DEATH PENALTY NEG

Note: This file was compiled by Mike Shackelford, coach at Rowland Hall, in collaboration with the National Debate Coaches Association (NDCA). Special thanks to Jason Peterson, coach at St. Mark's, and his lab at the University of Michigan debate camp, for producing and sharing much of the evidence included in this file. Also, thanks to the students at the Cal National Debate Institute for their research contributions.

Inherency Answers

1nc – Squo Solves

The status quo solves – it's declining now.

Washington Post Editorial Board '20 ["The death penalty is unworthy of America," Washington Post, 1-1-2020, Accessible Online at https://www.washingtonpost.com/opinions/the-death-penalty-is-unworthy-of-america/2020/01/01/1b0be1c6-2c05-11ea-bcd4-24597950008f_story.html)

For the fifth year in a row, **fewer than 30 people were executed** and fewer than 50 people were sentenced to death. Half of states representing half the population no longer execute people. With the New Hampshire legislature's abolition of capital punishment last year**, the punishment has been banned across New England and in all Northeastern states** save Pennsylvania, where the governor has imposed a moratorium. Seven states executed 22 inmates last year, and Texas was responsible for nearly half. The state is also responsible for a large share of new death sentences. **No one was executed west of Texas**. Juries in California, the state with the largest death-row population, handed down three new death sentences in 2019. But California Gov. Gavin Newsom (D) declared a moratorium and ordered San Quentin State Prison's execution chamber dismantled. Otherwise, new death sentences mostly came in the South, particularly in Florida. Death sentences are down some 90 percent from their mid-1990s peak. Executions are down some 77 percent from the late 1990s.

2nc – Squo Solves

The status quo solves both domestically and abroad.

Williams '16 [Williams, Kenneth (South Texas College of Law Houston Professor of Law, federal habeas attorney for several Texas death row inmates), Why and How the Supreme Court Should End the Death Penalty, February 18, 2016, Accessible at: https://ssrn.com/abstract=2734250] KL 6-24-20

The Court's evolving standards of decency test could lead to the conclusion that the death penalty violates the Eighth Amendment. Although thirty-one states, the federal government, and the U.S. military still authorize the death penalty,243 this figure is **misleading.** Four of these states have Governor-imposed moratoriums on executions.244 Two other states and the U.S. military have **not executed** anyone during the modern era of capital punishment.245 Nine other states and the federal government have not carried out an execution in **at least ten years.**246 Several other states have small death rows and the death penalty is rarely sought in these states.247 Therefore, more than half of the states have either formally **abolished the death penalty** or have done so **in practice.** Only a small number of states continue to sentence inmates to death and carry out executions.248 However, even in these states, the use of the death penalty is **in decline.**249 Furthermore, even in the small number of active death penalty states, death sentences are typically meted out in only **a few counties** within the state.250 Most importantly, the Court in its recent Eighth Amendment decisions has deemphasized the sheer number of states that authorize a challenged practice and instead emphasized the direction of change.251 The movement is clearly in the direction of **abolition**. Numerous states have abolished the death penalty during the last ten years.252 Voters in California, however, refused to abolish the death penalty in the November 2016 election.253 Despite this setback, the Court's criteria still definitively points toward abolition. Additional objective evidence of the movement away from the death penalty is abundant. First, in striking down the death penalty for juveniles and intellectually disabled inmates, the Court emphasized the fact that the practices had become so rare.254 As discussed earlier,255 there has been a significant decline in death sentences over the last fifteen years.256 Second, several respected professional and religious organizations support the abolition of the death penalty or imposing a moratorium on executions. Most notably, the American Law Institute has withdrawn the death penalty provision of the Model Penal Code.257 Third, several former and present Justices have publicly called attention to the problems in the administration of the death penalty.258 Fourth, in its Eighth Amendment decisions, the Court has considered the opinions of the international community with respect to a particular practice.259 In this regard, most **nations** in **the world community** have abolished the death penalty either by law or in practice.260 The United States' use of the death penalty has isolated it from the international community. For instance, many nations **will not extradite** criminal suspects to the United States without an assurance that the suspect will not be sentenced to death.261 In addition, several nations have challenged the United States' attempt to execute their citizens.262

Racism Advantage Answers

1nc – No Racial Bias

It's fair and not racially disparate – white people are more likely to executed

Stimson '19 [Senior Legal Fellow & Manager, National Security Law Program Cully Stimson is a widely recognized expert in national security, homeland security, crime control, drug policy & immigration. https://www.heritage.org/crime-and-justice/commentary/the-death-penalty-appropriate]

Genny **Rojas** was four years old when her aunt and uncle, Veronica and Ivan Gonzales**, tortured and murdered her**. They suspended her alive by a hook on the closet wall in their apartment. They shook her violently, strangled her, beat her with a hairbrush, and handcuffed her for days. She died after she was forced into a scalding bath tub for three minutes. A California jury sentenced Veronica and Ivan to death, and the California Supreme Court upheld their convictions. If anyone deserved the ultimate punishment, they did. There are, to be sure, heartfelt arguments for people to be against the death penalty, not the least of which are religious, moral, or other reasons and beliefs. There are also valid arguments regarding the historical use of the death penalty against minorities, especially in the South. Yet a majority of Americans, quite reasonably, **support the death penalty** in appropriate cases, and believe that, despite its imperfections, it is constitutional. The Supreme **Court** has held the death penalty to be **constitutional**. The 5th and 14th Amendments carry express approval of the death penalty: a person may not be "deprived of life, liberty or property without due process of law." A majority of states (29) have the death penalty on the books. Similarly, the federal government, and the **military** have the **ultimate punishment** for the **most heinous crimes**. Since 1976, when the Supreme Court reinstated the punishment, there have been 1,512 executions, with **whites** making up the **majority of defendants** executed (55%), followed by blacks (34%). Whites make up the majority of **victims** in death penalty cases (76%), followed by blacks (15%). A majority of Americans support the death penalty, and have since polling began in 1938. 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.

2nc – No Racial Bias

There is no racial bias—those stats are the result of the ideologies of researchers—researchers morally opposed to the death penalty concede this.

Walsh and Hatch '17 [Anthony Walsh (Boise State University) and Virginia Hatch (Boise State University), "Ideology, Race, and the Death Penalty: "Lies, Damn Lies, and Statistics" in Advocacy Research", Journal of Ideology: Vol. 37 : No. 1 , Article 2, 01-31-2017, Accessible Online at https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1006&context=ji] KL 6-28-2020

Nevertheless, a number of statements expressed with "incredible certitude" about race and the disproportionate application of the death penalty and illustrating "media overreach" are shown below from various organizations and authors: "African Americans are disproportionately represented among people condemned to death in the USA. While they make up 12 percent of the national population, they account for more than 40 percent of the country's current death row inmates, and one in three of those executed since 1977" (Amnesty International, 2003). "Approximately 35% of those executed since 1976 have been black, even though blacks constitute only 12% of the population. The odds of receiving a death sentence are nearly four times higher if the defendant is black than if he or she is white" (American Civil Liberties Union, nd). "The national death-row population is roughly 42 percent black, while the U.S. population overall is only 13.6 percent black, according to the latest census. We've long known that the death penalty disproportionately kills people of color" (Matt Ford in The Atlantic, June, 23rd, 2014). "Last week was the 35th anniversary of the return of the American death penalty. It remains as racist and as random as ever" (David Dow in The New York Times, July 8th , 2011). "[E]ven if it were clear that blacks and non-black defendants were treated fairly and consistently in America's death-sentencing system, there are also concerns about the substantial overrepresentation of blacks on death row in America (13 percent of the nation's civilian population versus 42 percent of the death row population)" (Acker, Bohm & Lanier, 2014:531). These claims are true on their face; the statistics are accurate, but **the interpretation is bogus**, and constitute examples of what Joel Best (2001, p. 62) call "mutant statistics." Neil Gilbert (1998, p. 102) calls such statements examples of "advocacy research" that purposely paints the grimmest of pictures to force fence-sitters to take notice. According to the latest information for the Death Penalty Information Center (DPIC) (2015), African-Americans have been between 11% and 13% of the U. S. population between 1976 and 2015, and have constituted 35% of the executions. Likewise, blacks comprise 42% of current U.S. death row inmates. Thus, since the resumption of executions in 1976, blacks have been overrepresented relative to their proportion of the general population by roughly 3 to 1 in terms of executions and as death row residents. As we have seen from the statements above, this is almost always taken by the media (as well as some academics) as clear evidence that the death penalty is still biased against African-Americans. The disproportionality argument is repeated mantra-like without giving any serious thought to the logic behind it because **it produces a comfortable fit with** the ideological **views** of death penalty opponents, **including those of the present authors.** We rarely seek to question something that slots comfortably into our ideology because to do so may lead us to question other positions located under the same umbrella and produce cognitive dissonance. Indeed, we unthinkingly accepted this view ourselves until we spent more than two years researching the death penalty for our book and received abundant feedback from at least 16 reviewers (Hatch & Walsh, 2016). Of course, as we know from our first exposure to statistics but sometimes forget, claims of disproportionality cannot be evaluated by comparing different things. The percentages of each race executed or on death row must be compared with the percentage of each race **eligible to be included** in those sub-populations, and **not** with their proportion of the general population. To assess this claim logically we have to compare each race's proportion of murderers with its proportion executed or on death row. Social scientists (and the DPIC) are well aware of this, but rarely make this awareness explicit, and perhaps cannot even acknowledge it to themselves in the Kuhnian (1970) sense of not "seeing at all." If we assess racial differences among the people on death row with the correct target population in mind, a very different picture emerges. In 2013, 52.2% of individuals arrested for murder in the United States were African-Americans and 47.8% were white (FBI, 2014). The FBI places Hispanics and non-Hispanic whites into a single "White" category (93% of Hispanics-Latinos are defined as white) in its Uniform Crime Reports (UCR), so we cannot make direct black/white comparisons between UCR and DPIC statistics. The inclusion of Hispanics in the white category inflates white crime figures because Hispanics have a higher crime rate than non-Hispanic whites (Steffensmeier et al., 2010). Steffensmeier and his colleagues (2010) calculated that when Hispanics are taken out of the white category, the black homicide rate averages 12.7 times higher than the white rate. Fox and Levin (2001) find that African-Americans are overrepresented in every homicide category, ranging from 66.7% of drug-related homicides to 27.2% of workplace homicides, and the Radford University's Serial Killer Information Center (Aamodt, 2015) finds that African-Americans have been 57.9% of serial killers in the U.S. from 2000 to 2014; whites 34%, Hispanics 7.9%, and Asian Americans 0.06%. With these data in mind, we should formulate a much different perspective on the disproportionality statements that we see in both the popular media and in scholarly works. A comparison of homicide and execution/death row data led Matt Robinson (2008) to the conclusion in his work on the death penalty that: "Although they are overrepresented among death row populations and executions relative to their share of the U.S.

population, blacks are **underrepresented based on their** arrests and **convictions for murder**" (p. 191). This raises the question of why the perception is the opposite of the reality. The Origins of the Conventional Wisdom The history of race relations in the United States is painfully disturbing. African-Americans have been treated badly from the time that the first African slaves landed in America in 1619 until relatively recently. In terms of the death penalty, in Virginia, slaves could be convicted of 66 crimes carrying the death penalty at one point, and free blacks could be executed for rape into the 20th century; only murder carried the death penalty for whites (Bohm, 2012). Blacks were subjected to such laws under slavery for over 200 years, and after emancipation they were subjected to the Black Codes, Jim Crow laws, disenfranchisement, "separate but equal" statutes, literacy tests, vicious stereotypes, and lynch mobs (Walsh & Hemmens, 2014). Those who are aware of this history have a tendency to examine modern racial issues in its context, and find it difficult to imagine that the death penalty can be administered in a racially neutral way and to take racial bias in capital cases for granted. For others, history is just that— history, and that in this modern age things have changed dramatically in the United States.

1nc – False Comparison

Comparison to slavery fails --- alienates those who must be persuaded and diminishes those who suffered literal slavery

Conklin, 19 --- Assistant Professor of Business Law, Angelo State University (7/4/19, Michael, Denver Law Review, "A STRETCH TOO FAR: FLAWS IN COMPARING SLAVERY AND THE DEATH PENALTY," https://www.denverlawreview.org/dlr-online-article/a-stretch-too-far-flaws-in-comparing-slavery-and-the-death-penalty, accessed on 5/27/2020, JMP)

For the most part, Malkani does not use the similarities he mentions to lead up to a more profound insight, such as what the anti-death penalty movement can learn from the slavery abolition movement or why he believes the anti-death penalty movement will prevail in the end. Furthermore, slavery is commonly recognized as America's most evil act and therefore is frequently utilized as a catch-all comparison to any modern action that someone wants to cast in a negative light. Animal rights activists, those attempting to repeal the Affordable Care Act, proponents of lower taxes, and gun control advocates have all compared their efforts to those of slavery abolitionists (and their opponents to pro-slavery activists). It is unclear how effective these modern-day comparisons to slavery are. Reducing slavery analogies to essentially "things I also don't like" runs the risk of **alienating those** on the other side of the issue **who the activist should be trying to persuade**—to say nothing of **diminishing the experience of those who suffered through literal slavery**. Malkani's selective use of comparisons and **refusal to address counterarguments** suggests that the primary purpose of comparing the death penalty to slavery is to simply make the death penalty look bad and therefore promote the anti-death penalty agenda. The tactic of comparing a controversial current issue with a settled issue from the past is certainly permissible and can be effective, but when masked as a comparative-historical analysis, it comes across as **disingenuous**.

2nc – False Comparison

Death penalty is not analogous to slavery --- culpability and scale

Conklin, 19 --- Assistant Professor of Business Law, Angelo State University (7/4/19, Michael, Denver Law Review, "A STRETCH TOO FAR: FLAWS IN COMPARING SLAVERY AND THE DEATH PENALTY," https://www.denverlawreview.org/dlr-online-article/a-stretch-too-far-flaws-in-comparing-slavery-and-the-death-penalty, accessed on 5/27/2020, JMP)

DIFFERENCES The starkest difference between slavery and capital punishment is found in the level of culpability. Slaves were blameless in their circumstance. Executed inmates, however, are not. They are convicted of a capital offense by a unanimous, twelve-person jury based on the highest legal burden: beyond a reasonable doubt. These inmates then spend years exhausting all avenues of appeal. This level of culpability presents challenges for death penalty abolitionists as they attempt to draw sympathy for those on death row. While slavery abolitionists faced distinct challenges in gaining sympathy, they did not have to confront the extreme levels of culpability that death penalty abolitionists are attempting to confront today. There is also a significant difference in the sheer scale of slavery in America when compared to the modern death penalty. In 1860, over twelve percent of the **U**nited **S**tates population was slaves.[29] **In 2016, only 0.00000006% of the population was executed.**[30] It is easy to see how the fewer people affected by an issue, the harder it is to gain advocates for that issue. The death penalty does not even make the list of the top forty-six most important problems in America.[31] Many slavery abolitionists supported a more pragmatic-based "gradualism," such as that promoted by the Pennsylvania Abolition Society. They proposed legislation that would only allow for the freedom of those born after March 1, 1780.[32] While death penalty abolitionists debate suitable alternatives to the death penalty, there is no real debate as to how quickly they want the death penalty abolished.

1nc – Utilitarianism

Utilitarianism is the only ethical framework that maintains responsibility to others by evaluating consequences and avoiding inaction

Issac, 02 – Professor of Political Science at Indiana-Bloomington, Director of the Center for the Study of Democracy and Public Life, PhD from Yale (Jeffery C., Dissent Magazine, Vol. 49, Iss. 2, "Ends, Means, and Politics," p. Proquest)

Politics, in large part, involves contests over the distribution and use of power. To accomplish anything in the political world, one must attend to the means that are necessary to bring it about. And to develop such means is to develop, and to exercise, power. To say this is not to say that power is beyond morality. It is to say that power is not reducible to morality. As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one's intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the clean conscience of their supporters; (2) it fails to see that **in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice**. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; it is the **effects** of action, rather than the motives of action, that is **most significant**. Just as the alignment with "good" may engender impotence, it is often the pursuit of "good" that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one's goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it **undermines political effectiveness**. WHAT WOULD IT mean for the American left right now to take seriously the centrality of means in politics? First, it would mean taking seriously the specific means employed by the September 11 attackers--terrorism. There is a tendency in some quarters of the left to assimilate the death and destruction of September 11 to more ordinary (and still deplorable) injustices of the world system--the starvation of children in Africa, or the repression of peasants in Mexico, or the continued occupation of the West Bank and Gaza by Israel. But this assimilation is only possible by ignoring the specific modalities of September 11. It is true that in Mexico, Palestine, and elsewhere, too many innocent people suffer, and that is wrong. It may even be true that the experience of suffering is equally terrible in each case. But neither the Mexican nor the Israeli government has ever hijacked civilian airliners and deliberately flown them into crowded office buildings in the middle of cities where innocent civilians work and live, with the intention of killing thousands of people. Al-Qaeda did precisely this. That does not make the other injustices unimportant. It simply makes them different. It makes the September 11 hijackings distinctive, in their defining and malevolent purpose--to kill people and to create terror and havoc. This was not an ordinary injustice. It was an extraordinary injustice. The premise of terrorism is the sheer superfluousness of human life. This premise is inconsistent with civilized living anywhere. It threatens people of every race and class, every ethnicity and religion. Because it threatens everyone, and threatens values central to any decent conception of a good society, it must be fought. And it must be fought in a way commensurate with its malevolence. Ordinary injustice can be remedied. Terrorism can only be stopped. Second, it would mean frankly acknowledging something well understood, often too eagerly embraced, by the twentieth century Marxist left--that it is often politically necessary to employ morally troubling means in the name of morally valid ends. A just or even a better society can only be realized in and through political practice; in our complex and bloody world, it will sometimes be necessary to respond to barbarous tyrants or criminals, with whom moral suasion won't work. In such situations our choice is not between the wrong that confronts us and our ideal vision of a world beyond wrong. It is between the wrong that confronts us and the means--perhaps the dangerous means--we have to employ in order to oppose it. In such situations there is a danger that "realism" can become a rationale for the Machiavellian worship of power. But equally great is the danger of a righteousness that translates, in effect, into a refusal to act in the face of wrong.

2nc – Utilitarianism

Maximizing all lives is the only way to affirm equality

Cummiskey '96 (David, Professor of Philosophy, Bates, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equality which dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

Dignity Advantage Answers

1nc – Morally Right

The death penalty is consistent with the moral retributive doctrine- stressing the importance of justice and holding people accountable for their actions, without retribution by death crimes go unpunished to a just extent

Gibbs '78 (Jack P. Gibbs, "Death Penalty, Retribution and Penal Policy," The Journal of Criminal Law and Criminology, Volume 69, Issue 3 Fall, article 22, Fall 1978, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=6075&context=jclc, accessed 6-27-2020 MS)

Only in the context of the foregoing issues and problems can one appreciate the merits of the retributive doctrine and see the reason for its "staying power." For one thing, whereas a custodial context may thwart efforts at rehabilitation or render behavioral modification ineffective, incarceration can be construed as the "just desert" for the violation of any criminal law and, hence, entirely consistent with the retributive doctrine. The general point is that the question of effectiveness haunts all penal doctrines except the retributive. If the business of criminal justice is to punish the guilty because, and only because, they deserve it, jurists or legislators need not be concerned with problematical consequences of punishment. Whereas the death penalty is the very contradiction of rehabilitation and behavioral modification, there is ample room for it in the doctrine of retribution. Like it or not, no one is truly startled by the argument that some crimes are so abominable that the perpetrator deserves death. The incapacitation realized through the death penalty serves no purpose if the deceased would not have repeated the crime, but that poses no problem for the retributive doctrine, according to which any legal punishment should be an end in itself. Finally, given the emphasis in the retributive doctrine on prosecuting individuals charged with a crime as "morally responsible beings," retributivists need not be ambivalent when it comes to granting the relevance of insanity pleas, an issue that is likely to be intensified by the reintroduction of the death penalty. The doctrine even provides a firm basis for an unequivocal return to the classical legal criterion of insanity. If the defendant knew what he or she was doing in committing the act, and knew it was wrong, the defendant was sane on committing the act. That criterion can be applied only through inferences, but it is hardly more difficult to discern than judging whether or not an individual acted in the grips of an irresistible impulse or a mental disease. Indeed, the retributive doctrine offers a distinct alternative to those who are weary and wary of "psychiatric justice." The retributive doctrine is not haunted by these problems as much as contending doctrines largely because it is not utilitarian. Since its goal is "doing justice" rather than the prevention of crimes, it makes no instrumental claims. Perhaps most important of all, in comparison with contenders, the retributive doctrine is the least conducive to the subversion of accepted principles of justice. In particular, the deterrence doctrine could encourage the punishment of the innocent because, with a view of promoting general deterrence, it is the publication of punishments and not the guilt of those punished that is essential. That criticism of the deterrence doctrine is not thwarted by the utilitarians' reply that an innocent person cannot be legally punished. The reply is a play on words, and it would be a cruel joke for anyone who sits on death row because of a judicial error. In any case, the deterrence doctrine does not preclude the execution of hostages to secure compliance with military law in an occupied country, vicarious punishments (as when the relatives of the alleged perpetrator of a criminal act are executed), or false publicity of punishments (to further general deterrence). The alleged dangers of a rehabilitative penal policy are more difficult to describe, largely because critics have introduced such a diverse range of issues. Nonetheless, the criticisms reduce to two major arguments: first, that advocates of rehabilitation call for a great deal of discretion both in sentencing and selecting "treatment modes" for offenders; and, second, that such discretion is inherently dangerous. The debate hinges largely on the second argument. That is the case because the warrant for discretion-that it is benign and exercised only to realize socially useful ends-is disputable. Indeed, so the criticism goes, there are conceivable means to rehabilitation, such as psychosurgery,16 that cannot be justified by appealing to social ends. 17 Unlike advocates of rehabilitation, retributivists are under no burden to demonstrate that a retributive reaction to crime is benign. No less important, since the means-ends distinction is minimized in the retributive doctrine, retributivists are less open to the charge of allowing the ends to justify the means.

2nc – Morally Right

The retributive doctrine is not eye for an eye- its about giving the highest level of punishment to the highest level of crime being the only way to bring justice to insecure societies

Brooks '17 (Thom Brooks, "Hegel's Political Philosophy: On the Normative Significance of Method and System," edited by Thom Brooks & Sebastian Stein, 05 June 2017, Durham Research Online, http://dro.dur.ac.uk/21955/1/21955.pdf, accessed 6-27-2020 MS

An example of how crimes are never fixed for any specific punishment is Hegel's views on the death penalty. A well known defender of capital punishment, Hegel says: although retribution cannot aim to achieve specific equality, this is not the case with murder, which necessarily incurs the death penalty. For **since life is the entire compass of existence** [Dasein], **the punishment cannot consist [bestehen] in a value – since none is equivalent to life – but only in the taking of another life** (PR, §101A). Hegel's argument is that **death is an appropriate punishment for murder, but not because it is a life for a life**. Instead, murderers should be executed because the most serious offence should be punished with the highest gravity. That the murderer has taken a life and the most appropriately grave punishment is his death is a coincidence.37 What counts is the comparative value and we should not be misled into thinking Hegel's support for the death penalty is grounded on some view of the lex talionis or some idea that punishments should mirror their corresponding crimes. But nor is Hegel's support for capital punishment absolute or timeless. In making some remarks about Beccaria's theory of punishment, Hegel says: 'The death penalty has consequently become less frequent, as indeed this ultimate form of punishment deserves to be' (PR, §100A). For Hegel, a crime may warrant execution as a punishment, but this might change over time as circumstances evolve. And his support for the death penalty is far from unequivocal in claiming it 'deserves' to become less frequent. This comment fits his later remarks about how the stability of civil society influences the amount of punishment: as society becomes more secure, the need for punishments like the death penalty start to dissipate.

1nc – Crime Turn

Checks solve misuse, but the death penalty is key to deterring violent crimes

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That said, the death penalty serves **three** legitimate penological **objectives**: general **deterrence**, specific deterrence, and **retribution**. The first, general deterrence, is the message that gets sent to people who are thinking about committing **heinous crimes** that they shouldn't do it or else they might end up being sentenced to death. The second, **specific deterrence**, is specific to the defendant. It simply means that the person who is subjected to the death penalty won't be alive to **kill other people**. 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. 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. 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. 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. Genny Gonzales would be 28 years old this year. She never went to high school, attended college, or fell in love. She is gone. Her murderers richly deserve the death penalty, though justice won't be complete until their sentence is **carried out**.

2nc – Crime Turn

The death penalty conclusively deters crime – a review of the literature confirms each execution deters 18 murders

Muhlhausen '14 [David B. Muhlhausen is a research fellow for the Center for Data Analysis at The Heritage Foundation. "Civil Society How the Death Penalty Saves Lives." https://www.heritage.org/civil-society/commentary/how-the-death-penalty-saves-lives]

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**. 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.** 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.

Empirically proven to decrease homicide levels.

Cassell '8 (Paul G. Cassell, Professor of Law at the University of Utah- S.J. Quinney College of Law, "In Defense of the Death Penalty," IACJ Journal, Summer 2008, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2181453) -LH

A final support for the death penalty's deterrent effect comes from statistical analysis.23 Abolitionists appear to have little time for investigating this issue. When they trouble to investigate the issue, they typically do little more than assert that the states without the death penalty have lower homicide rates than states with the penalty. Bright's chapter in Debating the Death Penalty can serve as a convenient illustration. Bright quickly dismisses the possibility of a deterrent effect with the factoid that the South has the highest murder rate in the country while the Northwest, with the fewest executions, has the lowest.24 **This analysis is fundamentally flawed**. It fails to account for a variety of regional differences—e.g., educational levels, criminal justice expenditures, economic prosperity—that are well known to have potential affects on homicide levels.25 Indeed, Bright's observation may prove little more than that the states that most need death penalty laws have been the ones most likely to pass them. A far better measure of a deterrent effect comes from measuring the experience of states with death penalty laws over time. Thus, we might compare what various states' murder rates were from 1968 to 1976 (a period of time in which no one was executed) with what they were during the years 1995–2000. Senator Hatch and other senators recently collected the relevant data.26 **The** five **states showing the greatest relative improvements** are, in order: Georgia, South Carolina, Florida, Delaware, and Texas. **All** these states **have aggressive application of the death penalty**. Another way of reviewing the data over time is to compare a state's 1999 murder rate to those of 1966, the most recent year in which the national homicide rate equaled that of 1999. In 1999, the national homicide rate had fallen to 5.7 per 100,000 persons, a 32- year low and the lowest rate since 1966. If death-penalty states had simply followed the national trend in recent years, one would expect that in 1999, they and the non-death-penalty states would all have returned to the low rates they experienced in 1966. But the data reveals a strikingly different pattern: **states aggressively using the death penalty** have generally **see**n **their murder rates decline** while **states not using the penalty** have generally **see**n **rates increase** The six leading

states measured by total executions are, in order: Texas, Virginia, Missouri, Florida, Oklahoma, and Georgia. Obviously this way of comparing states is biased against the smaller states. An alternative yardstick is to examine the rate of executions per murders in each state. By this measure— executions per total murders since 1976—the most aggressive death penalty state in the country is Delaware, followed by Oklahoma, Missouri, Texas, Virginia, and Arkansas. Taking the eight states that show up on either of these two lists, six have seen their murder rates drop since 1966. Arkansas' murder rate is down by 1.5 percentage points, Virginia's by 2.4 points, Texas by 3.0 points, Georgia's by 3.8 points, Florida's by 4.6 points and Delaware's by 5.8 points. The only states whose murder rates went up—Oklahoma and Missouri—went up by only 1.4 and 1.2 points respectively. Of the six states with declining murder rates (Arkansas, Virginia, Texas, Georgia, Florida, and Delaware), the period between 1997 and 1999 saw all six reach their lowest murder rate since 1960. Indeed, four of these states—Virginia, Florida, Delaware, and Arkansas—went from having murder rates well-above the national average in 1966 to rates well-below the average in 1999. In contrast to the general declines in the leading death penalty states, the largest **abolitionist states have** seen **rising homicide rates**. Among non-death penalty states, nine are large enough to have two congressmen, and have no wild swings in murder rates from year to year. These states are Wisconsin, Minnesota, Massachusetts, Iowa, Michigan, West Virginia, Rhode Island, and Hawaii. Of these, six have seen their murder rates go up since 1966 (Wisconsin, Minnesota, Michigan, West Virginia, Rhode Island, and Hawaii); one has stayed the same (Maine); and two have seen slight reductions (Massachusetts by 0.4 of a percentage point and Iowa by 0.1 point). These state-by-state comparisons are bolstered by more sophisticated and recent econometric analysis that controls for the variety of demographic, economic, and other variables that differ among the states. The best of these studies suggest that **the death penalty has a**n incremental **deterrent effect** over imprisonment: in plainer terms, the death penalty saves innocent lives.

Death penalty incapacitates criminals even if deterrence is unproven

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Another inaccuracy from Malkani's coverage of the Willie Horton incident is his claim that Horton "escape[d]" from prison. In reality, Horton was intentionally given an unsupervised weekend furlough from prison (although he did stay out longer than he was supposed to). Further, the famous 1988 Willie Horton campaign advertisement was not "Bush's most famous racial appeal." The ad was not even run by the Bush campaign—it was an independent expenditure by the National Security Political Action Committee.[41] Finally, in a comparatively minor inaccuracy, Willie Horton did not "[go] on to rape and murder . . . ." Rather, he tortured and raped a couple.[42] Neither were killed.[43] This misrepresentation of the facts of the Willie Horton case—whether intentional or accidental—seems to inform Malkani's understanding of capital punishment as a deterrence. He states that there is a "lack of any reliable empirical research that demonstrates that the death penalty deters potential offenders . . . ."[44] Although not explicitly addressed in the book, this statement evinces a sense of oversight regarding arbitrarily distinguishing between deterrence and incapacity—a common abolitionist tactic. Under this view, **an executed murderer is not "deterred" from committing future crimes; rather, he is "incapacitated."** This allows the abolitionist to disregard how executed individuals can no longer commit crimes and instead focus solely on the uncertain deterrent effects the death penalty has on other potential criminals. It is unlikely that the couple Willie Horton raped and tortured would find this distinction to be a meaningful one.

1nc – LWOP Turn

LWOP is inhumane and offers fewer protections for the convicted

Conklin, 19 --- Assistant Professor of Business Law, Angelo State University (7/4/19, Michael, Denver Law Review, "A STRETCH TOO FAR: FLAWS IN COMPARING SLAVERY AND THE DEATH PENALTY," https://www.denverlawreview.org/dlr-online-article/a-stretch-too-far-flaws-in-comparing-slavery-and-the-death-penalty, accessed on 5/27/2020, JMP)

A. Unintended Consequences The slavery and death penalty abolitionist movements have both resulted in unintended consequences. For example, a sharp increase in the death penalty against blacks followed the abolition of slavery.[7] After all, when slavery was legal, many people in power had a financial interest in not killing slave labor. Malkani and other death penalty abolitionists fear that abolishing the death penalty will likewise result in an unintended consequence, namely the **increased use of, and entrenchment in, life without parole** (LWOP). The concern is not just that **LWOP is inhumane** but that it **offers less protections for the convicted—such as automatic appeals**—when compared to the death penalty.

2nc – LWOP Turn

Public pressures ensure replacement with LWOP

Williams, 17 --- Professor of Law, South Texas College of Law (Kenneth, "Why and How the Supreme Court Should End the Death Penalty," 51 U.S.F. L. Rev. 271, Nexis Uni via Umich Libraries, JMP)

ii. Life Without Parole In the past, jurors often voted for death in order to ensure that dangerous defendants remained in jail and were never released on [*284] parole. 98 Now that most states provide jurors with the option of sentencing the defendant to life without parole ("LWOP"), this concern is eliminated. As a result, jurors are meting out fewer death sentences 99 and the public seems to agree with those decisions. In a recent poll, 52% of the public preferred LWOP, whereas 42% preferred the death penalty. 100 Even among those who support the death penalty, 29% preferred LWOP. The public is increasingly unwilling to accept the risk of executing an innocent person now that they are assured that the perpetrator will never be released from prison.

Life without parole lacks the heightened review procedures available in death sentence procedures and proves they can't embrace dignity

Malkani '18 (Bharat Malkani, Bharat Malkani researches and teaches in the field of capital punishment, and human rights and criminal justice more broadly. He is a member of the International Academic Network for the Abolition of Capital Punishment, and prior to joining academia he helped co-ordinate efforts to abolish the death penalty for persons under the age of 18 in America. "Slavery and the Death Penalty A Study in Abolition", Routledge, 2019, Accessed 6-25-2020) //ILake-JQ

We saw in Chapter Five that the restrictions on the use of capital punishment are designed to ensure that death sentences are only imposed when such sentences are considered proportionate to the gravity of the crime and the moral culpability of the offender. We also saw, though, that the Court has not applied the same proportionality analysis to non-capital cases. Sentences of life without parole are therefore available for a wide range of offenses including non-violent property offenses. In 2005, the US Supreme Court outlawed the death penalty categorically for offenders under the age of 18, but such persons can still be sentenced to life without parole in 31 states, if convicted of murder.68 In fact, as noted above, legislators in Texas specifically introduced LWOP in 2005 in order to ensure that the young offenders spared from execution under Roper v. Simmons would never be eligible for parole.69 And, as Marie Gottschalk has documented, "[i]n a pattern familiar in other states, the list of qualifying crimes for LWOP expanded in Texas" after it was introduced in 2005.70 In addition to the lack of any rigorous proportionality analysis, **LWOP is also free from individualized sentencing procedures**, except in cases involving juveniles. In Woodson v. North Carolina, the US Supreme Court explained why death sentences must be individualized. Defendants, the Court ruled, must be allowed to introduce mitigating evidence in order to ensure that only the most morally depraved are executed. And in Hurst v. Florida, the Court explained that death sentences could only be imposed by a jury, and not by a judge.71 When we look at LWOP schemes around the country, though, we see mandatory schemes abound. Even in some jurisdictions where the penalty is not mandatory, we see the potential for individuals to be sentenced to LWOP at the discretion of a judge rather than a jury. Consider, for example, the schemes in the seven jurisdictions that have outlawed capital punishment since 2007. In five of these states, LWOP is mandatory for some crimes. In Connecticut, in 2012, a jury-imposed, discretionary death penalty for "capital felonies" was replaced with a mandatory LWOP for offenses of "murder with special circumstances."72 When the Delaware Supreme Court invalidated the state's death penalty, it left LWOP as the only punishment available upon a finding of guilt for capital crimes. In Illinois, which abolished the death penalty in 2011, LWOP is mandatory when certain aggravating factors are found, as is the case in New Mexico and New York. Even though LWOP is not mandatorily imposed in Maryland, which abolished the death penalty in 2013, it is nonetheless a decision for a judge to make, rather than a unanimous jury. In addition to the mandatory application of LWOP in some states, **such sentences also lack the sort of procedural safeguards that are applicable in capital cases to ensure that convictions are free from error.** Thus, when anti-death penalty advocates encourage the use

of LWOP on the grounds that it is a cheaper punishment, they are by implication contributing to what Gottschalk calls "the carceral state", because prisoners sentenced to LWOP will have less chance of having their sentence reviewed or overturned. In this sense, we can draw parallels with David Walker's criticism of the American Colonization Society. Walker suggested that the true motives of the ACS were to strengthen the subjugation of black people by removing those who worked most hard for abolition and equality. While it might be implausible to argue that anti-death penalty advocates who champion LWOP are purposively entrenching harsh punishments**, the underlying concern is comparable: such an "alternative" has the effect of subjugating the very people it is supposed to help.** In some respects, **if you are innocent it is better to be sentenced to death and take advantage of the heightened review procedures available, than it is to be sentenced to a lesser-reviewed sentence of LWOP.** By advocating for the imposition of LWOP in its current form (that is, without heightened procedural safeguards), anti-death penalty advocates are normalizing and institutionalizing harsh retributivism. Consider, for example, the reversal rate for capital cases. It currently stands at 68 percent, because of the heightened review procedures. In non-capital cases – including LWOP – the reversal rate is between 10–20 percent, in part due to the relatively weaker safeguards and fewer opportunities for review.73 Capital defendants currently have a right to have their case reviewed by the state's highest court; but non-capital defendants – even those serving a term of LWOP – do not. Also, as noted above, if a prosecutor wishes to rely on "future dangerousness" as a reason for seeking a death sentence, the jury must be informed of the availability of LWOP as an alternative punishment.74 In other words, the defendant benefits from the jury being informed of alternative, allegedly lesser, punishments. However, in cases where LWOP is the maximum available sentence, juries are not required to be told of alternatives. Thus, there is more scope for a jury to be inclined to sentence someone to LWOP, unaware that there is a less harsh, but just as effective, alternative available.75 **The endorsement of LWOP can also contribute to the institutionalization of racism in the criminal justice system.** For example, North Carolina's Racial Justice Act, which has now been repealed, mandated the replacement of a death sentence with a sentence of life without parole in cases in which a prisoner successfully showed that race had impermissibly played a role in the imposition of their death sentence. As a result, it gave legitimacy to sentences of LWOP in cases that had been affected by racial prejudice. Death penalty abolitionists who criticize life without parole have also pointed to the counter-productivity of those who endorse such sentences, either for moral or strategic purposes. Such sentences are often touted as cheaper than death sentences, but Roger Hood and Carolyn Hoyle highlight the "enormous cost implications of housing increasing numbers of elderly people in prisons who will inevitably need medical and geriatric care."76 Perhaps more startling than the substantive and procedural shortcomings of LWOP, though, is the observation that even if there has been some decrease in the use of capital punishment as a result of the use of LWOP, this is nothing compared to the increased use of LWOP instead of lesser punishments. That is, it is arguable that people who would ordinarily have been sentenced to a term of imprisonment with the possibility of parole have instead been sentenced to LWOP as the latter has become acceptable. Ashley Nellis has found that "[b]etween 1992 and 2016, there was a 12.7 percent increase in the number of people on death row while over the same period the LWOP population rose 328 percent."77 It is highly unlikely that all those sentenced to LWOP in that period would have been sentenced to death had the former not been available, and as Carol Steiker and Jordan Steiker note, "…even if the entire decline in death sentencing were (implausibly) attributed to LWOP, **the number of capital defendants affected by LWOP's introduction would still be dwarfed by the number of noncapital defendants affected by its widespread adoption and use."**78 That is, even if the promotion of LWOP has led to a small decline in death sentences, this has been nothing compared to the startling increased use of LWOP instead of lesser sentences. In Nellis's words: "LWOP's widespread use in both capital and noncapital crimes has had a normalizing effect on extreme sentences and places an upward pressure on sentences across the spectrum."79 Indeed, as of 2016, nearly half of all LWOP sentences have been passed in just four states. Florida accounts for 16.7 percent of all LWOP sentences; Pennsylvania 10.1 percent , California 9.6 percent , and Louisiana 9.1 percent .80 All except Louisiana also appear in the list of the five most populous death rows.81 To paraphrase William Lloyd Garrison, then, "the [promotion or acceptance of LWOP] is inadequate in its design, injurious in its operation, and contrary to sound principle."82 It is inadequate because it fails to account for the problems inherent in LWOP in its current form; it is injurious because it has normalized the use of such sentences in cases that might have otherwise attracted lesser sentences, and subjects people to a lifetime behind bars with no hope of release; and it is contrary to principle because it **normalizes and institutionalizes the belief that some people can be permanently excluded from the human community, which is the very wrong that death penalty abolitionists are trying to eradicate in the first place.**

Solvency Answers

1nc – Circumvention

State jurisdiction determines whether the plan's rationale gets properly interpreted – Texas proves states can circumvent

Steiker & Steiker, 16 --- Professors of Law at Harvard and University of Texas respectively (Carol S. & Jordan M., Courting Death: The Supreme Court and Capital Punishment, ebook from University of Michigan, pg. 127-129) //ILake-JQ

In some extreme cases, state courts not only have underenforced Supreme Court doctrines, they have expressed open skepticism about the wisdom of the Court's regulation. A little over a decade after Gregg, the Court addressed in a Texas case whether the Eighth Amendment forbids the execution of persons with intellectual disability (formerly "mental retardation"). Given the paucity of states prohibiting the practice, the Court sided with Texas and established no categorical bar. Thirteen years later, the Court, responding to a flood of new states condemning the practice, ruled that the execution of persons with intellectual disability violates prevailing standards of decency. Despite straightforward language in the decision affirming that "death is not a suitable punishment for a mentally retarded criminal," the Texas Court of Criminal Appeals, as it purported to implement the Court's decision, **doubted whether all persons with intellectual disability should be exempt from execution**. Instead, the CCA suggested that it should "define that level and degree of mental retardation at which a consensus of Texas citizens would agree that a person should be exempted from the death penalty."18 The CCA rejected the idea that all persons recognized as having intellectual disability under prevailing clinical norms should be spared, arguing instead that the exemption was more appropriate for persons like the fictional character Lennie in John Steinbeck's novel Of Mice and Men.19 Accordingly, the CCA created its own, nonclinical approach to assessing intellectual disability with the avowed goal of weeding out offenders with mild intellectual disability whom Texans might regard as sufficiently culpable for execution. The nonclinical approach builds on and reinforces outdated stereo types about intellectual disability, focusing, for example, on whether the off ender can respond "rationally" to questions, lie in his own interest, and engage in planning. The approach explicitly invites the decision maker to consider facts of the capital offense, ostensibly to gauge whether the offense was "impulsive" or involved "forethought." But critics of the Texas approach argue that the effort to focus on the details of the offense is inconsistent with clinical practice (where the determination of intellectual disability is rooted in assessments of deficits in particular areas of adaptive be havior), and inappropriately encourages decision makers (jurors and judges) to reject the exemption where the circumstances of the crime are highly aggravated and disturbing.20 As a result of Texas's court- created ad hoc approach to intellectual disability, **numerous Texas defendants who satisfy traditional clinical criteria for the diagnosis have nonetheless been sentenced to death and executed.** Many of these inmates undoubtedly would be deemed exempt from the death penalty in other jurisdictions, and Texas offenders seeking relief based on intellectual disability have had a far lower rate of success than off enders outside the state.21 The Supreme Court recently moved to rectify a related problem in Florida, where the Florida courts had imposed a strict IQ cutoff for the exemption in conflict with professional clinical norms (which include a "standard error of measurement"). The Texas courts, though, continue to adhere to their nonclinical approach, and the Court of Appeals for the Fifth Circuit has declined to intervene. In fact, the Court of Appeals recently explained that the Supreme Court decision in the Florida case did not call into question the Texas nonclinical approach because "the word 'Texas' nowhere appears in the [Supreme Court] opinion." The underenforcement in Texas of the Court's prohibition against executing persons with intellectual disabilities demonstrates how **constitutional regulation can produce very different outcomes depending on a jurisdiction's willingness to embrace the principles animating the Court's intervention**.2

2nc - Circumvention

States won't comply – they'll re-write the laws.

Sarat et. al. '20 [Austin D. Sarat is the Associate Dean of Faculty and William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College. "After Abolition: Acquiescence, Backlash, and the Consequences of Ending the Death Penalty." https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1003&context=hastings_journal_crime_punishment]

However, such predictions were quickly **proven wrong**.10 Maurice Chammah of the Marshal Project reports that "[t]he backlash to **Furman** was **swift and furious**, as state legislatures scrambled to rewrite their laws to satisfy the [C]ourt's concern that the punishment was **arbitrary**."11 It was only a matter of days after the Court's decision before five states announced that they intended to **reinstate** the death penalty.12 As renowned death-penalty scholars Carol S. Steiker and Jordan M. Steiker note, "The backlash in the early 1970s depended largely on the view that new energy and attention to the death penalty could rescue it from its manifest and manifold problems."13 By May 1973, thirteen states had reinstated the death penalty and by 1976 that number increased to thirty-five.14 The adverse reaction to Furman was also reflected in **public opinion**. Three months before the decision, 42% of Americans said they were opposed to the death penalty. Four months after Furman, opposition to the death penalty had fallen to **32**%.15 By 1976, death penalty support reached a **twenty-five year high of 66%.**16 Backlash against Furman culminated with the Supreme Court's 1976 decision in Gregg v. Georgia, which held that capital punishment did not violate the 8th and 14th amendments in all circumstances.17 Of course, Furman was not the only mid-twentieth century Supreme Court decision to provoke **backlash**. To take another prominent example, there is substantial scholarly literature analyzing backlash after the 1973 Roe v. Wade decision,18 in which the Supreme Court held that the Constitution protected abortion rights. Examining public discourse following Roe, political science professor Vincent Vecera found that "the Court's ruling in Roe v. Wade played a critical role in transforming how Americans think and talk about abortion."19 Other scholars claim that Roe helped galvanize a previously dormant anti-abortion movement. Longtime Supreme Court reporter Linda **Greenhouse** and Yale legal historian Reva Siegal note that "One effect of Roe was to mobilize a **permanent constituency** for criminalizing abortion."20 Additionally, after Roe, Congress passed the first limits on **abortion funding**,21 and many state legislatures enacted **restrictions on abortion**.22 These actions were taken **despite general public support** for Roe. 23

1nc – No Spillover

Abolition doesn't spillover to other prison issues – it actively trades off with more substantive criminal justice reforms and normalizes the worst parts of the system

Steiker & Steiker '20 [Carol S. Steiker1 and Jordan M. Steiker. Harvard Law School, Harvard University, Cambridge, Massachusetts. University of Texas School of Law, University of Texas, Austin, Texas 78705, USA; email: jsteiker@law.utexas.edu. "The Rise, Fall, and Afterlife of the Death Penalty in the United States."

Another often **expressed hope** is that the abolition of the death penalty will bring the **U**nited **S**tates closer to its peer countries by expressing acceptance of a **human rights framework** to govern that issue. On a **formal level**, this hope will almost certainly be **realized**. If nationwide abolition were achieved, the United States would no longer need to cast a nay vote when the UN General Assembly adopts resolutions calling for a worldwide moratorium on the death penalty, as it has done seven times since 2007 (Caplan 2016, UN 2018). Furthermore, the structure of punishment within the United States would be less grossly out of step with international norms, given that the world's most serious crimes are not punishable by death under international law (Bessler 2017). As a result, the United States would enjoy less friction with its allies, especially in the context of seeking extradition of suspects facing serious (formerly capital) charges in American courts (Steiker & Steiker 2016). However, on a more **substantive level**, it seems doubtful that American abolition would represent a **deeper acceptance** of the norm of respect for human dignity that the international **consensus** on the death penalty embodies. Some experts hope that worldwide abolition of the death penalty will mark the success of an increasingly global postwar international human rights agenda and the general acceptance of the concept of human dignity as part of a new global common law (Novak 2019). But American abolition, if and when it comes, will likely be rooted in more **pragmatic concerns**, which tend to dominate American discourse on the issue (Steiker & Steiker 2016). Extreme criminal punishments like the death penalty both reflect and reinforce a vision of offenders as less than human (Christie 2014). But even without capital punishment, the vigorous use of other extremely harsh punishments (like LWOP) and the maintenance of degrading conditions of incarceration (such as excessive use of solitary confinement and tolerance of sexual violence) stand in the way of a full embrace of human dignity in punishment practices. And although the death penalty may have facilitated the rise of mass incarceration in the United States (Scherdin 2014), the **converse does not follow:** The dismantling of the death penalty will not **immediately** or **inevitably** do much to **reverse** the massive scale of American **imprisonment**.

2nc – No Spillover

Strengthening dignity is not enough – overcoming incapacitation as a penal rationale is a pre-requisite to rejecting retribution

Simon '12 (Jonathan Simon, Jonathan Simon is a professor of law at UC Berkeley and faculty director of the Center for the Study of Law & Society. "Life without Parole: America's New Death Penalty?" (Chapter 8: Dignity and Risk), NYU Press, https://muse-jhu-edu.proxy.lib.umich.edu/chapter/725357/pdf, 2012, Accessed 6-20-2020 via Umich Libraries) //ILake-JQ

But if the absence of dignity as a central legal value is both implicated and reinforced by an extreme version of incapacitation as a penal rationale, **it will take more than a strengthening of dignity within the law to overcome degrading punishments such as LWOP**. This is not an argument for abandoning court challenges to LWOP, three strikes, and other extreme sentences. Indeed, the availability and likely expansion of judicial forums to hear these claims is one of the best opportunities at present to wage a broader cultural struggle against total incapacitation. **Such challenges enable a rare break in the public presentation of incapacitation as sanitary and effective**, and provide a unique space in which to reintroduce a discourse of morality and justice into talk about punishment. But they will have their greatest effect when they can draw parallels with developments in **our social and legal culture in which risk and dignity are being reconfigured to place fear under a stronger value of dignity.** It is the growing strength of several such areas which provides me optimism that the road to a legal end of LWOP need not be a lifetime away.

1nc – Backlash Turn

A decision invalidating the death penalty on more pragmatic grounds solves and won't trigger a "culture war" response

Steiker '14 --- Professor at the University of Texas School of Law (Fall 2014, Jordan, "PANEL THREE: THE WISDOM OF CAPITAL PUNISHMENT (APART FROM MORALITY OR THE RISK OF CONVICTING THE INNOCENT): THE AMERICAN DEATH PENALTY FROM A CONSEQENTIALIST PERSPECTIVE," 47 Tex. Tech L. Rev. 211, Nexis Uni via Umich Libraries, JMP)

An odd but important question is whether death-penalty opponents should welcome a "Furman II," invalidating the American death penalty. The first Furman decision generated enormous backlash and ultimately reinvigorated what seemed to be a dying practice. 53 Then, like now, the United States experienced a significant decline in death sentencing and executions, as well as legislative momentum to repeal or restrict the death penalty. 54 Arguably the Court's intervention stalled some of that momentum--though other factors, including increasing rates of violent crime and the increased politicization of criminal-justice policy, might have independently contributed to the resurrection of the American death penalty. Would a Court decision today herald the true eradication of the death penalty, or would it risk the sort of backlash and reinvigoration that followed Furman? Several factors suggest that contemporary circumstances are more conducive to permanent abolition via judicial decision. First, violent crime rates have decreased substantially over the past two decades, and we have witnessed a corresponding decline in the use of criminal-justice concerns as "wedge" issues in both state and federal elections. 55 We are two decades removed from the dramatic use of the death penalty in a presidential or gubernatorial race (as in Michael Dukakis's failed bid in 1988 or Governor Mario Cuomo's reelection loss in 1994). 56 Second, and relatedly, the politics of the death penalty have also changed substantially, with some political conservatives voicing doubts about the State's power to kill, and increasing fragmentation of the views of victims regarding the desirability of the death penalty--in contrast to the seemingly united "pro-death penalty" front of the victims' rights movement of the 1970s and 1980s. 57 Third, a decision invalidating the death penalty at this time would have firmer footing along several dimensions. At the time Furman was argued, there were essentially no judicial precedents suggesting that the death penalty as a practice was constitutionally questionable. States had enjoyed wide, almost unfettered latitude in administering the death penalty and, despite the waning popularity of capital punishment, few observers believed the issue would or [*220] should be resolved judicially rather than politically. 58 Now, we have had over four decades experience with extensive judicial regulation of the death penalty. 59 The notion that the Constitution supplies important limits on capital punishment is **firmly entrenched**, and the Court's decisions have generated numerous doctrinal grounds for challenging the death penalty as a continuing practice. Accordingly, a decision invalidating the death penalty would be--and perhaps more importantly, would **appear to be--a natural outgrowth of death-penalty doctrines rather than the sort of "lightning bolt" that made Furman vulnerable**. Along these lines, the doctrines developed over the past forty years have provided something of a "yardstick" for measuring the acceptability of prevailing capital practice, and a Court decision invalidating the death penalty would fairly be regarded as holding states to the standards and norms essential to the constitutional administration of the death penalty. 60 In addition, given the Court's doctrines, judicial abolition would be less likely to rest on the sort of moral opposition to the death penalty reflected in Justice Brennan's and Justice Marshall's opinions in Furman. A contemporary opinion would tum on many of the pragmatic concerns about the death penalty's administration discussed above rather than insist that capital punishment violates "human dignity" in some more foundational sense, and would thus be **less likely to elicit a "culture war" response**.

2nc – Backlash Turn

Backlash empirically manifests itself in a racially charged tough on crime movement

Goldfarb, 16 --- Professor of Clinical Law, George Washington University Law School (Summer 2016, Phyllis, "Matters of Strata: Race, Gender, and Class Structures in Capital Cases," 73 Wash & Lee L. Rev. 1395, Nexis Uni via Umich Libraries, JMP)

[*1410] 1. Departure and Return of the Death Penalty There is yet more evidence of the racial pedigree of the death penalty in America. Furman v. Georgia, 60 the 1972 U.S. Supreme Court case that temporarily halted America's death penalty, was brought to the Supreme Court by the NAACP Legal Defense Fund, a legal organization founded by Thurgood Marshall and dedicated to the advancement of civil rights and racial justice. 61 Those in the contemporary movement to abolish the death penalty are known as abolitionists, a racial justice echo that voices its link with the abolitionist movement of the nineteenth century that sought to end slavery. 62 As Evan Mandery writes in A Wild Justice, his book about the Furman case, "everyone understood Furman to have been about race." 63 **Four years later, when the Supreme Court reinstated the death penalty** in the 1976 case of Gregg v. Georgia, 64 **it was clear that this retrenchment was tied to backlash against the civil rights movement and the civil rights advances that it had precipitated**. 65 **This backlash expressed itself in a racially charged tough-on-crime movement.** 66 But for the resentment of civil rights [*1411] progress that led to restoration of capital punishment, the death penalty would have been unavailable to the Virginia courts that imposed it on Joe Giarratano in 1979. 67 Long after its abolition in most Western democracies, the death penalty survived in America, a relic of America's centuries-old and still highly charged racial dynamics. 68

Their framing triggers public and political backlash that worsens criminal policy – New York proves

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These lofty ambitions, however, hit a snag. It soon became clear that the coalition of reformers had **gravely underestimated the determination of pro-carceral forces** to claw back the gains of last year and the eagerness of **news media to cooperate in a statewide campaign of public fearmongering**. They'd also underestimated the willingness of their erstwhile allies among Democratic state legislators to betray the poor, black, and brown New Yorkers overwhelmingly affected by the reforms, if it helps Democrats keep their seats. Far from building on their progress of last year, criminal justice reformers now find themselves exhausted, dispirited, and dismayed, caught in a 24/7 trench battle to defend the compromise measures they only just won. If they fail, it's increasingly possible that New York won't just revert to the pre-reform status quo. The avenging counterreformation of **police unions, police departments, district attorneys, Republicans, and** Facebook **fascists** is currently poised to drive past that line, **winning laws that will give prosecutors something they have never had in New York before**. Under a proposal unveiled by Democratic senators last week, prosecutors would gain the ability to ask for people to be sent to jail before the benefit of a trial, **based on speculation about what sort of crimes they might commit in the future**. To reformers' dismay, the issue has become a political football.

AT: Add-Ons

2nc – No Modeling Add-On

Even with federal reintroduction, the death is still on a major decline globally and nationally because of state action

Follet, 19 --- MA in Foreign Affairs from the University of Virginia (7/29/19, Chelsea, "Despite Federal Return, Capital Punishment Is Dying Out," https://www.cato.org/blog/despite-federal-return-capital-punishment-dying-out, accessed on 3/13/20, JMP)

The U.S. federal government recently ordered the death penalty to be reinstated for the first time in sixteen years and has scheduled the execution of five death row inmates. This policy change goes against the **widespread trend toward fewer executions**. Twenty-one U.S. states, plus the District of Columbia, have totally abolished the death penalty for all crimes. Seven of those states abolished the practice in my lifetime. New Hampshire just officially abolished it in 2019. **In many U.S. states where executions are still legal, none have been carried out for years and the law is mainly symbolic.** Kansas, for example, has not executed any prisoners in over forty years. The U.S. federal government, similarly, never officially abolished the death penalty but has had a moratorium on the practice since 2004 – a moratorium ended by the new policy ordered by Attorney General William Barr. **Harvard University's** Steven **Pinker has chronicled the decline of capital punishment** in his book, The Better Angels of Our Nature. He estimated that the execution rate in the **U**nited **S**tates has been falling for four centuries, from nearly 3.5 executions per 100,000 people in the 17th century. His graph is pictured below. **[image of graph omitted]** Trends against capital punishment can also be observed abroad as well. Consider Europe. Prior to the Enlightenment, European nations once used the death penalty for a vast number of crimes. England, for example, had 222 capital offenses in its legal system well into the 18th century. Until the early 19th century, it deemed many minor crimes, such as stealing anything worth more than four dollars in today's currency, to be worthy of execution. As the values of the Enlightenment spread, that number of capital offenses shrunk to four by the middle of the 19th century. Today, in Europe, capital punishment remains legal only in Belarus and Russia. The change extends beyond Europe. This year, Malaysia abolished mandatory capital punishment. Last year, Burkina Faso abolished the death penalty in its new penal code. Moreover, Gambia and Malaysia declared an official moratorium on executions. Last year, Amnesty International noted, at least 690 executions took place in 20 countries. That number was 31 percent lower than in 2017. The vast majority of recorded executions happen in Iran, Saudi Arabia, Vietnam and Iraq. Then there are China and North Korea. The two communist countries execute more people than other countries and may well execute more people individually than the rest of the world combined. Unfortunately, there are no reliable statistics for those secretive societies. The move to reinstate capital punishment federally in the United States represents a reversal after more than a decade-long hiatus in the federal use of capital punishment. But **opponents of the practice can take heart in the successful abolition of the death penalty in an increasing number of U.S. states and countries around the world**.

Trump's past disrespect for international law has destroyed any chances of US i-law credibility- the impact is thumped but international law also has very little impact on American society or politics

Brennan '20 (David Brennan, 1-15-2020, "Trump's "ignorance" about international law is "extreme even by U.S. standards": Expert," Newsweek, https://www.newsweek.com/donald-trump-ignorance-international-law-extreme-us-standards-expert-1482319, accessed 6-27-2020 MS)

The recent crisis with Iran—and the tit-for-tat military strikes that directly or indirectly resulted in the deaths of more than 200 people—have prompted questions about President Donald Trump's temperament and diplomatic skills. The roots of the conflict stretch back decades, but Trump's time in office and his withdrawal from the Joint Comprehensive Plan of Action—a.k.a. the Iran nuclear deal—and subsequent Iranian activity have given the historic animosity a shot in the arm. Trump and his supporters have claimed this month's brinkmanship as a win, at least in the short term. A notorious Iranian general has been removed from the battlefield with the loss of no American lives. The president avoided full blown war and as Secretary of State Mike Pompeo said, "restored deterrence." But the past month also raised questions about Trump's lack of concern for or even understanding of international law, according to three experts who spoke to Newsweek. Both the U.S. and Iran

justified their attacks by claiming self-defense under Article 51 of the United Nations charter. Ralph Wilde, an expert in international law at University College London explained, "The international law of self-defense is very narrowly constrained." "The right to use force in self-defense—military action—is possible if an attack actually happens and you are defending yourself from it, which obviously is not the case here, because there wasn't something underway that they were stopping." Wilde added that there is also a lawful basis if the attack is imminent. Iran's response to Soleimani's assassination was a barrage of missiles launched at two Iraqi military bases housing American troops. This was clearly a retaliation and—according to John Bellinger III, an expert in international and national security law and a partner at the Arnold & Porter firm in Washington, D.C.—not permitted under international law. Michael Doyle, an international relations expert who served as assistant secretary-general and special adviser to United Nations Secretary-General Kofi Annan, surmised, "You have a series of illegitimate attacks by Iran and a series of illegitimate responses by the U.S., in terms of international law." Trump and his senior aides have argued that killing Soleimani was necessary to stop imminent attacks against Americans. The president told Fox News Friday that Soleimani was planning attacks against four U.S. embassies, but he did not elaborate or provide any evidence. Secretary of Defense Mark Esper then appeared to contradict the president, saying he had not seen proof of such plots. The administration has still not produced any evidence that Soleimani's assassination stopped an imminent threat. "In the view of the U.S. Government, an action in self-defense against a potential attack would be permissible under international law if the plan for an attack was well-advanced but still some time away," Bellinger explained. President Barack Obama's administration used this standard in hundreds of drone strikes against Al-Qaeda members, for example. Under U.S. domestic law, the president has more latitude to use force. Under the Constitution, the president may use force without congressional authorization if he determines that it is in the national interest, even if not to prevent an imminent threat. Doyle simply told Newsweek that the administration's Soleimani explanation has been "exposed repeatedly as fictional." But none of the pressure seems to bother the president. Trump said Sunday "it doesn't really matter" if there was a legal basis for killing Soleimani "because of his horrible past!" The U.S. has, for now, avoided an open war with Iran though the debate over Soleimani's killing will rumble on. But the strike plays into larger concerns around Trump's respect for—and understanding of—international law. The administration has shown itself willing to flout global rules where politically expedient. Last year, for example, his administration recognized Israel's annexation of the Golan Heights and dropped its opposition to Israeli settlements in the Palestinian West Bank—both illegal under international law. Trump also "did not even try" to justify military strikes against chemical weapons facilities in Syria—launched to punish President Bashar al-Assad for reportedly gassing his own people—Bellinger, who also served as a State Department and National Security Council legal adviser under George W. Bush, said. Trump signalled his aversion to international law while on the campaign trail, speaking in favor of torture and threatening to kill the families of suspected terrorists. He now threatens illegal action from the Oval Office, promising to hit Iranian cultural sites and respond disproportionately to provocation from Tehran. Bellinger noted that most senior government officials in past administrations and lawmakers from both parties "have been less concerned about compliance with international law—especially regarding the use of force—than European counterparts, who are more steeped in international law." "Trump's ignorance about international law governing the use of force is extreme even by U.S. standards," Bellinger told Newsweek. While past U.S. administrations have at least tried to justify flouting international law, Trump "has seemed to delight, both as a candidate and as president, in ignoring and even ridiculing international law," Bellinger added. Wilde noted that in one sense, Trump's disregard of the law is a continuation of American policy. Though he warned against "exceptionalizing" Trump, Wilde added that the president's conduct in the Iran crisis has been "remarkable." "Instead of making ridiculous legal arguments but staying within the boundaries of the law, the implication of the tweets is, 'We're not going to follow the law,'" Wilde explained. "In my 25 years, working in international law, I have not seen much evidence of states doing such a thing," Wilde said. "But there is a question, of course, as to whether President Trump knew that what he was threatening to do would be illegal," he added. Doyle described Trump as "such an anomalous figure to be president of the United States or any other democracy that it throws a lot of the normal understanding of appropriate behavior out the window." "There is a quality of obliviousness that the president repeatedly exercises with regard to international law," Doyle continued. "So that when those begin to use legal rhetoric...it is less credible than it might be for any other leader that we could imagine as the head of a democracy." No administration is monolithic, and some statements from officials like Esper and Pompeo have tried to walk back some of Trump's more bombastic threats. Still, Bellinger suggested, it is difficult for aides to reign in a president so sure of himself and so dismissive of criticism. "The tone is set at the top," he said. Trump and the U.S. government will likely not face any legal repercussions for violating international law. Still, such actions have a wider effect. In a lecture at the Supreme Court in 2016, Bellinger cautioned against the argument that global opinion is not important because foreigners cannot vote for an American president. "Other countries do 'vote for us' by deciding whether to cooperate with us on intelligence, law enforcement, diplomatic, and military matters," he said. Under Bush, for example, some of America's European allies were reluctant to share intelligence for fear that the information would be used to break

international law. Wilde said international law remains a "very inadequate legal system...The enforcement mechanism is the reaction of other states in the international community. And that does count sometimes." At home, too, legality—or at least the appearance of legality—can be helpful. If Trump did indeed assassinate Soleimani seeking a boost in the opinion polls as some have claimed, it would help the president to be able to say he did so legitimately. "The desire to appear within the framework of law is clearly something that's worth rhetorical effort on the basis of the president," Doyle said. "He wanted to present himself as a law abiding political leader, knowing that the ethos, the culture of legality is relatively deep within the American public." Ultimately international law does matter, even if powerful states like the U.S. can ignore it when it is inconvenient, Bellinger said. "Most governments still try to abide by international law requirements regarding the use of force. By ignoring these rules, President Trump sets a bad example for other countries and contributes to the breakdown of international order." Newsweek has contacted the White House and the State Department for clarification on any evidence supporting Soleimani assassination, and a for response to suggestions that Trump acted in contravention of international law. This article has been updated to clarify comments made by Ralph Wilde and John Bellinger III.

2nc – No Innocent Death Add-On

Capital punishment is key to condemning unquestionably guilty killers – outweighs a negligible risk of killing innocents

Broughton, 17 --- Assistant Professor of Law at the University of Detroit Mercy School of Law in Detroit, Michigan, J. Richard (2017, "The Death Penalty and Justice Scalia's Lines," Akron Law Review: Vol. 50 : Iss. 2 , Article 2. Available at: http://ideaexchange.uakron.edu/akronlawreview/vol50/iss2/2)//MP

Claims regarding the constitutionality of the death penalty—an issue once thought settled after the Court's 1976 decision in Gregg v. Georgia50—are making a comeback. There is even a movement among American conservatives to abolish capital punishment, which, though small today, should be taken seriously by every death penalty supporter.51 It is a needle-moving effort. Abolition talk is alive and well. This is despite the fact, as Scalia and others on the Court repeatedly reminded us, that the Constitution expressly acknowledges the existence of capital punishment.52 Of course, whether its use violates the Eighth Amendment may be a separate matter,53 and its recognition in the Fifth Amendment is not conclusive of its validity as to all applications; rather, its recognition in the Fifth Amendment should be a critical factor in determining whether any application of capital punishment is constitutionally permissible. Moreover, abolition talk is increasingly fashionable despite public opinion remaining supportive of capital punishment,54 and despite the fact that a clear majority of American jurisdictions still maintain the death penalty.55 Claims that the death penalty is per se unconstitutional also persist despite the reality that abolition would mean concluding that the Constitution forbids applying the death penalty to any defendant—no matter how heinous, cruel, or depraved the defendant's crime, no matter how strong the evidence against him, and no matter how powerful the aggravators or how weak the mitigators.56 Arguments for invalidating the death penalty also rely substantially upon claims about the risk of executing innocents.57 Those are, of course, powerful claims. But they do not explain why every death sentence should be forbidden. The risk of executing innocents is simply not the same in every capital case. **In some cases, the risk is negligible, or even non-existent.**58 Moreover, **opposing imposition of the death penalty upon an innocent person tells us very little about the proper punishment for a guilty person**. Why should the risk of executing innocents impede the execution of, for example, an unquestionably guilty killer like Timothy McVeigh or Dzokhar Tsarnaev? Political life brings risks, risks that sometimes unfortunately implicate innocents. The political community can decide whether to tolerate those risks.59 But it often does (for example, in war, in policing, or in defining the law of self-defense).

Ending the death penalty doesn't stop innocents from being convicted --- it actually INCREASES the likelihood that claims of innocence will be canvassed

Steiker, 14 --- Professor at the University of Texas School of Law (Fall 2014, Jordan, "PANEL THREE: THE WISDOM OF CAPITAL PUNISHMENT (APART FROM MORALITY OR THE RISK OF CONVICTING THE INNOCENT): THE AMERICAN DEATH PENALTY FROM A CONSEQENTIALIST PERSPECTIVE," 47 Tex. Tech L. Rev. 211, Nexis Uni via Umich Libraries, JMP)

Before moving forward, I will offer a brief comment on suspending concerns relating to convicting and executing the innocent. This concern has undoubtedly contributed significantly to the decline in support for and use of capital punishment over the past fifteen years. I remain something of a skeptic about the strength of the argument from innocence (in comparison to other anti-death-penalty or pro-repeal claims). 12 In particular, I regard the argument as rooted in an overly optimistic view about the error-correcting potential of our criminal-justice system. That claim might sound odd because the argument from innocence appears to rest on the fallibility of human endeavors, including the administration of criminal punishment. But, **lurking beneath the argument from innocence is the somewhat naive view that without the death penalty, significant errors and false convictions would be discovered and corrected**. So, the argument goes, if someone is sentenced to life imprisonment rather than death, there is always the possibility of vindication. What this view ignores is the disturbing fact **that non-death-sentenced inmates rarely have any meaningful review of their convictions**. 13 They lack lawyers to investigate and present "newly-discovered" evidence in state and federal postconviction proceedings, and **fundamental errors, including wrongful conviction, are unlikely to come to light**. 14 In fact, **the presence of the death penalty seems to increase the likelihood that claims of innocence will be canvassed**. 15 **More resources, judicial attention, and public concern flow to claims of innocence**

asserted by condemned inmates than to those asserted by inmates merely facing lengthy confinement. 16[*214] I do not wish to understate the horror of executing the innocent, nor do I want to understate the horror of lengthy-in most cases lifetime-incarceration for persons wrongfully convicted of murder but not sentenced to death. In sheer numbers, this is a much larger group; it seems to me a complicated empirical question whether the presence of the death penalty leads to more or less "wrongful punishment" over the long term.