

## Capital Punishment ABF 2019

In the US:

25 executions in 2018, 4 so far in 2019

Idaho currently has 9 inmates on death row

Currently used by 31 states and the federal government

Around the world

54 countries around the world and 35 states in the US have a form of the death penalty for certain crimes. Vast majority take place in China, Iran, Iraq, and Saudi Arabia and US – 91%.

Abolition of the death penalty is required for membership in the European Union.

UN reported 966 executions in Iran in 2015, about 500 each in 2016 and 2017.

Landmark legal decision in 1972 by the Supreme Court in *Furman v. Georgia* that struck down the death penalty as currently practiced in a 5-4 decision. All death sentences pending at that time were reduced to life imprisonment. 37 states enacted new death penalty statutes to address the concerns.

Some mandated death penalty for certain murders (addressing the concern about fairness in implementation)

Some bifurcated trial and sentencing procedures (innocence/guilt and what degree murder in one phase, sentencing in a second phase; upheld in 1977 decision by Supreme Court in 7-2)



Paul Ezra Rhodes – Executed Nov 18 2011, second most recent in Idaho (Richard Leavitt in 2012). Prior to Rhodes was 1994. He killed and raped an IF school teacher in 1987 and 2 clerks in 1988.

Is there a contradiction between these two Biblical ideas?

**Exodus 20:13** "You shall not murder.

**Genesis 9:6** <sup>6</sup> "Whoever sheds man's blood, By man his blood shall be shed, For in the image of God He made man.

Is capital punishment just? What about the need to show mercy and “turn the other cheek?” Are Christians inconsistent if they argue for capital punishment but also affirm a pro-life/sanctity of life position on issues like abortion and euthanasia?

Must not be flippant or cavalier. Life is on the line and real victims and families are involved.

## 1. Arguments Against Capital Punishment

- a. If the purpose of punishing criminals is rehabilitation, then capital punishment makes no sense.
  - i. Karla Faye Tucker. While on death row she turned to Christianity and her life was transformed. Before her execution, she was quite influential in helping other prisoners to make needed changes in their lives.
  - ii. Rehabilitationism – purpose of justice is rehabilitation and not retribution.
    1. Norway as the prime example of this and facing difficulty with how to punish Anders Breivik, the man convicting of murdering 77 people in 2011. The prison system only allows for maximum sentence of 21 years, even for murder. They must be released at that point unless deemed a threat.



2.
  - iii. However, in the early days of our country one purpose of the death penalty was to encourage rehabilitation as the murderer is encouraged to restore their broken relationship with God.
- b. If the purpose of punishing criminals is restitution, then capital punishment makes no sense.
  - i. Cannot repay the family of victim if the criminal is executed.
- c. If the purpose of punishment is detering future crime, capital punishment may be less effective than other means.
  - i. while in general murder rates of states with the death penalty decreased during the 1990s, the murder rate of states without the death penalty declined considerably more.
  - ii. in 1967 Canada abolished the death penalty for five years. Results of the experiment indicated no increase in violent crimes attributable to abolition. Consequently, Canada permanently banned the death penalty in 1976.<sup>27</sup> In the years after abolition up to 1999 the murder rate in Canada declined 43 percent
    1. Feinberg, John S. / Feinberg, Paul D. (2010-11-03). Ethics for a Brave New World, Second Edition (p. 235). Good News Publishers/Crossway Books. Kindle Edition.
  - iii. More generally, a study for the United Nations on the changes in death penalty laws and the effect on homicide rates was done in 1988 and updated in 2002. The conclusion from the data was “. . . it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.”<sup>28</sup>
    1. Feinberg, John S. / Feinberg, Paul D. (2010-11-03). Ethics for a Brave New World, Second Edition (p. 235). Good News Publishers/Crossway Books. Kindle Edition.

- iv. Certainty of being caught seems to play a higher role in deterring crime than the method of penalty (death vs. imprisonment).
  - v. However, capital punishment clearly deters the offender who is executed.
  - vi. "if it cannot be shown that those who don't kill were deterred by fear of capital punishment, we must drop talk (pro or con) of capital punishment as a deterrent."
    - 1. Feinberg, John S. / Feinberg, Paul D. (2010-11-03). Ethics for a Brave New World, Second Edition (p. 236). Good News Publishers/Crossway Books. Kindle Edition.
  - vii. We don't know if a country that has twice the murder rate of a country without capital punishment would actually have 4 times the rate if capital punishment is abolished.
  - d. Capital punishment violates the 8<sup>th</sup> Amendment prohibiting cruel and unusual punishment.
    - i. Typically, a three-drug "cocktail" is given to the prisoner.
      - 1. The first is sodium thiopental, which induces sleep when it reaches the brain.
      - 2. The second is pancuronium bromide, which is a muscle relaxant that paralyzes the lungs and diaphragm.
      - 3. The third is potassium chloride, which causes the heart to stop beating.
    - ii. It is argued that a person could still be awake when his heart stopped pumping.
    - iii. Michael Morales case in California – 2006 – argued that lethal injection by 3 drug cocktail could stop his heart before he was unconscious.
    - iv. Botched electrocutions that took too long. Moving from firing squad to hanging to electric chair (1888) to lethal injection, trying to find the most humane method of execution.
    - v. Last time a firing squad was used in an execution was 2010 in Utah
      - 1. State abandoned firing squad in 2004 but he was sentenced before that date and was able to select this method. 5 executioners, volunteers, police officer trained, one gun has blanks.
      - 2. If the drugs needed for an execution are not available then firing squad is still an option.
    - vi. 2006 case in California where the execution was postponed when they couldn't find a physician or anesthesiologist to perform the lethal injection.
    - vii. In 1990 and 1997 two inmates heads caught on fire during electrocution in Florida. 2006 an inmate took 34 minutes to die via lethal injection and appeared to be moving most of that time. Mistake was made and the drugs were administered into the soft tissue of his arm rather than the veins.
    - viii. "cruel" if done wrong, but taking life in itself is not necessarily cruel. The founders apparently didn't take it at that as they practiced capital punishment while still adding these words to the constitution.
- 1972), Justice Brennan wrote, "There are, then, four principles by which we may determine whether a particular punishment is 'cruel and unusual'."
- 1. The "essential predicate" is "that a punishment must not by its severity be degrading to human dignity," especially torture.
  - 2. "A severe punishment that is obviously inflicted in wholly arbitrary fashion." (*Furman v. Georgia* temporarily suspended capital punishment for this reason.)
  - 3. "A severe punishment that is clearly and totally rejected throughout society."

4. "A severe punishment that is patently unnecessary."
- ix. "unusual" if means "rare" then not the case. But that's probably not the best way to take it. Torture would not become acceptable if common. Best to take it as strange, obscure, unnecessarily painful.
- e. Capital punishment in the US is discriminatory against minorities and the poor.
  - i. From 1930-1980, 53% of those executed in the US were black, while only 10% of population black.
  - ii. In several states studied, the convicted criminal is about 4 times more likely to be executed if the victim is white.
    1. Jurors in Washington state are three times more likely to recommend a death sentence for a black defendant than for a white defendant in a similar case (Becket, Univ. of Washington, 2014)
    2. In Louisiana, the odds of a death sentence were 97% higher for those whose victim was white than for those whose victim was black. (Pierce and Radelet, Louisiana Law Review, 2011)
    3. California – those who killed whites were over 3 times more likely to be sentence to death than those who killed blacks and over 4 times more likely than those who killed Latinos.
  - iii. Wealthy people are much less likely to be convicted and given the death penalty because of the good legal counsel.
    1. O.J. Simpson
  - iv. As Stephen Nathanson has argued, deserving criminals must be punished for the right reasons. Nathanson asks us to imagine a highway patrolman who is confronted with many drivers who are breaking the speed limit. Though all of them deserve a ticket for speeding, imagine that the patrolman decides to pursue only those who wear beards. In such a case, would those who received traffic tickets for speeding be justly punished? Nathanson thinks not, not because they weren't really speeding, but because the patrolman cited them for speeding and for being bearded. Hence the reason they were punished was ultimately unjust, and consequently they didn't deserve to be ticketed.<sup>39</sup>
    1. Feinberg, John S. / Feinberg, Paul D. (2010-11-03). Ethics for a Brave New World, Second Edition (p. 238). Good News Publishers/Crossway Books. Kindle Edition.
  - v. Prior to 1972 some 5,707 people were legally executed for capital crimes in the United States.<sup>1</sup> Then in 1972 came a landmark decision in Furman v. Georgia. By a 5–4 margin the Supreme Court ruled that the death laws of Georgia and Texas violated the Eighth Amendment by involving cruel and unusual punishment. The decisive issue for some of the justices was that among all "eligible" for the most extreme punishment, the few chosen were selected by no clear standard. Between 1972 and 1976 thirty-five states rewrote their laws to conform to the Supreme Court's decision. On July 2, 1976, by a 7–2 margin the Court declared most of the new statutes acceptable.
    1. Feinberg, John S. / Feinberg, Paul D. (2010-11-03). Ethics for a Brave New World, Second Edition (p. 227). Good News Publishers/Crossway Books. Kindle Edition.
- f. Capital punishment is *at least* as expensive as life in prison.

- i. Cost of each execution is around \$1,000,000 with all the appeals, etc.
  - ii. Florida - \$51 million/year for enforce the death penalty more than what it would cost to punish all 1<sup>st</sup> degree murderers with life in prison. 44 executions since 1976 so about \$24 million/execution.
  - iii. As currently practiced but, perhaps, could be streamlined. But at what cost to justice and ensuring that innocent people are not executed?
- g. Capital punishment sends an unbeliever to hell with no opportunity to repent.
  - i. As believers, our primary concern should be the eternal state of all people. Likewise, God desires for all to be saved and come to a knowledge of the truth. Capital punishment cuts that opportunity short prematurely.
  - ii. God is patient and gives humanity, as a whole, time to repent. Shouldn't we model the same in our judicial system?
  - iii. But it's not their capital punishment that sends them to hell, their unbelief does. Impending death may actually be a clear call for repentance that God uses to bring the people to Himself in repentance and faith. And God doesn't give people unending time to repent – everyone dies and faces judgment and He even takes some people directly and early (Ananias and Saphira, rebellion at Korah).
- h. Biblical arguments –
  - i. God's people should show mercy and not take vengeance.
    - 1. **Matthew 5:43-44** "You have heard that it was said, 'YOU SHALL LOVE YOUR NEIGHBOR and hate your enemy.' <sup>44</sup> "But I say to you, love your enemies and pray for those who persecute you,
    - 2. **Romans 12:17-20** Never pay back evil for evil to anyone. Respect what is right in the sight of all men. <sup>18</sup> If possible, so far as it depends on you, be at peace with all men. <sup>19</sup> Never take your own revenge, beloved, but leave room for the wrath of God, for it is written, "VENGEANCE IS MINE, I WILL REPAY," says the Lord. <sup>20</sup> "BUT IF YOUR ENEMY IS HUNGRY, FEED HIM, AND IF HE IS THIRSTY, GIVE HIM A DRINK; FOR IN SO DOING YOU WILL HEAP BURNING COALS ON HIS HEAD."
    - 3. And yet, Romans 13 explains that the government is an avenger who brings wrath on those who do wrong.
  - ii. OT civil laws are no longer applicable today.
    - 1. If they are, should we practice capital punishment for adultery (Lev 20:10), rape (Deut 22:25), striking or reviling a parent (Exod 21:15, 17), or incest (Lev 20:11–13)?

## 2. Arguments in Favor of Capital Punishment.

- a. One purpose of punishing criminals is just retribution for a crime.
  - i. Not simply rehabilitation, restitution, or deterrence.
  - ii. There is a sense of justice when a punishment is carried out. Not personal vengeance or done in anger or cruelty or through mob violence, but a just punishment carried out by those who are qualified to do so.
  - iii. **Deuteronomy 19:11-13** "But if there is a man who hates his neighbor and lies in wait for him and rises up against him and strikes him so that he dies, and he flees to one of these cities, <sup>12</sup>

then the elders of his city shall send and take him from there and deliver him into the hand of the avenger of blood, that he may die. <sup>13</sup> "You shall not pity him, but you shall purge the blood of the innocent from Israel, that it may go well with you.

- b. There is a difference between personal vengeance and the government carrying out justice to preserve order.
  - i. While individuals are commanded not to take vengeance (Mt. 5:43-44; Rom. 12:17-20; 1 Pet. 3:9), the government is described as a God-ordained institution to punish those who do wrong.
  - ii. **Romans 13:1-4** Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. <sup>2</sup> Therefore whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. <sup>3</sup> For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; <sup>4</sup> for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil.
- c. Rehabilitationism incorrectly views people as sick rather than sinful.
  - i. At least, some forms of rehabilitationism views it this way.
  - ii. In some cases, mental illness may indeed be a factor. However, we can't paint all people with that brush. Sin is real.
  - iii. Lewis – "To be 'cured' against one's will . . . is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals."
- d. Israel practiced capital punishment for murder.
  - i. **Exodus 21:12-14** "He who strikes a man so that he dies shall surely be put to death. <sup>13</sup> "But if he did not lie in wait *for him*, but God let *him* fall into his hand, then I will appoint you a place to which he may flee. <sup>14</sup> "If, however, a man acts presumptuously toward his neighbor, so as to kill him craftily, you are to take him *even* from My altar, that he may die.
- e. The rationale behind capital punishment in the Bible is that man is made in the image of God.
  - i. **Genesis 9:6** "Whoever sheds man's blood, By man his blood shall be shed, For in the image of God He made man.
    - 1. The execution of a murderer as not going to be carried out directly by God, but by a human agent, but it was not to be seen as human vengeance but as carrying out God's own requirement of justice. (Grudem)
      - a. V 5 says for your lifeblood *I will require a reckoning*
      - b. From this point God is laying the foundational principles for all human governmental authority. People will need to decide what wrongdoing is worthy of punishment, what punishment is appropriate for each wrongdoing, and whether or not an individual is guilty of that wrongdoing.
  - ii. This is not dependent upon the continuity of OT laws in the New Covenant, because man is still in the image of God.
  - iii. This precedes the law of Moses so it wasn't abolished by Christ and it is still practiced in the NT.

- iv. Capital punishment actually supports the dignity of humanity. It holds human life as so significant that the consequence for taking life is to lose your own life. Rather than treating human life lightly, it actually does the opposite.

### 3. Considerations Regarding the Application of Capital Punishment

- a. The judicial system must work justly for all accused of crimes, regardless of race or level of income.

**Proverbs 16:11** A just balance and scales belong to the LORD; All the weights of the bag are His concern.

**Proverbs 20:23** Differing weights are an abomination to the LORD, And a false scale is not good.

**Proverbs 17:15** He who justifies the wicked and he who condemns the righteous, Both of them alike are an abomination to the LORD.

**Proverbs 24:23** These also are sayings of the wise. To show partiality in judgment is not good.

**Proverbs 29:7** The righteous is concerned for the rights of the poor, The wicked does not understand such concern.

- i. The Southern Baptist Conference resolution:

1. That capital punishment should only be administered when the pursuit of truth and justice result in clear and overwhelming evidence of guilt;
2. That because of the deep reverence for human life, profound respect for the rights of individuals, and respect for the law, the SBC calls for vigilance, justice, and equity in the criminal justice system;
3. That capital punishment be applied as justly and as fairly as possible without undue delay, without reference to the race, class, or status of the guilty; that civil magistrates use humane means in administering capital punishment

- b. Exhaustive measures should be taken to decrease the likelihood of erroneous executions.

- i. Governor George Ryan of Illinois in 2000 declared a moratorium on executions in Illinois. The reason? Since death penalty reinstated in 1977, 12 death row inmates had been executed, 13 people also on death row were exonerated. In many cases, DNA evidence, a technology not available earlier, showed that they were innocent. He concluded that those odds were unacceptable. Within days of leaving office, he commuted the sentence of 167 prisoners on death row to life in prison and pardoned 4 other death row prisoners.

- ii. George Will – “[When] capital punishment is inflicted, it cannot later be corrected because of new evidence, so a capital punishment regime must be administered with extraordinary competence.”

1. <http://www.nationalreview.com/article/418694/why-capital-punishment-will-eventually-be-abolished-george-will>

- iii. Five procedural standards for applying capital punishment under mosaic law (Feinberg p. 237)

1. Absolute certainty of guilt was required for conviction (Deut 17:4).
  - a. This is stronger than the American rule of proof beyond reasonable doubt.
2. Conviction required the testimony of more than one witness (Deut 19:15; Num 35:30).
  - a. Given the need for certain proof, most likely those witnesses were to be eyewitnesses. Moreover, since stoning to death was to be done by the witnesses (Deut 17:7), one might suspect reticence to cast the first stone unless one was an eyewitness.
3. To discourage attempts to “frame” someone for a crime, witnesses who committed perjury in capital cases were themselves to be executed (Deut 19:16, 19).

4. In difficult cases the verdict was deferred to **judicial experts** (Deut 17:8–9).
  - a. This differs from the American system in which jurors who often do not understand law must decide anyway.
5. If the verdict was “guilty,” the death penalty was **mandatory** (Exod 21:12, 14; Num 35:31).
  - a. Lighter sentences could not be adopted. This made discriminatory application of the death penalty impossible; i.e., all people, regardless of social standing, etc., were treated equally if deemed guilty.



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### History and practice in the US

#### Furman v. Georgia (1972)

- Struck down the death penalty as then practiced.
- 37 states responded by enacting new statutes to address the concerns.

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- d. Capital punishment violates the 8th Amendment prohibiting cruel and unusual punishment.

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