

"The greatest argument in favor of a moratorium on the death penalty rests in the overwhelming evidence that the system is consistently error bound and flawed."

The Death Penalty Should Be Abolished

John W. Whitehead

In the following viewpoint, John W. Whitehead argues that the death penalty system in America is flawed to a degree that warrants abolishing capital punishment. Whitehead claims that the evidence of errors in capital cases, the racial disparities in sentencing, the trial and execution costs of death penalty cases, the lack of evidence of a deterrent effect, and the large number of innocent people already killed support elimination of this criminal justice practice. Whitehead is an attorney, author, and founder of the Rutherford Institute, a nonprofit civil liberties and human rights organization.

As you read, consider the following questions:

1. According to Whitehead, what are the four countries that execute more people than the United States?

John W. Whitehead, "The Death Penalty Is a Miscarriage of Justice: It Should Be Abolished," Rutherford Institute, August 15, 2011. www.rutherford.org. Copyright © 2011 by the Rutherford Institute. All rights reserved. Reproduced by permission.

2. Black defendants are how much more likely than white defendants to be sentenced to death, according to the author?
3. Whitehead claims that since 1973, how many people have been released from death row after their innocence was brought to light?

There is nothing moral or just about the death penalty—certainly not the way it is implemented in America, and anyone who says otherwise is either deluding themselves or trying to get elected by appearing tough on crime. Take Troy Davis, for example, a 43-year-old black man from Georgia who has spent the past 20 years of his life on death row for allegedly shooting and killing a white off-duty police officer—a crime he very well may not have committed.

A Troubling Death Penalty Case

According to Amnesty International, the case against Davis consisted entirely of witness testimony, which contained inconsistencies even at the time of the trial. Since then, all but two of the state's non-police witnesses from the trial have recanted or contradicted their testimony. Many of these witnesses have stated in sworn affidavits that they were pressured or coerced by police into testifying or signing statements against Troy Davis. One of the two witnesses who has not recanted his testimony is Sylvester "Red" Coles—the principal alternative suspect, according to the defense, against whom there is new evidence implicating him as the gunman. Nine individuals have signed affidavits implicating Sylvester Coles.

Despite the fact that the case against Davis has largely fallen apart, the courts have not been inclined to grant Davis a new trial or evidentiary hearing. At a minimum, there's enough doubt as to Davis' guilt to commute his sentence. And even with prominent politicians and public officials such as former president Jimmy Carter, Pope Benedict XVI and [re-

tired South African archbishop] Desmond Tutu lobbying on his behalf, Davis continues to languish on death row at a Georgia prison.

Unfortunately, Davis' journey to death row and his impending execution are indicative of the many failings of the capital punishment system in America, a system sorely lacking in justice and riddled by racial prejudice and economic inequality, not to mention outright corruption. [Editor's note: Davis was executed on September 21, 2011.]

Countries and States with the Death Penalty

As it now stands, America's Western allies have abolished the death penalty, leaving America as one of only three industrialized democracies still carrying out capital punishment. Internationally, the U.S. ranks fifth in terms of the number of prisoners put to death, putting America in such ill-esteemed company as the regimes of China, Iran, North Korea, and Yemen. In fact, Mahmoud Ahmadinejad, the president of Iran, wasted no time in pointing out the hypocrisy of the U.S. executing Teresa Lewis [a woman convicted of arranging the murders of her husband and stepson] last year [2010] while criticizing Iran for stoning a woman convicted of adultery.

Within the U.S., 14 states and the District of Columbia have done away with the death penalty. Execution remains an option in 34 states and for federal inmates. Of the states still actively putting prisoners to death, Texas and Virginia rank highest for the number of executions carried out since capital punishment was reinstated in 1976. Indeed, Texas governor Rick Perry has presided over more than 200 executions during his time in office, more than any other governor in U.S. history, while Virginia governor Bob McDonnell has been an outspoken, staunch supporter of the death penalty. Contrast this with Illinois governor Pat Quinn who, on March 9, 2011, signed a law banning the death penalty, saying it was impos-



The Issue of Deterrence

The death penalty has no deterrent effect. Former claims that each execution deters a certain number of murders have been thoroughly discredited by social science research. People commit murders largely in the heat of passion, under the influence of alcohol or drugs, or because they are mentally ill, giving little or no thought to the possible consequences of their acts. The few murderers who plan their crimes beforehand—for example, professional executioners—intend and expect to avoid punishment altogether by not getting caught.

American Civil Liberties Union (ACLU), "The Death Penalty: Questions and Answers," September 2011. www.aclu.org.

sible to fix a system that had wrongly condemned at least 20 innocent men to death (138 death row inmates have had their convictions overturned since the death penalty was reinstated in 1976). New York, New Jersey and New Mexico have also done away with capital punishment in the past two years.

Evidence of a Flawed System

Thus far, the greatest argument in favor of a moratorium on the death penalty rests in the overwhelming evidence that the system is consistently error bound and flawed. In a Columbia University study on 5,760 capital cases, the report found an overall rate of error of 68 percent. In other words, courts found serious reversible errors in nearly 7 out of 10 capital cases. The most common errors included egregiously incompetent defense lawyers, prosecutorial suppression of evidence and other misconduct, misinstruction of juries, and biased judges and juries. As U.S. Supreme Court justice Ruth Bader Ginsburg once observed, "I have yet to see a death case among

the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial. . . . People who are well represented at trial do not get the death penalty.”

In the Columbia University study, the team of legal analysts concluded that the death penalty system was “collapsing under the weight of its own mistakes. They reveal a system in which lives and public order are at stake, yet for decades has made more mistakes than we would tolerate in far less important activities. They reveal a system that is wasteful and broken and needs to be addressed.”

Disparities in Sentencing

The racial disparities in sentencing are well known. For example, there are 1,371 blacks on death row (42% of the total death row population) despite the fact that blacks only make up 12% of the U.S. population. Indeed, blacks are 40% more likely to be sentenced to death than a white defendant who has committed the same crime. Class and wealth are also a factor in who receives the death penalty. In fact, almost all death row inmates could not afford their own attorney at trial and there is a significant disparity in wealth between murderers who live and those who are executed.

Those who end up on death row are also often the products of extreme abuse or abject poverty. “In the US the overwhelming majority of those executed are psychotic, alcoholic, drug addicted or mentally unstable,” said George Ryan, former Illinois governor. “They frequently are raised in an impoverished and abusive environment. Seldom are people with money or prestige convicted of capital offenses, even more seldom are they executed.”

The Practical Considerations

Rejection of the death penalty arises from many practical considerations as well. Abolishing the death penalty would save

money to fund public works programs to reduce poverty and child abuse, or simply to reduce taxes and put more money in the pockets of Americans. The death penalty, however, costs the state a great deal of money. Some studies estimate that states spend 48% to 300% more prosecuting cases in which the death penalty is an option versus cases in which it is not. In North Carolina, it costs more than \$2 million to execute just *one* person. There are a myriad of ways to better utilize the money presently being spent on prosecuting, sentencing, and appealing death penalty cases.

As for the argument that the death penalty is a deterrent to future violent crimes, there is no convincing evidence to support that claim. Indeed, 67% of U.S. police chiefs do not believe that the death penalty significantly reduces the numbers of murders. One study determined that there was no appreciable difference in murder rates before and after states had either reinstated or abolished the death penalty. Due to the slow process and infrequent occurrence of death sentences being carried out throughout the United States, most regression analysis studies are unable to prove the efficacy of the death sentence. As Gregory Ruff, a police lieutenant in Kansas, noted, “I have never heard a murderer say they thought about the death penalty as consequence of their actions prior to committing their crimes.”

The Killing of Innocent People

Furthermore, the death penalty allows government officials, who are often corrupt or misinformed, to pursue an irreversible policy of killing with imperfect information. Consequently, police officers, prosecutors, juries, and judges have sent many innocent men to death row. Since 1973, 138 people have been released from death row after evidence of their innocence was brought to light, each person spending an average of 9.8 years in prison. That amounts to one in every ten prisoners condemned to die since 1976 being innocent. Yet

human nature and the law of averages decree that if more than 100 individuals have prevailed in proving their innocence, there must be many more who have not been able to do so. Whether through lack of resources, opportunity or time, these individuals go to their deaths innocent of the crimes for which they were charged.

One such person is Cameron Todd Willingham, accused, tried, and convicted of setting a fire that killed his three children in 1992. He was put on death row and executed in 2004. However, since his death there has been a rigorous investigation into the circumstances surrounding the fire that suggests Willingham was, in fact, innocent.

Even if most of those condemned to die prove to be guilty, if just one innocent person is wrongly executed, that is still one too many. No matter what our individual views on the death penalty, its application clearly deserves closer scrutiny. "Our capital system is haunted by the demon of error," Governor George Ryan once said, "error in determining guilt and error in determining who among the guilty deserves to die." The inconsistency and utter randomness of imposing the death penalty by any governmental body should give even the most hard-line death penalty advocate pause.

Merino, Criminal Justice: Opposing
Viewpoints, 2013.

VIEWPOINT
2

"The criminal process should not be abused to prevent the lawful imposition of the death penalty in appropriate capital cases."

The Death Penalty Should Not Be Abolished

David Muhlhausen

In the following viewpoint, David Muhlhausen argues that there is a sound justification for having the death penalty as an option within the criminal justice system. Muhlhausen claims that despite objections to the contrary, the death penalty in America is not racially discriminatory. He argues that both past and current research supports the view that allowing capital punishment saves lives by deterring would-be criminals. Thus, he concludes that Americans are justified in supporting the death penalty. Muhlhausen is a research fellow at the Heritage Foundation's Center for Data Analysis.

As you read, consider the following questions:

1. According to the author, Americans support the death penalty by what ratio?

David Muhlhausen, "The Death Penalty Deters Crime and Saves Lives," Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the Committee on the Judiciary, US Senate, 110th Congress, 1st Session, June 27, 2007, pp. 271-277.