The Death Penalty Is Unjust


State-supported execution—even for the most brutal murderers—is ethically wrong and can never be justified, contend the editors of the Progressive in the following viewpoint. Capital punishment is physically and psychologically cruel and is disproportionately administered to minorities and the poor, the authors point out. Moreover, innocent and wrongly convicted inmates might have already been executed. The death penalty should be abolished because it brutalizes society and denies the value of human life. The Progressive is a monthly journal of left-wing political opinion.

As you read, consider the following questions:

1. According to the authors, why did the U.S. Supreme Court agree to review Florida's use of the electric chair?
2. According to Helen Prejean, quoted by the authors, what is torturous about the practice of capital punishment?
3. What flaws did Chicago Tribune reporters uncover in their investigation of capital punishment in Illinois?

In December 1999, a convicted killer in Texas named David Long attempted suicide by overdosing on anti-psychotic medication shortly before he was to be executed. He was placed on life support and revived, then removed from the hospital against the advice of his doctor. "Placed in intensive care on a ventilator in a Galveston hospital, Mr. Long suddenly presented a politically delicate question for [then] Governor George W. Bush, even as he campaigned for the Republican Presidential nomination in New Hampshire," said the New York Times. "Would the state of Texas remove an inmate from intensive care so that he could meet his date with his executioner rather than stay the execution for thirty days? The answer is yes."

The case of David Long tops a long list of bizarre and indecent instances of capital punishment in 1999. It was a year for the executioner. Ninety-eight were put to death, the most since states began to dust off the death machinery in 1976.

In Texas, George W. Bush presided over thirty-five executions in 1999, the most of any state in the country. This brings the total during his tenure as governor to 112. He has granted one act of clemency in that time. During the election year (2000), George W. has plenty of company on the campaign circuit. Every Republican and Democratic candidate for President supports the death penalty. But Bush may be the most gung-ho. He beat Ann Richards in the 1994 campaign for governor by attacking her execution record as slow. Richards had allowed fifty executions during the four years she held office. Easily besting her, Bush has limited the ability of prisoners to appeal their death sentences. In the spring of 1999, as he began his campaign for President of the United States, he opposed a state bill that would have banned the use of capital punishment on those who are mentally retarded. The bill failed.

At times, Bush seems insensitive to the plight of the people he is sending to the death chamber. In an interview with Talk magazine in the summer of 1999, he mocked convicted double murderer Karla Faye Tucker for her last-minute mercy plea.

We at the Progressive have a long history of opposing capital punishment on moral grounds. We believe every human being deserves the dignity of life. This includes the most brutal of murderers. We simply do not believe that premeditated, state-sanctioned killing is justifiable under any circumstances. The death penalty brutalizes us. It is an indication of how little our government values human life.

But the case against the death penalty does not rest solely on this pillar. Capital punishment is cruel, both physically and psychologically. People have been executed who very well might have been innocent. The death penalty is not applied consistently. And it discriminates against minorities and the poor.

As to cruelty, there can be no question. In 1997, Pedro Medina's head caught fire while he was being electrocuted in Florida. State Attorney General Bob Butterworth commented, "People who wish to commit murder, they better not
do it in the state of Florida, because we may have a problem with our electric chair." In 1999, that state had another botched execution: In June, Allen Lee Davis started to bleed profusely from the nose and appeared to suffer extreme pain during electrocution. After the machine was turned off, he continued to breathe. "Witnesses say his chest rose and fell about ten times before he went still," reported the New York Times. The occurrence prompted the Supreme Court to agree to review Florida's use of the electric chair, and Florida's state legislature has offered lethal injection as an alternative.

Although the electric chair is gruesome, other methods of execution currently practiced in the United States—particularly hanging and the gas chamber—are capable of producing excruciating pain, as well.

Sister Helen Prejean, who was portrayed by Susan Sarandon in the movie Dead Man Walking, counsels death row convicts in the Louisiana State Penitentiary at Angola. She has seen the psychological cruelty of death row. "People may be able to control their consciousness, but they can't control their dreams," she said at the November 1998 First National Conference on Death and Dying in Prisons and Jails (sponsored by the Open Society Institute). "Everybody I have known on death row always had the same nightmare: 'They're coming for me, they're dragging me out of my cell, they're bringing me to the execution chamber. I'm fighting, I'm screaming, No, no! And then I wake up and I'm in a sweat. And then I realize, oh, no, it's not my time yet.'"

It is this psychological aspect of capital punishment that leads Prejean to call it a "practice of torture." "We don't torture people physically by flogging them in the public square until they bleed to death," she said. "But the reason that you can't take the torture out of the death penalty is that conscious human beings condemned to death anticipate death, have imaginations, and die a thousand times before they die."

The Danger of Wrongful Convictions

The death penalty, once applied, is irrevocable. And the record of false convictions for those who end up on death row provides no reassurance that innocent people are not being executed. In 1999, eight people were freed and declared innocent of their crimes, bringing the total of those exonerated from death row to eighty-four since 1973, or about one-seventh of all those executed. These inmates had spent an average of 7.5 years on death row before winning release because evidence of their innocence emerged—an eloquent testament to the dangers of quicker executions.

A recent Chicago Tribune investigation found that at least 381 homicide convictions across the country have been overturned since 1963 because prosecutors were discovered to have concealed evidence of innocence or because they used evidence they knew to be false. None of these prosecutors, said the investigation, has been disbarred or convicted.

"Just how often the police actually get the wrong man is nothing short of astounding," says an article in the November 1999 issue of the Atlantic Monthly. "A 1996 Justice Department report Convicted by Juries, Exonerated by Science: Case Steadies in the Use of DNA Evidence to Establish Innocence After Trial found that in 8,048 rape and rape-and-murder cases referred to the FBI crime lab from 1988 to mid-1995, a staggering 2,012 of the primary suspects were exonerated owing to DNA evidence alone."

Unfair Application of the Death Penalty

The death penalty is hardly applied evenhandedly across the country. Two people can commit the same offense but receive very different treatment, depending on where they live. "Death penalty conviction rates can vary dramatically between neighboring counties imposing identical state laws," reported USA Today. And the percentage of executions in the South (80 percent) as opposed to the rest of the country (11 percent in the Midwest, 8 percent in the West, and 0.5 percent in the Northeast) is striking evidence of the geographical distortions that mark executions in the United States. According to data from the Death Penalty Information Center, in 1999, Connecticut had five people on death
row, Kansas had two, while Texas had 443.

In 1994, just before he retired, Justice Harry Blackmun, who had supported the death penalty for decades, turned against it precisely because it was administered so inconsistently. "I no longer shall tinker with the machinery of death," he wrote.

African Americans make up 12 percent of the population of the United States but account for 35 percent of those currently on death row. "A 1998 University of Iowa study of sentencing in Philadelphia showed that the odds of receiving a death sentence are nearly 3.9 times greater if the defendant is black," reports the Death Penalty Information Center.

But the death penalty is more closely linked to the race of the victim. A 1998 report by the Death Penalty Information Center found that in Florida, "a defendant's odds of receiving a death sentence are 4.8 times higher if the victim was white than if the victim was black in similarly aggravated cases. In Illinois, the multiplier is 4, in Oklahoma, it is 4.3, in North Carolina, 4.4, and in Mississippi, it is 5.5.... The state of Kentucky presents a particularly outrageous example of race-of-victim discrimination: Despite the fact that 1,000 African Americans have been murdered there since the 1975 reinstatement of the death penalty in that state, as of spring 1999, all of the state's thirty-nine death row inmates were sentenced for murdering a white victim; none were there for murdering a black victim."

Death row is a ghetto of poor people. "The average capital defendant doesn't have the money to hire O.J. Simpson's 'dream team,'" reported the Atlantic. "More likely than not, he has no money at all. At the very least, three-fourths of state prison inmates and half of federal prison inmates have taxpayer-financed court-appointed counsel. The quality of this representation is questionable."

When it comes to the constitutional right to representation, the situation for defendants in capital cases is dismal. "Eighteen death penalty states lack statewide public defender organizations, and many of those that have them underfund them so seriously that lawyers end up handling huge caseloads that would be considered unconscionable, to say nothing of impractical, in the private sector," said the Atlantic.

Some who have been executed were juveniles at the time they committed their crimes or had severe mental disabilities. Amnesty International has been sharply critical of all countries, but particularly the United States, for the practice of sentencing such individuals to death.

"International human rights treaties prohibit anyone under eighteen years old at the time of the crime being sentenced to death," says Amnesty International. "Nevertheless, five countries since 1990 are known to have executed prisoners who were under eighteen years old at the time of the crime: Iran, Pakistan, Saudi Arabia, the U.S.A., and Yemen. The majority of known executions of juveniles has been in the U.S.A. The United States has executed ten since 1990. Seventy youth offenders are currently on death row. Nearly one-third of these are in Texas.

When death row prisoners are freed, often it occurs not because the legal system is fail-safe but because dedicated lawyers, journalists, activists, scholars, and students have brought the injustice out into the light of day.

David Protess, a professor of journalism at Northwestern University, has his students look into questionable convictions. Altogether, he and his students have managed to free five inmates from Illinois prisons. Three were on death row. The most recent of these, Anthony Porter, came within two days of execution. "It would certainly be hard to conclude that the death penalty is working when eighty-four people have been freed from death row in the last twenty-five years," says Protess. "This is not a conservative or liberal issue. The machinery of death is broken and it cannot be fixed."

In November 1999, reporters at the Chicago Tribune examined all the death penalty convictions in Illinois in the twenty-two years since capital punishment was reinstated—285 altogether. "Capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics, and legal incompetence that justice has been forsaken," the reporters declared in summing up their discoveries.

Here's what they found:
• At least forty-six times, evidence against the defendant included a jailhouse snitch—a notoriously unreliable form of testimony.
• At least twenty times, evidence involved a visual comparison of body hair, a type of forensic science known to be imprecise and subjective.
• In at least thirty-three cases, the defending attorney had been, or was later, suspended or disbarred.
• In at least thirty-five cases, "a defendant sent to death row was black and the jury that determined guilt or sentence was all white."
• Eight death row inmates were allegedly tortured by former commander Jon Burge of the Chicago Police Department and several detectives under his direction. "Among the accusations leveled at the Burge regime are that detectives beat suspects, shocked them with electric wires, and put guns to their mouths in order to get confessions," the report notes. In 1993, Burge was fired because he had allegedly tortured an inmate during an investigation. When the Tribune reporters contacted Burge, he declined to comment.
• In some cases, many of these improprieties appear in a single case. "Dennis Williams, who is black, was sentenced to die by an all white Cook County jury, prosecuted with evidence that included a jailhouse informant, and defended—none too well—by an attorney who was later disbarred." He was subsequently freed as the result of evidence uncovered by Protess's class.

Protess believes Illinois may have a better record than other states. "We're catching the errors before it's too late," he says. "But it's important to point out that this is the result of pressure from outside—religious leaders, journalists, and college students, as opposed to the system correcting itself. We can't count on the system to fix this problem. It has to be pressured."

Exploiting Capital Punishment

Meanwhile, there are plenty of politicians ready to exploit capital punishment.

"Kirk Fordice promised in his campaign that he would make Mississippi the 'capital of capital punishment,'" the Atlantic reported. "Kentucky Governor Paul Patton signed five execution warrants on his second day in office, though all five cases were still pending in court. Bob Martinez has bragged that he signed some ninety death warrants during his four years as governor of Florida. And Governor Bill Clinton flew to Arkansas during the 1992 New Hampshire Presidential primary for the execution of a brain-damaged man who had killed a policeman. Flouting Supreme Court rulings against executing the mentally incompetent, Clinton seized control of the crime issue for the Democratic Party."

The average length of time spent on death row decreased by three months in 1998. But opportunistic politicians have vowed to decrease it further. George W. Bush succeeded in doing so in Texas. In January 2000, Florida Governor Jeb Bush convened a special three-day legislative session to pass laws cutting the time between sentencing and execution. The resulting law is intended to reduce the average time on death row to five years—down from a current average of fourteen. In Virginia, those convicted of murder have just twenty-one days to introduce new evidence of their innocence. Laws like the 1996 Anti-Terrorism and Effective Death Penalty Act, which makes it more difficult for convicts to obtain federal review of claims that their constitutional rights have been violated, are also designed to hasten the march to the death chamber.

Criticism of the Death Penalty

A burgeoning global movement is harshly critical of the United States on the issue of the death penalty. The European Union has called on the United States to end the practice. So, too, has the Inter-American Court on Human Rights. And Amnesty International launched an unprecedented campaign against the United States because of its use of capital punishment.
U.S. religious leaders also have taken a strong stand. "We oppose capital punishment not just for what it does to those guilty of horrible crimes, but for what it does to all of us as a society," says a March 1999 joint statement by U.S. Jewish and Catholic leaders. "Increasing reliance on the death penalty diminishes all of us and is a sign of growing disrespect for human life. We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we defend life by taking life." And the Pope has called for international abolition of capital punishment to mark the new millennium.

This movement has found at least one ally in the U.S. Senate. In mid-November 1999, Senator Russ Feingold, Democrat of Wisconsin, introduced a bill to abolish the federal death penalty and called on all states to cease the practice.

"We are a nation that prides itself on the fundamental principles of justice, liberty, equality, and due process," Feingold said in announcing his bill. "We are one of the first nations to speak out against torture and killings by foreign governments. It is time for us to look in the mirror."

In the 1972 case *Furman v. Georgia*, the Supreme Court struck down the death penalty, declaring among other things that it had been applied arbitrarily and used unfairly against the poor and African Americans. In a concurring opinion, Justice Thurgood Marshall attacked capital punishment in these words: "It is excessive, unnecessary, and offensive to contemporary values." The Supreme Court should take another close look at this barbaric practice and end the death race once and for all.

Many of those on death row may no longer be threats to society. Some, no doubt, may be. But for those who are, there are options less cruel and unusual that do not put society at risk. Life without parole is one. A lengthy sentence with treatment, with release conditional upon proof of rehabilitation, is another.

But our political leaders do not want to consider these options. Instead, they pander to the basest, most vengeful impulses of the public.

For Prejean, the issue is simple. Accompanying someone to execution "focuses everything for you. Where are you? What side are you on? Are you for life or are you for death? Are you for compassion or are you for vengeance?" she said. "Because there is no way you can take the death penalty and call it anything else other than an act of distilled hatred."