



## Crime and Punishment—Lesson Plan

### Student Objectives

- Develop a deeper understanding of how democratic societies punish those who break their rules.
- Appreciate the tensions between the different purposes democratic societies have for punishing persons who break their rules.
- Consider the different ways that democracies use the criminal justice system to define themselves and their values.
- Examine how democracies that share common principles and face similar problems can still develop very different solutions.
- Analyze the reasons supporting and opposing the death penalty as a form of punishment.
- Identify areas of agreement and disagreement with other students.
- Decide, individually and as a group, whether the government should ban the death penalty.
- Reflect on the value of deliberation when deciding issues in a democracy.

### Question for Deliberation

*Should our democracy ban the death penalty?*

### Materials

- Lesson Procedures
- Handout 1—Deliberation Guide
- Handout 2—Deliberation Activities
- Handout 3—Student Reflection on Deliberation
- Reading
- Selected Resources
- Deliberation Question with Arguments  
*(optional—use if students have difficulty extracting the arguments or time is limited)*



## Crime and Punishment—Reading

1 Every society has laws defining crimes. Every society punishes people who commit those  
2 crimes. But how should the state punish the guilty? Consider these four cases:

- 3 • Milada Horakova was a Czechoslovakian politician who resisted the Nazis during World  
4 War II. The Nazis captured and imprisoned her. After the war, she returned to her country  
5 and served in Parliament. She resigned her seat after the communist coup in 1948. Within 18  
6 months, she was arrested on charges of attempting to overthrow the government. She was  
7 tried publicly in a show trial. Despite a lack of evidence, she was found guilty of treason.  
8 Horakova was hanged on June 27, 1950. Today she is recognized as a national heroine in the  
9 Czech Republic.
- 10 • On January 7, 1965, Mildred Weiss, a mother of two, was returning to her home in San  
11 Gabriel, California, when she was confronted and shot by Robert Lee Massie. Weiss was  
12 only one of Massie's victims during a seven-day crime spree. Massie was arrested; convicted  
13 of robbery, attempted murder, and murder; and sentenced to death. Hours before his  
14 scheduled execution, a stay was issued so that Massie could testify against his accomplice.  
15 Massie's sentence was later commuted to life in prison when the U.S. Supreme Court  
16 temporarily halted executions in 1972. He was eventually paroled. Eight months later, he  
17 robbed and murdered businessman Boris Naumoff in San Francisco, California. More than  
18 36 years after he murdered Mildred Weiss, Massie was executed in March 2001 by the State  
19 of California.

- 20 • In 1995, the State of North Carolina sentenced Alan Gell to death for the crime of first-  
21 degree murder. Gell maintained his innocence while serving nine years on death row. His  
22 appeal revealed that the prosecution had withheld significant evidence *proving* Gell’s  
23 innocence. Upon his exoneration, Gell and his family were jubilant. “We finally got the  
24 truth,” said Gell’s stepfather. “We have felt sure he was not guilty...It was a hard fight. You  
25 can’t win a fight when the other side makes up the evidence.”
- 26 • In 1998, 29-year-old drug addict Roman Postl was convicted of murdering fellow Czech Jan  
27 Stencl. Postl was sentenced to 13 years in prison. He was released early, in 2008, because of  
28 his good behavior. Over three days in September 2008, Postl murdered four men, including a  
29 police officer who tried to stop him. Another police officer shot Postl, who died of his  
30 wounds later that month.

31 In a democracy, there are limits on how the government can punish persons convicted of  
32 crimes. The government must follow laws and procedures approved by the people. Almost all  
33 democracies, for example, forbid torture or cruel punishments for prisoners. There are dramatic  
34 differences, however, regarding capital punishment—both within and among democracies.

### 35 **Capital Punishment**

36 Capital punishment, or the death penalty, is the lawful execution of a convicted criminal by  
37 the government. Those crimes punishable by death are known as “capital crimes.” Sixty-two  
38 countries, including India, Pakistan, Cuba, Japan, Iran, Iraq, China, Saudi Arabia, and the United  
39 States, retain the death penalty. In 2007, China executed 470 people, the most performed in a  
40 single country, whereas Iran executed 317 and the United States executed 42.

41 Many democracies have abolished the death penalty on the principle that executing any  
42 person is dehumanizing, even if that person was convicted of the worst kinds of crime. Ninety-  
43 one countries prohibit capital punishment, including Azerbaijan, Serbia, Ukraine, and the United  
44 Kingdom. The European Union’s Charter of Fundamental Rights states, “No one shall be  
45 condemned to the death penalty, or executed.” Protocol 6 of the European Convention on Human  
46 Rights states that the death penalty “shall be abolished” except in times of war. All member  
47 states except the Russian Federation have ratified Protocol 6, and Russia no longer uses the death  
48 penalty. The International Criminal Tribunals for the former Yugoslavia and for Rwanda did not  
49 consider the option of capital punishment, even though the tribunals were hearing charges of  
50 genocide, the systematic mass murder of an entire national, ethnic, or cultural group.

51 Despite European governments’ disapproval of capital punishment, some polls show that  
52 many European people support the death penalty. Polling conducted in 2005 by the independent  
53 firm Angus Reid Global Monitor found, for example, that 57% of Czechs supported the death  
54 penalty, as did 70% in Poland and 65% in Russia. Only 23% of Italians favored the death  
55 penalty.

56 Public support for capital punishment has been strong throughout U.S. history, remaining  
57 above 50% since the 1960s. The Pew Research Center reports that U.S. support for the death  
58 penalty for persons convicted of murder has remained between 62% and 68% since 2001. Most  
59 capital cases are determined by the laws of each state, and currently 14 states do not have a death  
60 penalty. Whether such punishment has a legitimate purpose, therefore, remains a hotly debated  
61 public issue within democratic societies regardless of what the laws in each country say.

## 62 **The Death Penalty and the Purposes of Punishment**

63 Societies have varied purposes for punishing people found guilty of crimes. Debates about  
64 the death penalty usually cite three distinct but related purposes: retribution, deterrence, and  
65 incapacitation.

66 ***Retribution*** is the idea that criminals face punishments in proportion to the amount of  
67 damage they have caused society. This principle, sometimes called an “an eye for an eye,” was  
68 common in the ancient cultures of the Near East. It was part of Mesopotamian, Hebrew, and  
69 Greek law thousands of years ago. Proponents of capital punishment argue that, in order to  
70 prevent individuals from resorting to private violence, the government must execute those who  
71 have murdered others. Some proponents of capital punishment also view the death penalty as a  
72 means of closure for victims’ families—executing the convicted murderer can end their ordeal.

73 Opponents of capital punishment believe retribution undermines the democratic principle of  
74 respecting the life of all citizens. They argue that there are certain things the government simply  
75 cannot be permitted to do, even if a majority of citizens feel it is appropriate. They worry that,  
76 when the state has the power to execute citizens, it can use that power—as in the case of Milada  
77 Horakova—to silence its enemies. Other death penalty opponents argue that the death penalty—  
78 like torture or slavery—is a vestige of humanity’s barbaric past. It should therefore be prohibited  
79 by civilized nations.

80 All religious traditions have specific teachings about human dignity, and many address  
81 different forms of punishment, including the death penalty. Significantly, however, there exists a  
82 wide diversity within these traditions about what believers think about this question.

83 A second purpose of the death penalty is *deterrence*, or prevention of future crime.  
84 Deterrence is achieved by establishing a punishment that will discourage a potential criminal  
85 from breaking the law. Those who support the death penalty argue that potential murderers will  
86 not actually kill others out of fear of losing their own lives. Ernest van den Haag, a professor at  
87 Fordham University in New York City who has studied the question of deterrence closely, wrote:  
88 “Even though statistical demonstrations are not conclusive, and perhaps cannot be, capital  
89 punishment is likely to deter more than other punishments because people fear death more than  
90 anything else....Whatever people fear most is likely to deter most. Hence, the threat of the death  
91 penalty may deter some murderers who otherwise might not have been deterred.”

92 Other scholars debate the effectiveness of capital punishment as deterrence. Richard Berk, a  
93 UCLA professor of statistics and sociology, concluded after critiquing previous studies that  
94 “credible evidence for deterrence is lacking.” According to Amnesty International, an  
95 organization that opposes the death penalty, murders “are often committed in moments of  
96 passion, when extreme emotion overcomes reason.” Fear of capital punishment, therefore, could  
97 not deter such a criminal.

98 A third reason that some people support the death penalty is *incapacitation*, or making it  
99 physically impossible for murderers to repeat their crimes. Proponents of capital punishment  
100 argue that executing a convicted murderer ensures that people like Robert Lee Massie and  
101 Roman Postl cannot murder again. Opponents of capital punishment, however, argue that a  
102 sentence of life imprisonment incapacitates a prisoner just as well as the death penalty. Groups  
103 such as the Innocence Project also argue that the risk of executing an innocent person who was  
104 wrongly convicted is too great. Life imprisonment avoids such a risk.

## 105 **The Death Penalty and the Reliability of the Criminal Justice System**

106 Many arguments about the death penalty turn on the fairness of the criminal justice system  
107 itself. Opponents of capital punishment argue that the process for deciding capital cases is flawed  
108 and that a flawed system should not determine whether a person lives or dies. They cite the 126  
109 death row inmates in the United States (including Alan Gell) who have been found innocent and  
110 released from prison since 1973. They also note that poor defendants in death penalty cases may  
111 be assigned lawyers who provide an inadequate defense, with devastating effects. U.S. Supreme  
112 Court Justice Hugo Black wrote in *Griffin v. Illinois* (1956), “There can be no equal justice  
113 where the kind of trial a man gets depends on the amount of money he has.” Yet many notorious  
114 examples suggest that poor defendants do not receive equal justice. For example, attorneys have  
115 fallen asleep or otherwise neglected their duties during a trial. Advanced technologies like DNA  
116 testing also cost money and require expertise that is not available equally. This inconsistency  
117 mocks the idea of equality before the law.

118 Death penalty supporters in the United States see the exoneration of persons on death row as  
119 proof that the system works. They believe that the appeals process is one of many safeguards to  
120 ensure fairness. Others include legal representation for the accused in capital crimes and the  
121 option to have a case decided by an impartial jury of citizens. Moreover, with DNA testing and  
122 other advances in forensic science, death penalty proponents in the United States and elsewhere  
123 say it is highly unlikely that an innocent individual will be sentenced to death.

124 As democracies decide how to deter future crimes and to punish the most heinous of  
125 criminals, the debate over capital punishment will continue.



## Crime and Punishment—Selected Resources

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## **Crime and Punishment—Deliberation Question with Arguments**

### **Deliberation Question**

*Should our democracy ban the death penalty?*

### **YES—Arguments to Support the Deliberation Question**

1. The concept of “an eye for an eye” undermines the democratic principle of respecting the life of all citizens. Taking a life for a life harkens back to humanity’s more barbaric past. Like slavery, retribution is incompatible with democracy. Thus, it should be outlawed. Some religious traditions share this view and call for abolition of the death penalty.
2. The effectiveness of capital punishment as deterrence is a myth. Credible evidence that the death penalty deters people from committing murder is lacking. Moreover, murders are often crimes of passion carried out by people who are overwhelmed by emotion. Fear of death cannot deter them.
3. The most effective way to incapacitate a person – to keep a murderer from killing again – is life imprisonment, not capital punishment. Resorting to execution is too drastic. Keeping a person isolated from society in prison accomplishes the same result. Life imprisonment also avoids the risk of putting to death a wrongly convicted person.
4. Despite the existence of an appeals process, the justice system is too flawed to determine whether a person should live or die. The fact that more than 120 death row inmates in the United States have been found to be innocent since 1973 only proves that the legal safeguards are inadequate to prevent wrongful conviction. The risk of even one innocent person being executed outweighs any benefit of ridding society of the worst criminals.
5. There is no consensus in democratic nations that the death penalty is a just punishment. Relatively few citizens support the death penalty in Italy, Great Britain, and in certain states in the United States. The European Union and Council of Europe both require abolition of the death penalty in their member nations.



## **Crime and Punishment—Deliberation Question with Arguments**

### **Deliberation Question**

*Should our democracy ban the death penalty?*

### **NO—Arguments to Oppose the Deliberation Question**

1. Beginning in ancient civilizations, the death penalty has been accepted as a justified and proportional means of retribution. The government needs to be able to use this ultimate punishment for murder, which is the worst of crimes. Use of this punishment also prevents individuals from resorting to private violence. Retribution provides victims' families with a sense of closure.
2. Potential criminals stop themselves from committing crimes when they fear punishment. This is called deterrence. The death penalty provides such deterrence for would-be murderers. Since people fear death, then the threat of death deters at least some people who might otherwise become murderers.
3. Prison incapacitates convicted criminals by physically separating them from society. Some convicted murderers are likely to repeat their crime once they are released from imprisonment. Therefore, the death penalty is an effective means of incapacitation. It makes it physically impossible for murderers to repeat their crimes.
4. When convicted murderers on death row are exonerated (found innocent), it becomes even more unlikely that the injustice of executing an innocent person will occur. Along with the safeguards of an appeals process and guaranteed access to an attorney, DNA testing and advances in forensic science ensure that only the guilty will suffer the death penalty.
5. Support for the death penalty is strong in many democratic countries, including the United States, Poland, and Russia. If the people decide the death penalty is an appropriate punishment, democratic governments should make it available to punish the worst crimes.