

## Should Capital Punishment Be Abolished Scholarly Commons

We've asked dozens of people the following questions: "Justice: What are the arguments against capital punishment (death penalty)?" and "Should capital punishment be abolished? Why, or why not?." Here are the top answers. These answers were picked as being the most inspiring and interesting of all the given answers. Enjoy."

Europe is today the only region in the world where the death penalty has been almost completely abolished. In the Council of Europe's 45 member states, including the European Union's 15 member states and its 13 candidate countries, capital punishment is no longer applied. The Council of Europe believes that the death penalty has no place in democratic societies under any circumstances. This book reviews the long and sometimes tortuous path to abolition in Europe. It also addresses the tangible problems which countries face once the death penalty has been abolished, and related issues: the situation of murder victims' families and alternatives to capital punishment, particularly the choice of a substitute sentence. It also discusses abolition campaigns in Russia, the United States and Japan.

Refusing to eradicate the death penalty, the U.S. has attempted to reform and

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rationalize capital punishment through federal constitutional law. While execution chambers remain active in several states, Carol Steiker and Jordan Steiker argue that the fate of the American death penalty is likely to be sealed by this failed judicial experiment.

At the start of the twenty-first century, America is in the midst of a profound national reconsideration of the death penalty. There has been a dramatic decline in the number of people being sentenced to death as well as executed, exonerations have become common, and the number of states abolishing the death penalty is on the rise. The essays featured in *The Road to Abolition?* track this shift in attitudes toward capital punishment, and consider whether or not the death penalty will ever be abolished in America. The interdisciplinary group of experts gathered by Charles J. Ogletree Jr., and Austin Sarat ask and attempt to answer the hard questions that need to be addressed if the death penalty is to be abolished. Will the death penalty end only to be replaced with life in prison without parole? Will life without the possibility of parole become, in essence, the new death penalty? For abolitionists, might that be a pyrrhic victory? The contributors discuss how the death penalty might be abolished, with particular emphasis on the current debate over lethal injection as a case study on why and how the elimination of certain forms of execution might provide a model for the larger abolition of the death penalty.

In *Abolishing the Death Penalty: Why India Should Say No to Capital Punishment*,

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Gopalkrishna Gandhi asks fundamental questions about the ultimate legal punishment awarded to those accused of major crimes. Is taking another life a just punishment or an act as inhuman as the crime that triggered it? Does having capital punishment in the law books deter crime? His conclusions are unequivocal: Cruel in its operation, ineffectual as deterrence, unequal in its application in an uneven society, liable like any punishment to be in error but incorrigibly so, these grievous flaws that are intrinsic to the death penalty are compounded by yet another-it leaves the need for retribution (cited as its primary 'good') unrequited and simply makes society more bloodthirsty. Examining capital punishment around the world from the time of Socrates onwards, the author delves into how the penalty was applied in India during the times of Asoka, Sikandar Lodi, Krishnadevaraya, the Peshwas and the British Raj, and how it works today. Of the 195 countries in the world, 140 are abolitionist and no longer have the death penalty in law or in practice. Abolition-minded in theory, India is retentionist in practice-the death penalty can be handed down even for non-homicidal crimes. But even though it is only meant to be handed down in the 'rarest of the rare' cases, there are currently 385 convicts on death row. Through in-depth analysis, persuasive argument and the marshalling of the considered opinion of jurists, human rights activists, scholars and criminologists among others, this book shows exactly why the death penalty should be abolished with immediate effect in India

Numerous people face legal execution in the United States. Their presence in death

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rows throughout the country refutes a basic premise of our judicial system, for the use of capital punishment denies the existence of universal rehabilitation. There is another paradox-juries continue to sentence men and women to death; yet few ever get executed. Whether one is for or against capital punishment, one cannot approach the issue without deep emotion and conviction. James McCafferty provides an even-tempered, eminently reasonable discussion of the issue with balanced commentary from both sides of the debate. McCafferty presents not only empirical data and analyses of the nature of capital punishment, but provides perspectives on the larger issues of our approach to lawbreakers and their rehabilitation. The claims of both those who want to retain capital punishment and those who want to abolish it are included. The arguments consider whether capital punishment deters crime as well as the question of discrimination. A wealth of references, an extremely useful bibliography, and a final chapter delineating the legal issues facing the courts at the time the book was originally published in 1972 complete this unusually incisive and balanced study. Capital Punishment remains an important volume in the field of criminal justice. It seeks to educate rather than propagandize. It is intended for use in numerous courses in sociology and political science as well as in law schools. Anyone wishing to gain a perspective on what remains a controversial issue more than thirty years later would be well advised to study this work by world-class scholars.

What are the critical factors that determine whether a country replaces, retains or restores the

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death penalty? Why do some countries maintain the death penalty in theory but in reality rarely invoke it? By asking these questions, the editors hope to isolate the core issues that influence the formulation of legislation so that they can be incorporated into strategies for advising governments considering changes to their policy on capital punishment. They also seek to redress the imbalance in research, which tends to focus almost exclusively on the experience of the USA, by covering a range of countries such as South Korea, Lithuania, Japan and the British Caribbean Commonwealth. This valuable contribution to the debates around capital punishment contains contributions from leading academics, campaigners and legal practitioners and will be an important resource for students, academics, NGOs, policy makers, lawyers and jurists.

During the Dark Ages and the Renaissance, Europe's monarchs often resorted to torture and executions. The pain inflicted by instruments of torture—from the thumbscrew and the rack to the Inquisition's tools of torment—was eclipsed only by horrific methods of execution, from breaking on the wheel and crucifixion to drawing and quartering and burning at the stake. The English 'Bloody Code' made more than 200 crimes punishable by death, and judicial torture expressly authorized by law and used to extract confessions permeated continental European legal systems. Judges regularly imposed death sentences and other harsh corporal punishments, from the stocks and the pillory, to branding and ear cropping, to lashes at public whipping posts. In the Enlightenment, jurists and writers questioned the efficacy of torture and capital punishment. In 1764, the Italian philosopher Cesare Beccaria—the father of the world's anti-death penalty movement—condemned both practices. And Montesquieu, like Beccaria and others, concluded that any punishment that goes beyond absolute necessity is tyrannical.

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Traditionally, torture and executions have been viewed in separate legal silos, with countries renouncing acts of torture while simultaneously using capital punishment. The UN Convention Against Torture strictly prohibits physical or psychological torture; not even war or threat of war can be invoked to justify it. But under the guise of “lawful sanctions,” some countries continue to carry out executions even though they bear the indicia of torture. In *The Death Penalty as Torture*, Prof. John Bessler argues that death sentences and executions are medieval relics. In a world in which “mock” or simulated executions, as well as a host of other non-lethal acts, are already considered to be torturous, he contends that death sentences and executions should be classified under the rubric of torture. Unlike in the Middle Ages, penitentiaries—one of the products of the Enlightenment—now exist throughout the globe to house violent offenders. With the rise of life without parole sentences, and with more than four of five nations no longer using executions, *The Death Penalty as Torture* calls for the recognition of a peremptory, international law norm against the death penalty’s use.

Powerful, wry essays offering modern takes on a primitive practice, from one of our most widely read death penalty abolitionists As Ruth Bader Ginsburg has noted, people who are well represented at trial rarely get the death penalty. But as Marc Bookman shows in a dozen brilliant essays, the problems with capital punishment run far deeper than just bad representation. Exploring prosecutorial misconduct, racist judges and jurors, drunken lawyering, and executing the innocent and the mentally ill, these essays demonstrate that precious few people on trial for their lives get the fair trial the Constitution demands. Today, death penalty cases continue to capture the hearts, minds, and eblasts of progressives of all stripes—including the rich and famous (see Kim Kardashian’s advocacy)—but few people with

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firsthand knowledge of America's "injustice system" have the literary chops to bring death penalty stories to life. Enter Marc Bookman. With a voice that is both literary and journalistic, the veteran capital defense lawyer and seven-time Best American Essays "notable" author exposes the dark absurdities and fatal inanities that undermine the logic of the death penalty wherever it still exists. In essays that cover seemingly "ordinary" capital cases over the last thirty years, Bookman shows how violent crime brings out our worst human instincts—revenge, fear, retribution, and prejudice. Combining these emotions with the criminal legal system's weaknesses—purposely ineffective, arbitrary, or widely infected with racism and misogyny—is a recipe for injustice. Bookman has been charming and educating readers in the pages of *The Atlantic*, *Mother Jones*, and *Slate* for years. His wit and wisdom are now collected and preserved in *A Descending Spiral*.

Committee Serial No. 21. Includes, "Man's Right To Life" by Ruth Leigh, Commission on Social Action of Reform Judaism, 1959 (p. 57-120).

*Comparative Capital Punishment* offers a set of in-depth, critical and comparative contributions addressing death practices around the world. Despite the dramatic decline of the death penalty in the last half of the twentieth century, capital punishment remains in force in a substantial number of countries around the globe. This research handbook explores both the forces behind the stunning recent rejection of the death penalty, as well as the changing shape of capital practices where it is retained. The expert contributors address the social, political, economic, and cultural influences on both retention and abolition of the death penalty and consider the distinctive possibilities and pathways to worldwide abolition.

A landmark dissenting opinion arguing against the death penalty Does the death penalty

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violate the Constitution? In *Against the Death Penalty*, Justice Stephen G. Breyer argues that it does: that it is carried out unfairly and inconsistently, and thus violates the ban on "cruel and unusual punishments" specified by the Eighth Amendment to the Constitution. "Today's administration of the death penalty," Breyer writes, "involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use." This volume contains Breyer's dissent in the case of *Glossip v. Gross*, which involved an unsuccessful challenge to Oklahoma's use of a lethal-injection drug because it might cause severe pain. Justice Breyer's legal citations have been edited to make them understandable to a general audience, but the text retains the full force of his powerful argument that the time has come for the Supreme Court to revisit the constitutionality of the death penalty. Breyer was joined in his dissent from the bench by Justice Ruth Bader Ginsburg. Their passionate argument has been cited by many legal experts — including fellow Justice Antonin Scalia — as signaling an eventual Court ruling striking down the death penalty. A similar dissent in 1963 by Breyer's mentor, Justice Arthur J. Goldberg, helped set the stage for a later ruling, imposing what turned out to be a four-year moratorium on executions.

This collection asks questions about the received wisdom of the debate about capital punishment. Woven through the book, questions are asked of, and remedies proposed for, a raft of issues identified as having been overlooked in the traditional discourse. It provides a long overdue review of the disparate groups and strategies that lay claim to abolitionism. The authors argue that capital litigators should use their skills challenging the abuses not just of

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process, but of the conditions in which the condemned await their fate, namely prison conditions, education, leisure, visits, medical services, etc. In the aftermath of successful constitutional challenges it is the beneficiaries (arguably those who are considered successes, having been 'saved' from the death penalty and now serving living death penalties of one sort or another) who are suffering the cruel and inhumane alternative. Part I of the book offers a selection of diverse, nuanced examinations of death penalty phenomena, scrutinizing complexities frequently omitted from the narrative of academics and activists. It offers a challenging and comprehensive analysis of issues critical to the abolition debate. Part II offers examinations of countries usually absent from academic analysis to provide an understanding of the status of the debate locally, with opportunities for wider application.

From 1965 until 1980, there was a virtual moratorium on executions for capital offenses in the United States. This was due primarily to protracted legal proceedings challenging the death penalty on constitutional grounds. After much Sturm und Drang, the Supreme Court of the United States, by a divided vote, finally decided that "the death penalty does not invariably violate the Cruel and Unusual Punishment Clause of the Eighth Amendment." The Court's decisions, however, do not moot the controversy about the death penalty or render this excellent book irrelevant. The ball is now in the court of the Legislature and the Executive. Legislatures, federal and state, can impose or abolish the death penalty, within the guidelines prescribed by the Supreme Court. A Chief Executive can commute a death sentence. And even the Supreme Court can change its mind, as it has done on many occasions and did, with respect to various aspects of the death penalty itself, durlog the moratorium period. Also, the people can change their minds. Some time ago, a majority, according to reliable polls, favored

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abolition. Today, a substantial majority favors imposition of the death penalty. The pendulum can swing again, as it has done in the past.

The fifth edition of this highly praised study charts and explains the progress that continues to be made towards the goal of worldwide abolition of the death penalty. The majority of nations have now abolished the death penalty and the number of executions has dropped in almost all countries where abolition has not yet taken place. Emphasizing the impact of international human rights principles and evidence of abuse, the authors examine how this has fueled challenges to the death penalty and they analyze and appraise the likely obstacles, political and cultural, to further abolition. They discuss the cruel realities of the death penalty and the failure of international standards always to ensure fair trials and to avoid arbitrariness, discrimination and conviction of the innocent: all violations of the right to life. They provide further evidence of the lack of a general deterrent effect; shed new light on the influence and limits of public opinion; and argue that substituting for the death penalty life imprisonment without parole raises many similar human rights concerns. This edition provides a strong intellectual and evidential basis for regarding capital punishment as undeniably cruel, inhuman and degrading. Widely relied upon and fully updated to reflect the current state of affairs worldwide, this is an invaluable resource for all those who study the death penalty and work towards its removal as an international goal.

Does the possibility of being put to death deter crime? Do the methods of execution matter? Is it possible for a state-ordered execution to be botched? Are innocent people ever sent to death row? Are there racial biases or other prejudices associated with the death penalty? This book examines the history of capital punishment in the United States; describes the significant

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issues, events, and cases; and addresses the controversies and legal issues surrounding capital punishment, making this important topic accessible to a wide range of readers. The book presents both sides of the argument on whether capital punishment should continue or be abolished, looking at the evidence regarding whether it is necessary for carrying out justice and deterring violent crime or whether the practice is inhumane, ineffective, biased in its application, and costly. Readers will gain insights into how capital punishment should be used, if at all; whether effective safeguards are in place to ensure that only the guilty receive the death penalty; what crimes deserve this sentence; whether juveniles or individuals with diminished mental capacity should ever be sentenced to death; potentially viable alternatives to the death penalty; and the hidden costs involved in our capital punishment system that make it so expensive. The book also contains primary documents relevant to capital punishment, such as excerpts from documents like the U.S. Constitution, the Hittite case laws, and the Code of Hammurabi, as well as descriptions of and excerpts from key cases decided by the U.S. Supreme Court.

The 4th edition of this authoritative study of the death penalty, now written jointly with Carolyn Hoyle, brings up-to-date developments in the movement to abolish the death penalty worldwide. It draws on Roger Hood's experience as consultant to the United Nations for the UN Secretary General's five-yearly surveys of capital punishment and on the latest information from non-governmental organizations and the academic literature. Not only have many more countries abolished capital punishment but, even amongst those that retain it, the majority have been carrying out fewer executions. Legal challenges to the mandatory capital punishment have been successful, as has the pressure to abolish the death penalty for those

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who commit a capital crime when under the age of 18. This edition has more to say about the prospects that China will restrict and control the number of executions 'on the road to abolition'. Yet, despite such advances, this book reveals many human rights abuses where the death penalty still exists. In some countries a wide range of crimes are still subject to capital punishment, and the authorities too often fail to meet the safeguards embodied in international human rights treaties to safeguard those facing the death penalty. There is evidence of police abuse, unfair trials, lack of access to competent defence counsel, excessive periods of time spent on in horrible conditions on 'death row', and public, painful forms of execution. The authors engage with the latest debates on the realities of capital punishment, especially its justification as a uniquely effective deterrent; whether it can ever be administered equitably, without discrimination or error; and what influence relatives of victims should have in sentencing and on the public debate. For the first time, it also discussing the problem of devising an alternative to capital punishment, especially life imprisonment without the possibility of parole.

In this volume, Swedish human rights activist and political figure, Hans Göran Franck, examines the administration of the death penalty from a historical perspective. The author's opinions are based on his lifelong work and devotion to abolishing the 'barbaric punishment'. Building upon previously unpublished material and considerable detail drawn from Franck's personal experiences, it focuses on both the progressive developments within European countries and institutions over several decades, and the frustratingly retrograde situation that prevails in the United States. The author dedicated this book to those facing a sentence of death. During the course of his work, the author traveled to numerous countries and met many

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condemned men and women. Publication of this important volume, which comes a few years after Hans Göran Franck's untimely passing, coincides with a major development to which he contributed, the adoption of Protocol No. 13 to the European Convention on Human Rights, which abolishes capital punishment in both wartime and peacetime. William A. Schabas a law professor who specializes in the subject of capital punishment, has ensured that the manuscript is up to date, and contributed the introductory chapter.

In 1976, the US Supreme Court ruled in *Gregg v. Georgia* that the death penalty was constitutional if it complied with certain specific provisions designed to ensure that it was reserved for the 'worst of the worst.' The same court had rejected the death penalty just four years before in the *Furman* decision because it found that the penalty had been applied in a capricious and arbitrary manner. The 1976 decision ushered in the 'modern' period of the US death penalty, setting the country on a course to execute over 1,400 inmates in the ensuing years, with over 8,000 individuals currently sentenced to die. Now, forty years after the decision, the eminent political scientist Frank Baumgartner along with a team of younger scholars (Marty Davidson, Kaneesha Johnson, Arvind Krishnamurthy, and Colin Wilson) have collaborated to assess the empirical record and provide a definitive account of how the death penalty has been implemented. Each chapter addresses a precise empirical question and provides evidence, not opinion, about whether how the modern death penalty has functioned. They decided to write the book after Justice Breyer issued a dissent in a 2015 death penalty case in which he asked for a full briefing on the constitutionality of the death penalty. In particular, they assess the extent to which the modern death penalty has met the aspirations of *Gregg* or continues to suffer from the flaws that caused its rejection in *Furman*. To answer this

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question, they provide the most comprehensive statistical account yet of the workings of the capital punishment system. Authoritative and pithy, the book is intended for both students in a wide variety of fields, researchers studying the topic, and--not least--the Supreme Court itself. Why does the United States, alone among Western democracies, still have the death penalty? It's not a new question, but David Garland provides fresh answers from a multilayered analysis...The title hints at the most provocative part of Garland's answer. In American history, the "peculiar institution" is slavery. Anyone who thinks its vestiges were wiped out by the Emancipation Proclamation or civil rights laws should read this book and think again. It has long been acknowledged that the death penalty in the United States of America has been shaped by the country's history of slavery and racial violence, but this book considers the lesser-explored relationship between the two practices' respective abolitionist movements. The book explains how the historical and conceptual links between slavery and capital punishment have both helped and hindered efforts to end capital punishment. The comparative study also sheds light on the nature of such efforts, and offers lessons for how death penalty abolitionism should proceed in future. Using the history of slavery and abolition, it is argued that anti-death penalty efforts should be premised on the ideologies of the radical slavery abolitionists.

The increase in the number of countries that have abolished the death penalty since the end of the Second World War shows a steady trend towards worldwide abolition of capital punishment. This book focuses on the political and legal issues raised by the death penalty in "countries in transition", understood as countries that have transitioned or are transitioning from conflict to peace, or from authoritarianism to democracy. In such countries, the politics

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that surround retaining or abolishing the death penalty are embedded in complex state-building processes. In this context, Madoka Futamura and Nadia Bernaz bring together the work of leading researchers of international law, human rights, transitional justice, and international politics in order to explore the social, political and legal factors that shape decisions on the death penalty, whether this leads to its abolition, reinstatement or perpetuation. Covering a diverse range of transitional processes in Asia, Africa, Latin America, Europe, and the Middle East, *The Politics of the Death Penalty in Countries in Transition* offers a broad evaluation of countries whose death penalty policies have rarely been studied. The book would be useful to human rights researchers and international lawyers, in demonstrating how transition and transformation, 'provide the catalyst for several of interrelated developments of which one is the reduction and elimination of capital punishment'.

Many studies during the past few decades have sought to determine whether the death penalty has any deterrent effect on homicide rates. Researchers have reached widely varying, even contradictory, conclusions. Some studies have concluded that the threat of capital punishment deters murders, saving large numbers of lives; other studies have concluded that executions actually increase homicides; still others, that executions have no effect on murder rates. Commentary among researchers, advocates, and policymakers on the scientific validity of the findings has sometimes been acrimonious. Against this backdrop, the National Research Council report *Deterrence and the Death Penalty* assesses whether the available evidence provides a scientific basis for answering questions of if and how the death penalty affects homicide rates. This new report from the Committee on Law and Justice concludes that research to date on the effect of capital punishment on homicide rates is not useful in

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determining whether the death penalty increases, decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of noncapital punishments on homicide rates. The report recommends new avenues of research that may provide broader insight into any deterrent effects from both capital and noncapital punishments.

Experts on both side of the issue speak out both for and against capital punishment and the rationale behind their individual beliefs.

Describes social, political, and moral conditions in the United States, discusses the history of capital punishment, and examines the possibility of its being abolished

NEW YORK TIMES EDITORS' CHOICE • A deeply reported, searingly honest portrait of the death penalty in Texas—and what it tells us about crime and punishment in America “If you’re one of those people who despair that nothing changes, and dream that something can, this is a story of how it does.”—Anand Giridharadas, The New York Times Book Review WINNER OF

THE J. ANTHONY LUKAS AWARD In 1972, the United States Supreme Court made a surprising ruling: the country’s death penalty system violated the Constitution. The backlash was swift, especially in Texas, where executions were considered part of the cultural fabric, and a dark history of lynching was masked by gauzy visions of a tough-on-crime frontier. When executions resumed, Texas quickly became the nationwide leader in carrying out the punishment. Then, amid a larger wave of criminal justice reform, came the death penalty’s decline, a trend so durable that even in Texas the punishment appears again close to extinction. In *Let the Lord Sort Them*, Maurice Chamamah charts the rise and fall of capital

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punishment through the eyes of those it touched. We meet Elsa Alcala, the orphaned daughter of a Mexican American family who found her calling as a prosecutor in the nation's death penalty capital, before becoming a judge on the state's highest court. We meet Danalynn Recer, a lawyer who became obsessively devoted to unearthing the life stories of men who committed terrible crimes, and fought for mercy in courtrooms across the state. We meet death row prisoners—many of them once-famous figures like Henry Lee Lucas, Gary Graham, and Karla Faye Tucker—along with their families and the families of their victims. And we meet the executioners, who struggle openly with what society has asked them to do. In tracing these interconnected lives against the rise of mass incarceration in Texas and the country as a whole, Chammah explores what the persistence of the death penalty tells us about forgiveness and retribution, fairness and justice, history and myth. Written with intimacy and grace, *Let the Lord Sort Them* is the definitive portrait of a particularly American institution.

An analysis of the use of the death penalty across the world, together with the underlying arguments. This book ranks as the original in-depth treatment by the Director of Studies at the Centre for Capital Punishment Studies - University of Westminster, and another leading academic, plus leading commentators from around the world including the USA/North America's Michael L Radlett, William A Shabas and Hugo Adam Bedau.

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