



## CAPITAL PUNISHMENT

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### Ten Anti-Death Penalty Fallacies

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The case against capital punishment relies on myth, misinformation, and misplaced emotionalism.

Renewed attacks on the death penalty are likely as the trial of accused Twin Tower bombing accomplice Zacharias Moussaoui proceeds. Federal officials have charged Moussaoui with six crimes, four of which carry a potential death sentence. Amnesty International has already issued an "urgent action alert" to call on the world to condemn this "outdated punishment" in the United States. Therefore, there is no time like the present to review some of the misinformation and faulty reasoning of capital punishment opponents.

#### Fallacy #1: Racism

*"The death penalty is racist.... [T]he federal death penalty is used disproportionately against minorities, especially African Americans.... According to [Justice Department] figures, nearly 80 percent of inmates on federal death row are Black, Hispanic, or from another minority group." (Campaign to End the Death Penalty)*

*"The imposition of the death penalty is racially biased: Nearly 90% of persons executed were convicted of killing whites, although people of color make up over half of all homicide victims in the United States." (National Coalition to Abolish the Death Penalty)*

*"Death row in the U.S. has always held a disproportionately large population of people of color relative to the general population." (ACLU Briefing Paper on the Death Penalty)*

**Correction:** The claim that the death penalty unfairly impacts blacks and minorities is a deliberate fraud. The majority of those executed since 1976 have been white, even though black criminals commit a slim majority of murders. If the death penalty is racist, it is biased against white murderers and not blacks.

According to the U.S. Bureau of Justice Statistics, blacks committed 51.5% of murders between 1976 and 1999, while whites committed 46.5%. Yet even though blacks committed a majority of murders, the Bureau of Justice Statistics reports: "Since the death penalty was reinstated by the Supreme Court in 1976, *white* inmates have made up the majority of those under sentence of death." (Emphasis added.) Whites continued to comprise the majority on death row in the year 2000 (1,990 whites to 1,535 blacks and 68 others). In the year 2000, 49 of the 85 people actually put to death were whites.

So how can abolitionists claim that the death penalty unfairly punishes black people and other minorities? The statistics they cite are often technically accurate (though not always), but they don't mean what most people assume they mean. Abolitionists often start by analyzing the race of the *victims* rather than the murderers. Because most murders are intra-racial (white murderers mostly kill other whites and most black murderers kill other blacks), imposing the death penalty more frequently on white murderers means that killers of white people will more likely be executed. In essence, abolitionists playing the race card argue that black murder victims are not receiving justice because only the murderers of white people are punished with the death penalty. Death penalty proponents may consider this denying justice to black people.

New "hate crimes" laws are likely to worsen the hypocrisy. A "hate crimes" mentality translates into tougher sentences for interracial "hate crimes." Because white people are killed by black people 2.6 times more

frequently than black people are killed by white people, more killers of white people will be susceptible to receiving the death penalty than killers of black people.

### Fallacy #2: Cost

*"It costs more to execute a person than to keep him or her in prison for life. A 1993 California study argues that each death penalty case costs at least \$1.25 million more than a regular murder case and a sentence of life without the possibility of parole." (deathpenalty.org)*

**Correction:** While these figures are dubious at best, this argument deserves no response. Justice isn't up for sale to the lowest bidder.

### Fallacy #3: Innocence

*"A review of death penalty judgments over a 23-year period found a national error rate of 68%." (ACLU Death Penalty Campaign statement)*

*"[S]erious error -- error substantially undermining the reliability of capital verdicts -- has reached epidemic proportions throughout our death penalty system. More than two out of every three capital judgments reviewed by the courts during the 23-year study period were found to be seriously flawed." ("Broken System: Error Rates in Capital Cases, 1973-1995" by James Liebman et al.)*

**Correction:** The major media reported this highly publicized Columbia University study uncritically when it was first released in 2000. But Reg Brown from the Florida governor's office exploded it: "The 'study' defines 'error' to include any issue requiring further review by a lower court.... Using the authors' misleading definition, the 'study' does, however, conclude that 64 Florida post-conviction cases were rife with 'error' -- even though none of these Florida cases was ultimately resolved by a 'not guilty' verdict, a pardon or a dismissal of murder charges."

Brown noted that even political overturning of death penalty cases added to the figure. "[T]he nearly 40 death penalty convictions that were reversed by the California Supreme Court during the tenure of liberal activist Rose Bird are treated as 'error cases' when in fact ideological bias was arguably at work." Paul G. Cassell of the *Wall Street Journal* explained how the 68 percent figure is deceptive: "After reviewing 23 years of capital sentences, the study's authors (like other researchers) were unable to find a single case in which an innocent person was executed. Thus, the most important error rate -- the rate of mistaken executions -- is zero."

### Fallacy #4: DNA Evidence

*"Since the U.S. Supreme Court ruled in 1976 that capital punishment is not 'cruel and unusual,' 618 prisoners have been executed across the nation and about 80 have been exonerated.... Those disturbing odds beg the question: If the chances of executing an innocent person are so high, should we have capital punishment?" (ABCNews.com, March 6, 2000)*

**Correction:** While most of those released from death row have been released for political purposes or for technical reasons unrelated to guilt, it is true that a small number have been released because DNA evidence has proven innocence.

But even though ABC may not agree, its news story reinforces why the release of those on death row argues for, not against, the death penalty: "Widespread use of DNA testing and established standards for defense lawyers will virtually eliminate the argument that the death penalty cannot be fairly applied." If DNA evidence can really prove innocence, it can prove guilt as well, and society can be all the more certain that criminals sentenced to death will be guilty. The system as a whole is already working well. Since reinstating the death penalty in 1976, not one person executed in the United States has been later proven innocent as a result of DNA evidence.

### Fallacy #5: "Cruel and Unusual"

*"The death penalty: Always cruel, always inhuman, always degrading ... there can be no masking the inherent cruelty of the death penalty." (Amnesty International)*

*"Capital punishment, the ultimate denial of civil liberties, is a costly, irreversible and barbaric practice, the epitome of cruel and unusual punishment." (ACLU Briefing Paper on the Death Penalty)*

**Correction:** The death penalty is not unusual. All of the nations of the world have had the death penalty on the lawbooks throughout most of their recorded history, and the death penalty remains on the statute books of about half of the nations of the world. The death penalty was on the statute books of all the states of the U.S. when the Constitution was adopted. It is far more unusual to have no death penalty than to have a death penalty.

More importantly, the Founding Fathers who adopted the Bill of Rights banning "cruel and unusual punishment" had no problem with implementing the death penalty.

### **Fallacy #6: Pro-Life Consistency**

*"We see the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance in our culture. As we said in Confronting a Culture of Violence: 'We cannot teach that killing is wrong by killing.'" (U.S. Catholic Conference)*

**Correction:** If capital punishment teaches that it's permissible to kill, do prison sentences teach that it's permissible to hold someone against his will, and do fines teach that it's permissible to steal? In actuality, this fallacy confuses killing the innocent with punishing the guilty. To punish the guilty via the death penalty is not to condone the shedding of innocent blood. Just the opposite, in fact, since capital punishment sends a strong message that murder and other capital crimes will not be tolerated.

A related fallacy is that the pro-lifer who defends the right to life of an unborn baby in the mother's womb, but who does not defend the right to life of a convicted murderer on death row, is being morally inconsistent. But there is no inconsistency here: The unborn baby is innocent; the convicted murderer is not. It is the pro-abortion/anti-death penalty liberal who is morally inconsistent, since he supports putting to death only the innocent.

Pro-lifers deceive themselves if they imagine abolishing the death penalty will lead to abolishing abortion or a greater respect for life. To the contrary, nations with the death penalty generally restrict abortion more than nations who have abolished the death penalty. Islamic nations and African nations have the death penalty and also have the most prohibitive abortion laws. By contrast, European nations have abolished the death penalty and have liberal abortion laws. Do pro-lifers really want to follow the example of Europe?

### **Fallacy #7: The Company We Keep**

*"The USA is keeping company with notorious human rights abusers. The vast majority of countries in Western Europe, North America and South America -- more than 105 nations worldwide -- have abandoned capital punishment. The United States remains in the same company as Iraq, Iran, and China as one of the major advocates and users of capital punishment." (deathpenalty.org)*

**Correction:** The arbitrary use of capital punishment in totalitarian societies argues for ensuring that government never abuses this power; it does not argue against the principle of capital punishment, which, in a free society, is applied justly under the rule of law.

The reference to Europe is misleading. Capital punishment advocates are the ones keeping company with common Europeans, while abolitionists are merely keeping company with their elitist governments. Public opinion remains in favor of the death penalty for the most severe murderers throughout much of Europe, but elitist European governments have eliminated using capital punishment.

### **Fallacy #8: No Deterrence**

*"Capital Punishment does not deter crime. Scientific studies have consistently failed to demonstrate that executions deter people from committing crime." (Death Penalty Focus)*

**Correction:** Death penalty opponents love to assume that the principal purpose for capital punishment is deterrence, possibly realizing it is a perfect straw argument. Tangible proof of deterrence alone is not a valid reason for capital punishment (or any other form of punishment, for that matter), nor is it the main rationale

employed by astute death penalty advocates. As Christian writer C.S. Lewis observes, "[deterrence] in itself, would be a very wicked thing to do. On the classical theory of punishment it was of course justified on the ground that the man deserved it. Why, in Heaven's name, am I to be sacrificed to the good of society in this way? -- unless, of course, I deserve it." Inflicting a penalty merely to deter -- rather than to punish for deeds done -- is the very definition of cruelty. A purely deterrent penalty is one where a man is punished -- not for something that he did -- but for something someone else might do. Lewis explained the logical end of this argument: "If deterrence is all that matters, the execution of an innocent man, provided the public think him guilty, would be fully justified."

Men should be punished for their own crimes and not merely to deter others. That said, the death penalty undoubtedly does deter in some cases. For starters, those executed will no longer be around to commit any more crimes.

### **Fallacy #9: Christian Forgiveness and Vengeance**

*"The death penalty appears to oppose the spirit of the Gospel. In the Sermon on the Mount, Jesus urges us to replace the old law of 'an eye for an eye, a tooth for a tooth' with an attitude of charity, even toward those who would commit evil against us (Mw 5:38-48). When asked for his opinion in the case of the woman convicted of adultery, a crime that carried the penalty of death, he immediately pardoned the offender, while deploring the action, the sin (Jn 8). It is difficult for us to accommodate Jesus' injunction to forgive and love, to reconcile and heal, with the practices of executing criminals." (Statement on Capital Punishment by the Christian Council of Delaware and Maryland's Eastern Shore)*

*"In Leviticus, the Lord Commanded 'You shall not take vengeance or bear any grudge against the sons of your own people.' Here the Old Testament anticipated Jesus' teaching: 'You have heard it said, "an eye for an eye and a tooth for a tooth." But I say to you, do not resist one who is evil. But if anyone strikes you on the right cheek, turn to him the other one also.' Paul likewise proclaimed that vengeance is reserved for God and that Christians should feed their enemies, overcoming evil with good (Rom 12:19-21)." (Christianity Today 4-6-98)*

**Correction:** Punishment -- sometimes called retribution -- is the main reason for imposing the death penalty. The so-called "Christian" case against the death penalty can be summed up in one sentence: We cannot punish wrongdoers because punishment is always a form of vengeance.

A careful reading of the Bible does not back up the idea that punishment is synonymous with vengeance. The proportionate retribution required by the Old Testament generally replaced disproportionate vengeance. The same Old Testament that ordered "an eye for an eye and a tooth for a tooth" also prohibited vengeance. Evidently, the Hebrew scriptures view retribution and vengeance as two separate things.

In the New Testament, Jesus denied trying to overturn the Old Testament law. "Do not imagine that I have come to abolish the Law or the Prophets. I have come not to abolish them, but to complete them." (Matthew 5:17) The apostle Paul told the Romans that revenge and retribution are different things entirely. "Never try to get revenge: leave that, my dear friends, to the retribution. As Scripture says, vengeance is mine -- I will pay them back, the Lord promises." But then just a few verses later, Paul notes that "if you do wrong, then you may well be afraid; because it is not for nothing that the symbol of authority is the sword: it is there to serve God, too, as his avenger, to bring retribution to wrongdoers." (Romans 13:4) "Authority" refers to the state, which is empowered to put evildoers to the "sword." Paul asserts that the state's retribution of capital punishment is the retribution of God.

Clearly, the Christian Testament regards retribution by the state as not only different from vengeance, but rather as opposites. Vengeance is always personal and it is only rarely proportional to the offense. The Hebrew standard of justice for "an eye for an eye" replaced the hateful and very personal "head for an eye" standard of vengeance. Retribution is impersonal punishment by the state. And impersonal punishment is far more likely to be proportionate to the crime, meaning that it comes closer to the standard of "eye for an eye."

By forgiving the adulterous woman, Jesus was not making a statement against the death penalty. Jesus' enemies thought they had put Christ into a no-win situation by presenting the adulterous woman to him. If Christ ordered the woman's release, they could discredit Him for opposing the Law of Moses. But if He ordered her put to death, then Christ could be handed over to the Roman authorities for the crime of orchestrating a murder. Either way, His opponents figured, they had Him. Christ, of course, knew the hypocritical aims of His enemies had nothing to do with justice. The absence of the man who had committed adultery with the woman

"caught in the very act" must have been glaring. His rebuke to "let he who is without sin cast the first stone" was the perfect reply; it highlighted the hypocrisy. Christ's response was in no way a commentary about the death penalty.

### **Fallacy #10: No Mercy**

*"Capital punishment is society's final assertion that it will not forgive." (Martin Luther King)*

*"It is a hell of a thing, killing a man. You take away all he's got, and all he's ever gonna have." (Clint Eastwood's character in the movie Unforgiven)*

**Correction:** The person opposing the death penalty on these principles opposes it from worldly reasoning rather than spiritual reasoning. The above statement by Clint Eastwood's character in the movie *Unforgiven* typifies this surprisingly common "religious" objection to capital punishment. The underlying assumption is that this world and this life is all that exists. It suggests that only a hateful and vengeful person would seek to take everything from anyone.

But it is not true that most supporters of capital punishment seek to take everything from the murderers. Thomas Aquinas noted in his *Summa Theologica* that "if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good." The death penalty for murderers, the Catholic Church's most famous theologian argued, was a form of retributive punishment. He explained that this "punishment may be considered as a medicine, not only healing the past sin, but also preserving from future sin." Though life may be taken from a murderer, he will be better off with the punishment because "spiritual goods are of the greatest consequence, while temporal goods are least important."

Unfortunately, it doesn't seem to dawn on proponents employing this faulty reasoning that perhaps a just punishment in this world would best prepare a criminal for the next.

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