the appeal process offers enormous protection not so much against wrongful conviction as against wrongful execution, so that there are very few, if any, documented cases of wrongful execution. And this process has been strengthened enormously with the development of DNA identification. However, lengthy appeals delay the execution of guilty murderers, and that can only lower the deterrent effect of capital punishment.

3. A/T “Mental illness / Diminished capacity”

Opponents of DP are splitting hairs and making excuses with “mental disability” theories. Example: federal death row inmate Cory Johnson, who murdered 7 people in 1992

Charles F. Lehman 2021 (*adjunct fellow at the Manhattan Institute, working primarily on the Policing and Public Safety Initiative*) 13 Jan 2021 “Cory Johnson Is Fit for Execution” <https://www.manhattan-institute.org/cory-johnson-fit-execution-opinion> (accessed 6 July 2021)

With the unadjusted test, Johnson scored a 77, just outside of the 70-to-75 threshold Johnson's advocates identify for intellectual disability. Adjusted, he scored a 73—within the range. Yet this is a strange rock upon which to erect a defense for Johnson. The IQ scores of [89 percent](https://www.hrw.org/reports/2001/ustat/ustat0301-01.htm) of intellectually disabled people fall below 70. The Atkins court [focused](https://www.law.cornell.edu/supct/pdf/00-8452P.ZO#page=3) on convicts whose IQ fell between a score of 50-55 and 70; Daryl Atkins had an IQ of 59. If Johnson is sufficiently intellectually disabled to avoid death, he is only just barely so, and only by strained definition. Johnson is far from the sort of person we picture when we imagine someone too dim-witted to be executed. Historically, Scalia noted, such people were profoundly or severely mentally disabled—they could not count to 20 or identify their own parents. That a newly revised definition of mental incompetence might be stretched to include Johnson hardly renders his death the moral outrage his defenders claim it to be. The testing argument also implies that if Johnson had committed his crime in 1978, he would have been eligible for execution. It is nothing about him that renders him incompetent, but merely the fact that others, on average, grew smarter. IQ scores are relative, but it is hard to see how a person's competency to be executed for a series of brutal murders ought to turn on this relativity, especially when the facts indicate his competency. After all, Johnson was plainly intellectually competent to co-lead an interstate crack cocaine smuggling ring, and competent enough to shoot and kill seven people over what the Department of Justice called "perceived slights or rivalry in the drug trade." He was competent to make a man put his head to his steering wheel before shooting him point blank, competent to kill not only a customer who refused to pay for crack in his own home, but also the customer's sister and a male acquaintance who had committed no offense other than being there. No incompetent child, Johnson is a serial killer by any definition of the term. He deserves to be treated as such. Against these crimes, the idea that Johnson is just barely too dumb to be put to death seems thin gruel. Yet it is the sort of argument routinely put forward by the capital defense bar and repeated in the press, eager as both are for any reason, no matter how hair-splitting, to forestall execution.

4. A/T “Racial bias”

Racial bias evidence from state DP practices doesn’t apply to the federal DP

Dr. [Stephen P. Klein](https://www.rand.org/pubs/authors/k/klein_stephen_p.html), Dr. [Richard A. Berk](https://www.rand.org/pubs/authors/b/berk_richard_a.html), [Laura J. Hickman](https://www.rand.org/pubs/authors/h/hickman_laura_j.html) 2006. (Klein – PhD; Senior Researcher at the Rand Corporation. Berk – PhD; professor of criminology, Univ. of Pennsylvania. Hickman – PhD; behavioral scientists at RAND Corp.) Race and the Decision to Seek the Death Penalty in Federal Cases (no month given in publication date of the article) <https://www.rand.org/pubs/technical_reports/TR389.html> (accessed 6 July 2021)

To our knowledge, only three studies have examined possible defendant- or victim-race effects in the prosecution of capital cases at the federal level. The U.S. Department of Justice (DOJ) conducted two of these studies (DOJ, 2000a, 2001). The third is David Algranati’s (2002) doctoral dissertation. There are several published studies of race effects in death-penalty decision-making at the state level. However, as discussed later in this chapter, the applicability of those studies to the federal system is questionable because of the often-substantial difference between the characteristics of state and federal cases.

RAND study finds: No racial bias in the federal DP. Prosecutors don’t seek DP arbitrarily nor on race.

**[Background to this evidence: They looked at all the federal homicide cases during the time period of the study. Some of the homicide cases were so terrible that anyone could see the prosecutor would ask for the DP. Some had so many mitigating circumstances that anyone could predict the prosecutor would not ask for the DP. It’s the ones in the middle – the borderline cases, judgment calls - where we worry that a biased prosecutor might ask for the DP for a black defendant, and let a white defendant get a life sentence. This was between 10-25% of the total federal homicide cases. But the study found the borderline cases didn’t show any evidence of racial bias. They found no “capriciousness” – no evidence of prosecutors making decisions on personal whim or bias. The cases were handled fairly.]**

Dr. [Stephen P. Klein](https://www.rand.org/pubs/authors/k/klein_stephen_p.html), Dr. [Richard A. Berk](https://www.rand.org/pubs/authors/b/berk_richard_a.html), [Laura J. Hickman](https://www.rand.org/pubs/authors/h/hickman_laura_j.html) 2006. (Klein – PhD; Senior Researcher at the Rand Corporation. Berk – PhD; professor of criminology, Univ. of Pennsylvania. Hickman – PhD; behavioral scientists at RAND Corp.) Race and the Decision to Seek the Death Penalty in Federal Cases (no month given in publication date of the article) <https://www.rand.org/pubs/technical_reports/TR389.html> (accessed 6 July 2021)

Finally, we found that, for the system as a whole, the USAO’s seek recommendation and the AG’s seek decision could be forecasted with considerable skill. In that sense, there is little evidence of capriciousness. However, even before looking at the data, it is clear that there are homicide cases for which prosecutor decisions could easily go either way. That is, were a second, independent seek decision made, it could well be different from the first decision. In an ideal world, such cases would be rare, with most cases being either clear death-penalty cases or clear incarceration cases. The empirical question, therefore, is what fraction of the federal cases falls in the middle. It is not apparent how to determine with our data how common the more ambiguous cases are. The index values of a seek recommendation or decision are only as good as the model. And while the model forecasts prosecutor decisions with high accuracy, there is no way to determine if the full distribution of the index values is credible. If one takes the range of 0.4 to 0.6 as representing cases whose outcomes are difficult to anticipate, one can find between about 10 percent and 25 percent that qualify. But even if these figures are taken seriously, capriciousness of this form was not associated with the race of the defendant or victim.

SOLVENCY

1. A/T “DP more expensive / saves money to abolish”

Money saved by life-without-parole happens because they plea bargain down from the DP

Robert B. Evnen 2015 (Attorney) 11 July 2015 “Local View: Thoughts about the Death Penalty: Correcting the Record,” <https://deathpenalty.procon.org/top-10-pro-con-arguments/#6> (accessed 6 July 2021)

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.”

DISADVANTAGES

1. Subverts democracy

Link: AFF cites “other countries have abolished” as a reason for the US to do so

Link & Impact: Those countries don’t respect democracy as we do. We keep DP because our representatives voted for it

Charles Stimson 2019 (law degree from the George Mason University School of Law, where he later taught as an Adjunct Professor of Law; senior legal fellow at The Heritage Foundation since 2007, Stimson became Manager of the National Security Law Program in Heritage’s Institute for Constitutional Government ) 20 Dec 2019 “The Death Penalty Is Appropriate” <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate> (accessed 5 July 2021)

Twenty-nine states, and the people’s representatives in Congress have spoken loudly; the death penalty should be available for the worst of the worst. Opponents also argue that since other countries have abolished the death penalty, we should also. But Thailand, India, Japan, Singapore, and many other countries retain the death penalty. Yes, many European countries have abolished the death penalty. But they are less democratic than we are, and its lawmakers are less accountable to the people in their countries.

2. Lost crime deterrence

Yang & Lester comprehensive “study of studies” over many years finds a deterrent effect from the DP

Dr. David B. Muhlhausen 2014 (PhD; Research Fellow in Empirical Policy Analysis at Heritage Foundation) How the Death Penalty Saves Lives 30 Sept 2014 <https://www.heritage.org/civil-society/commentary/how-the-death-penalty-saves-lives> (accessed 5 July 2021)

Studies of the death penalty have reached various conclusions about its effectiveness in deterring crime. But a 2008 comprehensive review of capital punishment research since 1975 by Drexel University economist Bijou Yang and psychologist David Lester of Richard Stockton College of New Jersey concluded that the majority of studies that track effects over many years and across states or counties find a deterrent effect.

Emory Study and Zimmerman Study find multiple lives saved annually for each DP execution, through murders deterred

Dr. David B. Muhlhausen 2014 (PhD; Research Fellow in Empirical Policy Analysis at Heritage Foundation) How the Death Penalty Saves Lives 30 Sept 2014 <https://www.heritage.org/civil-society/commentary/how-the-death-penalty-saves-lives> (accessed 5 July 2021)

Indeed, other recent investigations, using a variety of samples and statistical methods, consistently demonstrate a strong link between executions and reduced murder rates. For instance, a 2003 study by Emory University researchers of data from more than 3,000 counties from 1977 through 1996 found that each execution, on average, resulted in 18 fewer murders per county. In another examination, based on data from all 50 states from 1978 to 1997, Federal Communications Commission economist Paul Zimmerman demonstrated that each state execution deters an average of 14 murders annually.

Texas Study: Each execution prevents 2.5 additional murders from happening

Dr. David B. Muhlhausen 2014 (PhD; Research Fellow in Empirical Policy Analysis at Heritage Foundation) How the Death Penalty Saves Lives 30 Sept 2014 <https://www.heritage.org/civil-society/commentary/how-the-death-penalty-saves-lives> (accessed 5 July 2021)

A more recent study by Kenneth Land of Duke University and others concluded that, from 1994 through 2005, each execution in Texas was associated with "modest, short-term reductions" in homicides, a decrease of up to 2.5 murders. And in 2009, researchers found that adopting state laws allowing defendants in child murder cases to be eligible for the death penalty was associated with an almost 20 percent reduction in rates of these crimes.   
In short, capital punishment does, in fact, save lives.

Singapore Study: DP had “strong deterrent effect” comparing crime rates before and after it was started

Tham Yuen-C 2020 (journalist) 6 Oct 2020 THE STRAITS TIMES “Death penalty is a deterrent: Shanmugam” <https://www.straitstimes.com/politics/death-penalty-is-a-deterrent-shanmugam> (brackets added) (accessed 6 July 2021)

The death penalty is imposed here for intentional murder, drug trafficking, terrorist bombing and firearms use, among other crimes.

'STRONG DETERRENT EFFECT'

[Singapore Minister for Government Affairs & Law] Mr Shanmugam said there was some evidence that traffickers brought in smaller amounts of opium and cannabis after the mandatory death penalty was introduced in 1990, to avoid triggering the capital sentence. In the four-year period after 1990, the average net weight of opium trafficked fell by 66 per cent. The probability of traffickers choosing to bring in more than 500g of cannabis - the death penalty threshold - also fell by 15 to 19 percentage points. An MHA [Ministry of Home Affairs] study of convicted drug offenders also found that traffickers who were aware and mindful of the severe legal consequences had limited their trafficking behaviour. Among offenders who were not traffickers, 85.1 per cent felt the death penalty had a deterrent effect. Mr Shanmugam said: "This points to restrictive deterrence, as trafficking activities were intentionally limited when there was greater awareness of sanctions." He also cited figures on robberies with firearms and kidnappings as an indication of the "strong deterrent effect" of the death penalty.

If the studies are conflicting or imperfect, logic dictates that since most people want to live, DP deters crime

Dr. Gary Becker 2006 (PhD; won the Nobel Prize in 1992;Senior Fellow at the Hoover Institution; University Professor of Economics and Sociology at the Univ of Chicago) March 2006 ECONOMISTS VOICE “On the Economics of Capital Punishment” <http://athena.uwindsor.ca/users/m/mfc/41-240.nsf/831fc2c71873e46285256d6e006c367a/10ff8b04ff3a317885256d88005720f6/$FILE/Becker_CapitalPun.pdf> (accessed 6 July 2021) (italics, ellipses and “emphasis added” in the original)

“Of course, public policy on punishments cannot wait until the evidence is perfect. Even with the limited quantitative evidence available, there are good reasons to believe that capital punishment deters murders. Most people, and murderers in particular, fear death, especially when it follows swiftly and with considerable certainty following the commission of a murder. David Hume said in discussing suicide that “no man ever threw away life, while it was worth living. *For such is our natural horror of death…”* (emphasis added).”

Even with delays, DP has an important deterring effect

Dr. Gary Becker 2006 (PhD; won the Nobel Prize in 1992;Senior Fellow at the Hoover Institution; University Professor of Economics and Sociology at the Univ of Chicago) March 2006 ECONOMISTS VOICE “On the Economics of Capital Punishment” <http://athena.uwindsor.ca/users/m/mfc/41-240.nsf/831fc2c71873e46285256d6e006c367a/10ff8b04ff3a317885256d88005720f6/$FILE/Becker_CapitalPun.pdf> (accessed 6 July 2021) (brackets added)

As [federal judge Richard] Posner indicates, the deterrent effect of capital punishment would be greater if the delays on its implementation were much shortened, and if this punishment was more certain to be used in the appropriate cases. But I agree with Posner that capital punishment has an important deterrent effect even with the way the present system actually operates.

Deterrence creates a moral obligation that we MUST keep the DP

Cass R. Sunstein and Adrian Vermeule 2006 (Sunstein - Distinguished Service Professor of Jurisprudence, the Univ of Chicago Law School. Vermeule – Prof. of Law, Univ of Chicago) IS CAPITAL PUNISHMENT MORALLY REQUIRED? ACTS, OMISSIONS, AND LIFELIFE TRADEOFFS Jan 2006 STANFORD LAW REVIEW <https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/04/sunstein1.pdf> (the “eighteen murders” study is referring the Dezhbakhsh Study quoted in the card below)

The foundation for our argument is a significant body of recent evidence that capital punishment may well have a deterrent effect, possibly a quite powerful one. A leading national study suggests that each execution prevents some eighteen murders, on average. If the current evidence is even roughly correct—a question to which we shall return—then a refusal to impose capital punishment will effectively condemn numerous innocent people to death. States that choose life imprisonment, when they might choose capital punishment, are ensuring the deaths of a large number of innocent people. On moral grounds, a choice that effectively condemns large numbers of people to death seems objectionable to say the least. For those who are inclined to be skeptical of capital punishment for moral reasons—a group that includes one of the current authors—the task is to consider the possibility that the failure to impose capital punishment is, prima facie and all things considered, a serious moral wrong.

Dezhbakhsh Study: DP has a strong deterrent effect – about 18 murders prevented / execution

Dr. Hashem Dezhbakhsh, Dr. Paul Rubin and Dr. Joanna Shepherd 2003. (Dezhbakhsh – PhD; prof. of economics, Emory Univ. Rubin – PhD; prof. of economics, Emory Univ. Shepherd – PhD; professor at Emory Univ. ) AMERICAN LAW & ECONOMICS REVIEW Feb 2003 Does Capital Punishment Have a Deterrent Effect? New Evidence from Postmoratorium Panel Data

We examine the deterrent hypothesis by using county-level, postmoratorium panel data and a system of simultaneous equations. The procedure we employ overcomes common aggregation problems, eliminates the bias arising from unobserved heterogeneity, and provides evidence relevant for current conditions. Our results suggest that capital punishment has a strong deterrent effect; each execution results, on average, in eighteen fewer murders--with a margin of error of plus or minus ten. Tests show that results are not driven by tougher sentencing laws and are robust to many alternative specifications.

3. Degrades value of human life

Opposing DP devalues the life of the victims in order to exalt the value of the life of the murderer

[*Paul Rosenzweig*](https://www.heritage.org/about/staff/paulrosenzweig.cfm) *2003 (senior legal research fellow in the Center for Legal and Judicial Studies at The Heritage Foundation and adjunct professor of law at George Mason University) 23 Oct 2003 “*The Death Penalty, America, and the World” Oct 23rd, 2003 <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-america-and-the-world> (accessed 5 July 2021)

Some opponents of the death penalty, including many Europeans and other critics of the U.S., say no. They insist that in this day and age, the death penalty is a relic of the past, a barbaric instinct for vengeance no better than the crime it purports to punish. But such sentiments, however heartfelt, ignore the horrific nature of some criminal deeds. And to do that is, in many senses, to devalue human life itself, for it denies the value of the life of the innocent victim and exalts that of the murderer.

Opposing DP devalues the victims and perverts justice. Some crimes are so bad that DP is the only just outcome

[*Paul Rosenzweig*](https://www.heritage.org/about/staff/paulrosenzweig.cfm) *2003 (senior legal research fellow in the Center for Legal and Judicial Studies at The Heritage Foundation and adjunct professor of law at George Mason University) 23 Oct 2003 “*The Death Penalty, America, and the World” Oct 23rd, 2003 <https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-america-and-the-world> (accessed 5 July 2021)

Death-penalty opponents can argue for abolition only by elevating the "system" and devaluing the victim - and calls to ignore the victims show this unfortunate moral calculus at work. Simply put, there *is* a class of people whose crimes are so heinous, like Malvo and Muhammad, that the death penalty should apply. For those who oppose the death penalty the ultimate thought experiment is: "What would you do with Adolf Hitler?" Anyone who can answer that the principle of non-retribution requires society to permit Hitler to live demonstrates remarkably little regard for any moral calculus that reflects a serious consideration of what it means to be just.