

DEMOCRACY, CITIZENSHIP, AND PUNISHMENT

Democracy



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Democracy and Confusion

Ostensibly it means “rule by the people.” However, the normative aspect of the term means that the more the term is praised, the more difficult the definition becomes!



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Important things to keep in mind when analyzing “democracy”

In the 17th century very few claimed a belief in democracy – it was in fact a term of abuse – a bad thing.

Through the 19th century it was still not fully supported by elites or ordinary people.

It was only after WWI in the 20th century that democracy became a respectable term.

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Democracy and Liberalism

Weldon, a linguistic analyst has suggested that “democracy,” “capitalism” and “liberalism” are all alternative names for the same thing.



But are they?

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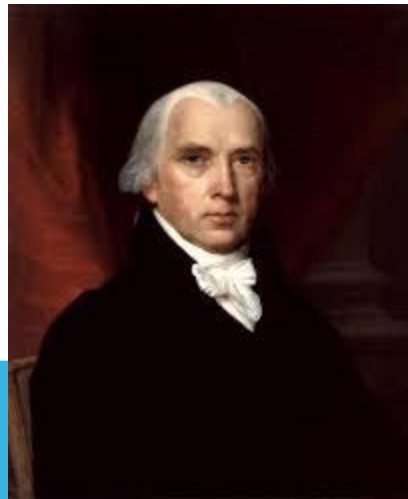
Hofstadter has pointed out that “American folklore” has assumed that liberalism and democracy are identical, which is only half true. There has always been “tension” as well as “harmony” between the two bodies of thought.

Tension – because liberals did not intend for the idea of universal rights to apply to all adults (think slaves, paupers, servants, women, native peoples, etc...);

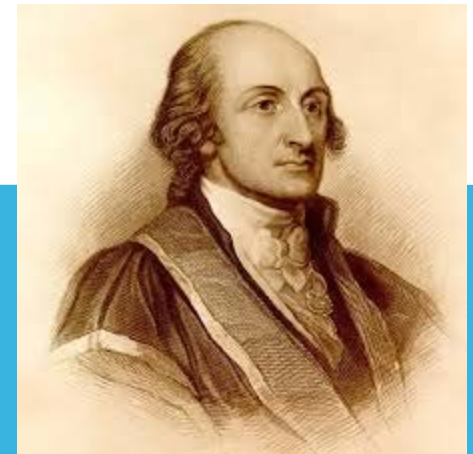
Harmony – because conservative critics believed that they did, and Marxist critics felt if rights were universal in theory, they should be universal in practice.

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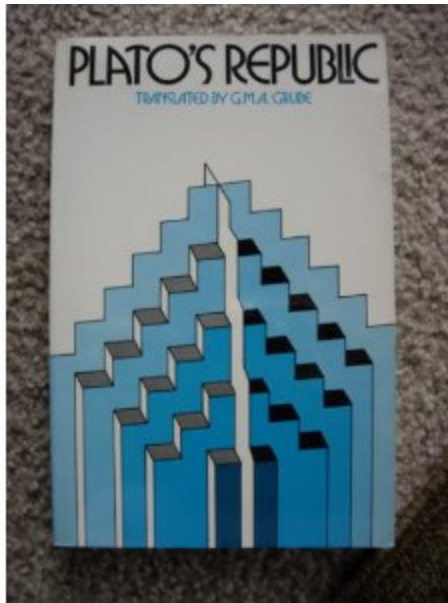
James Madison, one of the founders of the American Constitution, said democracies are “incompatible with personal security or the rights of property.”



John Jay, a very important author of *The Federalist Papers*, declared that “the people who own the country ought to govern it.”



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The Problem of Exclusion

Conservative critics speak of democracy as turning “natural” hierarchies upside down.

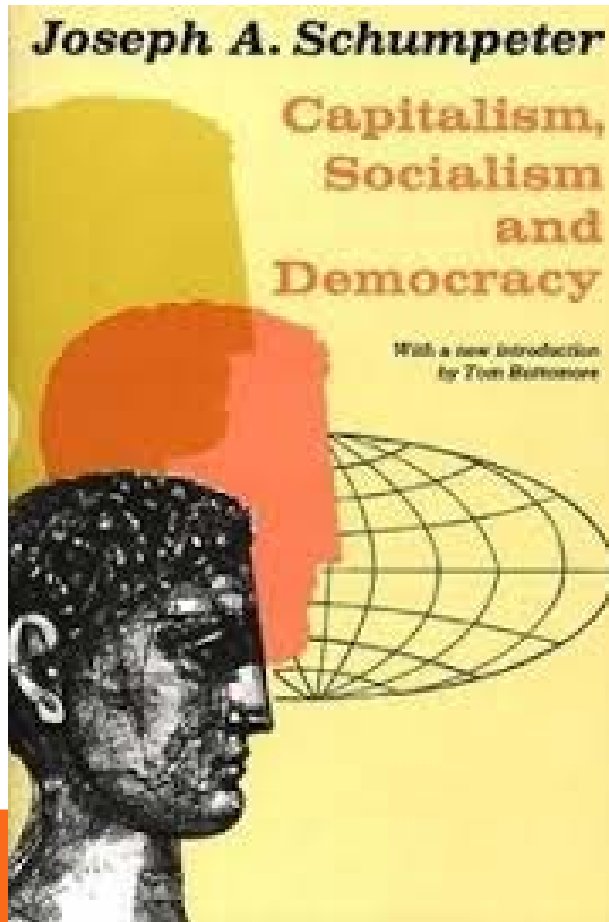
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The “Tyranny of the Majority” Thesis

The ancient Greek argument that democracy as the “rule of the poor” could take the form of popular despotism.



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The Problem of Participation

Democracy was redefined by **Schumpeter** after WWII to “bring it into line” with practical realities (meaning moral qualities removed).

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In **Schumpeter's** view, democracy is simply a “political method.” It is an arrangement for reaching political decisions, not an end in itself.

Schumpeter argued that in modern liberal societies, even though all adults should have the right to vote, it does not mean they will use this right, or that they should use this right, since the typical citizen, is driven by prejudice, impulse, and “dark urges.”

This led to a number of studies in the 1950s that argued for an “elitist democracy” or a democracy that had low participation rates (by the masses, of course).

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Solutions to the Problem of Low Participation

Does low participation actually undermine democracy?



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In the *Life and Times of Liberal Democracy*, Macpherson outlines what he calls a “participatory model,” which focuses on breaking the vicious circle between apathy which leads to inequality (as the poor and vulnerable lose out), and inequality which generates apathy (as the poor and vulnerable feel impotent and irrelevant).



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Halting gentrification, reining in Big Oil or Wall Street? Rolling back the prison state or shrinking the drug war? Making underwater homeowners or student debtors whole? Bringing the troops home? Ending the drone wars? Will voting for this guy or Romney make any of those things more likely? Is it time to look outside the two establishment parties yet? Or is a black face in a high place all you really need?



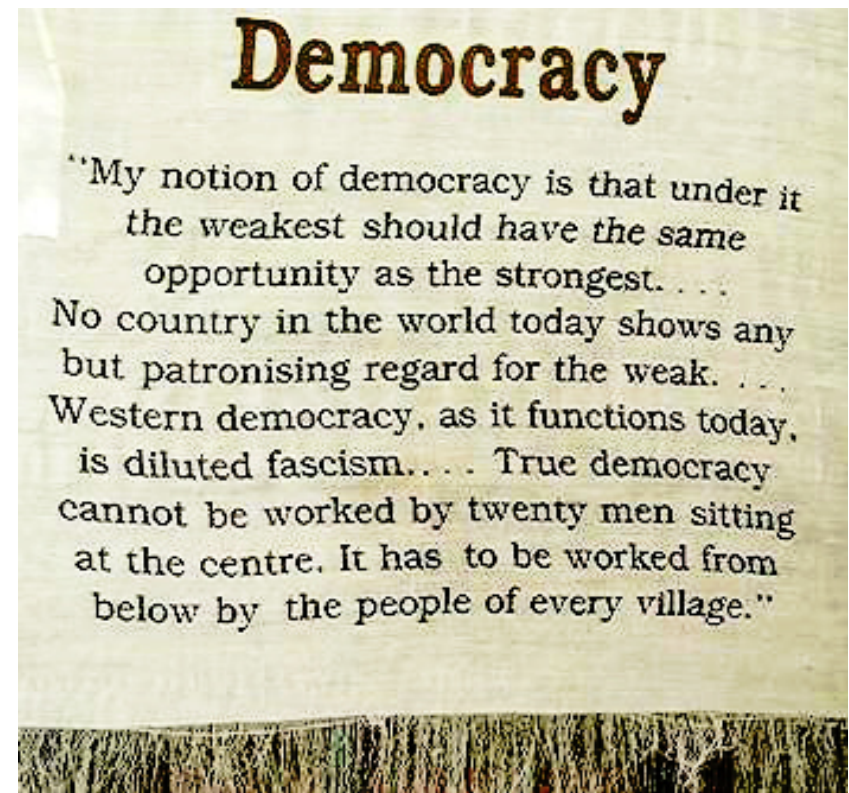
The “Mirror” Theory of Representation

Can representation only be fair if exact percentages of groups within the population at large are “reflected: in the composition of representatives?

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Democracy and the State

The problem with much of the analysis of democracy is that assumes that democracy is a form of the state. Hoffman and Graham argue, it definitely isn't!



True that! Liberal society still needs a state, and the state is a repressively hierarchical institution that excludes outsiders and uses force to tackle conflicts of interest.

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Democracy and the Relational Argument

As **Hoffman** and **Graham** note, once we reject the idea that democracy can be a form of the state, the argument that the will of the majority will end in repressive rule dissolves.

Majorities cannot repress minorities unless their rule expresses itself in the form of the state. The problem is *not* with majority rule: it is with the state.

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Citizenship



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Citizenship and Liberalism

Classical liberalism argues individuals are free and equal. Yet many liberals have supported patriarchy, elitism, colonialism, and yes, even slavery!



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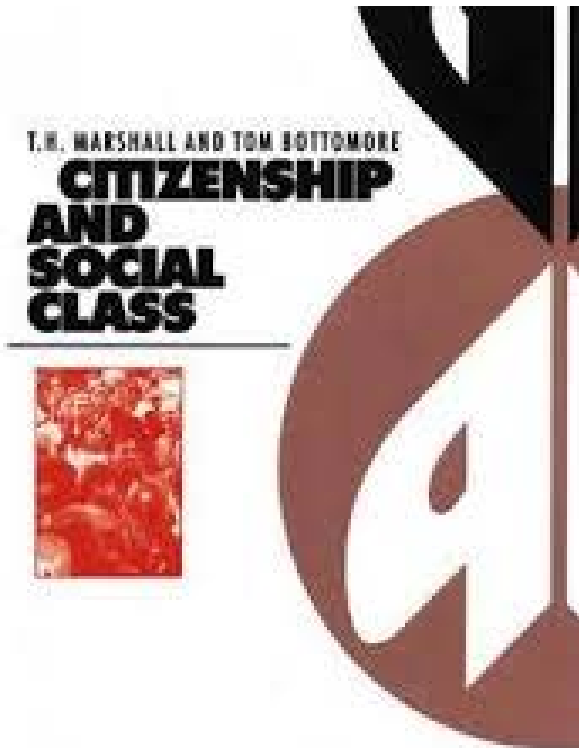
Citizenship and Class

Classical liberalism assumed that the individual had property and even some socialists suggested citizenship was something workers should aspire to.

Marx however, had a very negative attitude toward the concept of citizenship , insisting that the classical ideal of citizenship was contradicted by the concrete inequalities that exist in the real world.

Thus, the abstract notion of citizenship conceals beneath its benevolent sounding principles the reality of class.

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Citizenship, Marshall and Social Rights

T.H. Marshall presents the argument that civil and political rights do not, on their own, create meaningful citizenship. Social rights are also crucial.

PLUTO CLASSIC

For Marshall, taming market forces was an essential precondition for a just society.

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More on Marshall...

As a social liberal, he believed a pragmatic compromise between capitalism and citizenship was possible.

However, he also understood that the political rights of citizenship, unlike civil rights, are a potential danger to the capitalist system.

Thus the preservation of economic inequalities has been made more difficult by the expansion of the status of citizenship, and any concern for the social rights of the citizen challenges the class structure of a capitalist society.

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Citizenship and the New Right (Neoliberalism)

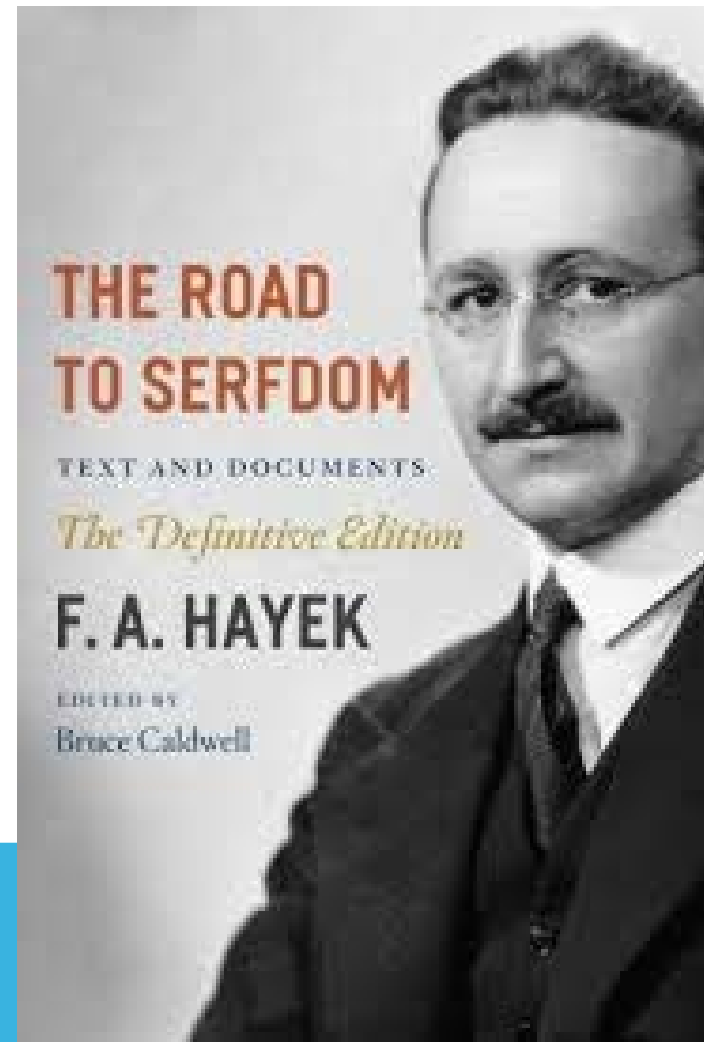
Seeks to defend individualism and the market against “menacing inroads” created by a post-war consensus around reform.



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Neoliberal **Hayek**:

“Nothing is more damaging to the demand for equal treatment than to base it on so obviously untrue an assumption as that of the factual equality of all men.”



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Citizenship and the Case for a Basic Income



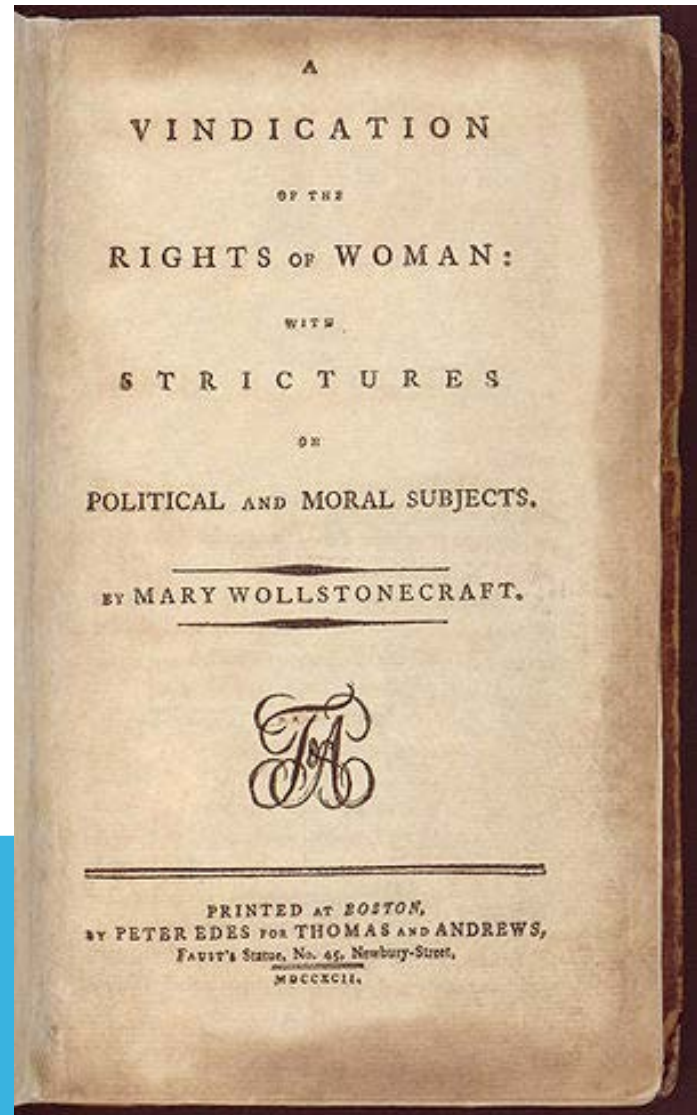
Pateman: Should there be a basic universal income for everyone?

Would that improve people's abilities to carry out their duties as "citizens"?

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Citizenship and Women

Are women citizens in modern liberal states (in a true sense, not in the classically defined sense)?



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Global Citizenship

This involves a respect for others, a concern for their well-being, and a belief that the security of each person depends on the security of everyone else.

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The Problem of Class

Will inclusive citizenship need to chart a path beyond both the state and capitalism?



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Punishment



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In Chapter 1 of your text, **Hoffman** and **Graham** argued that the state is a coercive entity that successfully commands a monopoly on the legitimate use of violence in a given territory.

Importantly, since the state claims the *right* to punish, it means that punishment is not the application of arbitrary force or violence, but must be *reasoned* in order to be legitimate.

But how do we in society justify punishment, particularly the death penalty?



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Hoffman and **Graham** consider two theories and offer a third.

Retributivism and *consequentialism* dominate the debate over the justification of punishment, but there are “**compromise theories.**”

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***Retributivism:
The Crude
Version***

**Punishment as
“payback” or
restitution (an
eye for an eye)**



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Retributivism: The Sophisticated Versions

Egoism vs. Morality – people have the choice of acting for purely self-interested reasons or from a “moral law”

Public Power vs. Private Action – in contracting into the state we pool our private rights to pursue violence against those who harm us in order to win the benefits of collective action.



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Consequentialism

Judging the rightness of an action by its consequences. As applied to punishment, we punish in order to bring about good consequences, or avoid (or reduce) bad ones.

Its main features include:

- 1. In the utilitarian version, consequentialism requires that legal and political institutions should function to maximize the overall level of welfare – or utility – of society.**
- 2. Instances of utility must be commensurable, meaning you can compare different things by their capacity to increase or reduce utility.**

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Compromise Theories (Indirect Utilitarianism)

What **Hoffman** and **Graham** call “compromise theories” are consequentialist theories that seek to avoid the problem of perceived injustice – the punishment of the innocent and inequity.

Institutional utilitarians such as **H.L.A. Hart** argues that three questions are central to the philosophical debate over punishment:

1. What is the “general justifying aim” of punishment?
2. Who may be properly punished?
3. How should the appropriate amount of punishment be determined?

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*Beyond Retributivism
and
Consequentialism?
Censure and
Restoration*



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Restorative Justice



The Criminal Justice system asks...

"What law was broken"?

"Who broke it"?

"How do we punish them"?

In Restorative Justice, practitioners ask...

"What harm was done and to whom"?

"What needs have arisen based on that harm"?

"Whose obligation is it to meet those needs"?

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Retributivism and the Death Penalty

Hoffman and **Graham** conclude that **Kant's** argument is instructive:

“Even if civil society [i.e. the state] were to be dissolved by consent of all its members, the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice.”

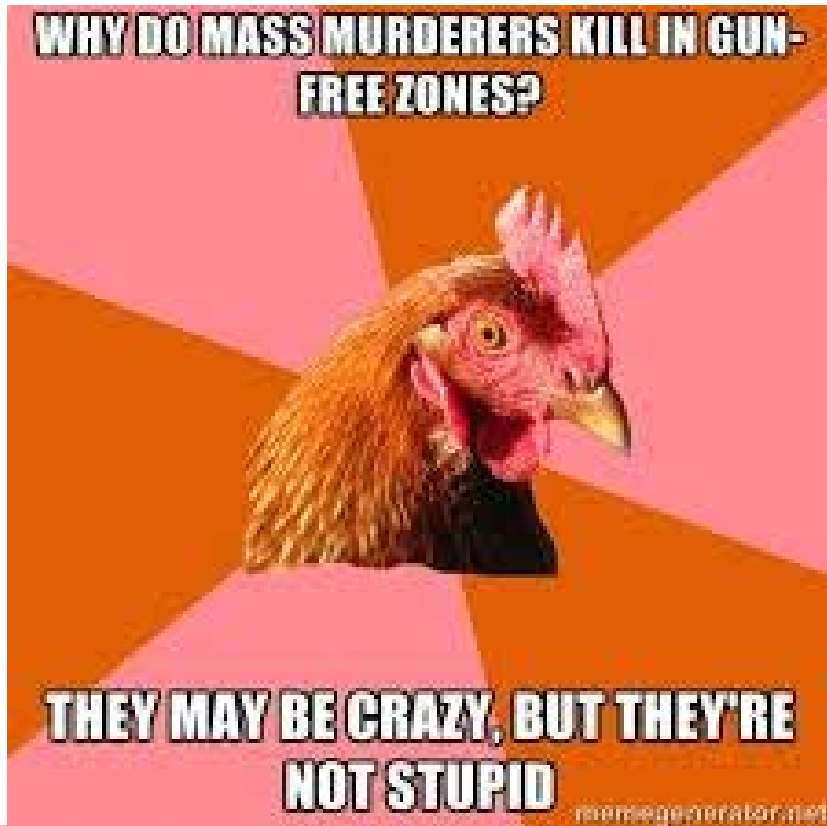
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This means that

a) since society (or the state) is going to be dissolved it carries no practical consequences (primarily, deterrence) if the murderer is not executed, and...



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b)...the people have no choice but to execute the murderer; if they do not they are complicit in his act....

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Consequentialism and the Death Penalty

Hoffman and **Graham** say that consequentialist arguments come down to an assessment of the consequences of the practice. This means debate is dominated by one particular issue: whether capital punishment deters murder. **Steven Goldberg** (who supports it on the grounds he believes it does deter) makes the following points:

- 1) Capital punishment deters *potential* murderers.
- 2) Comparing different countries can be misleading.
- 3) Comparing countries over time can be misleading.

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Arguments

Against

Capital

Punishment

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1. Killing is wrong

WHY DO WE KILL PEOPLE
WHO KILL PEOPLE
TO SHOW THAT
KILLING IS WRONG?

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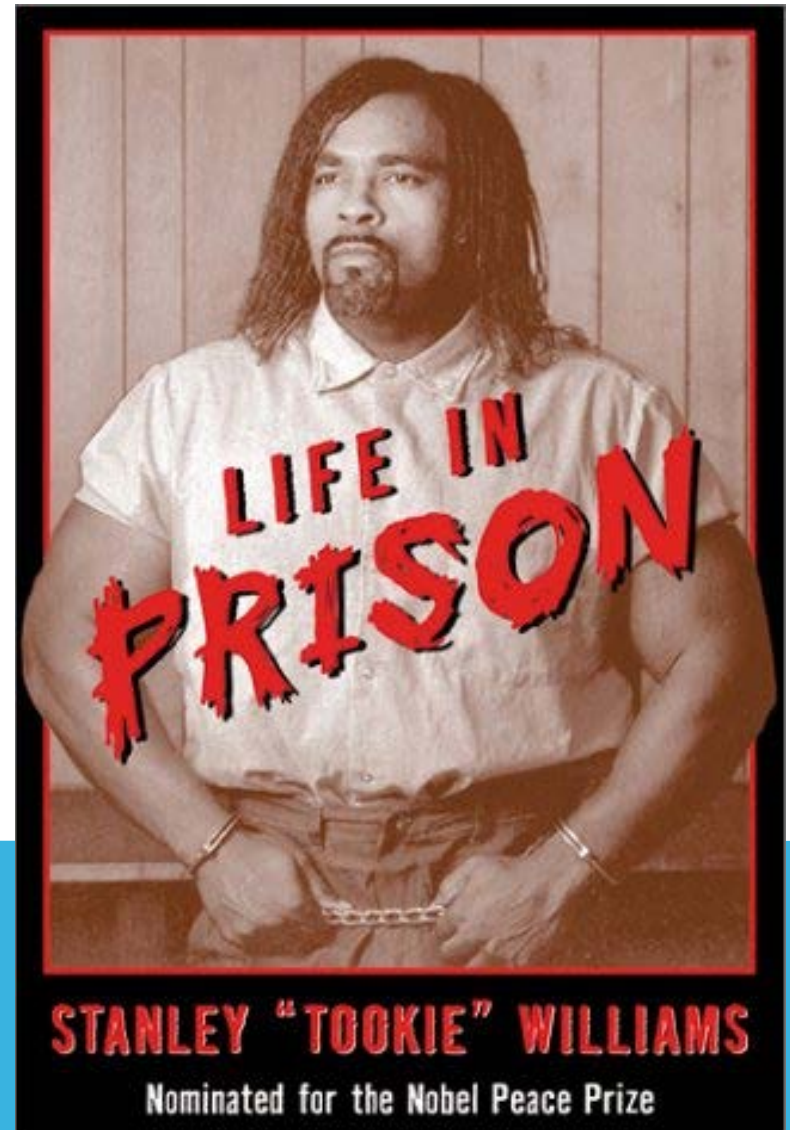


2. There is a risk of killing an innocent person

Since 1973, 151 people have been released from death rows throughout the country due to evidence of their wrongful convictions. In 2003 alone, 10 wrongfully convicted defendants were released from death row.

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3. Capital punishment assumes a person is beyond redemption



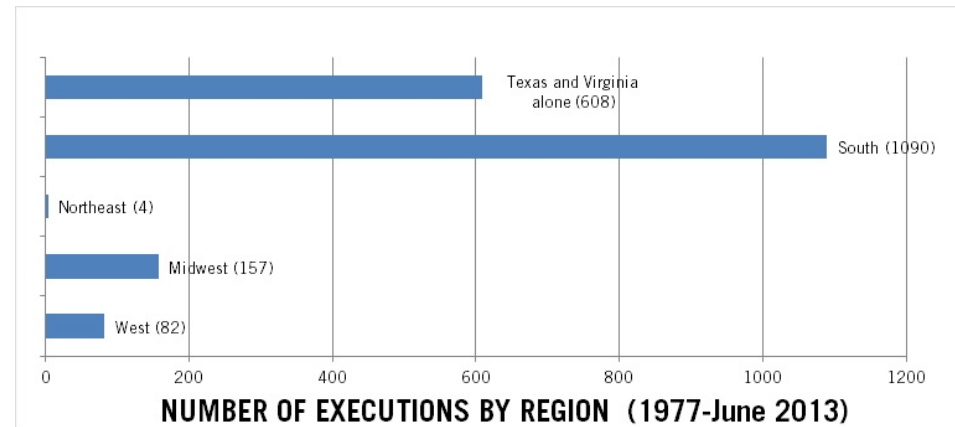
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4. We are using people



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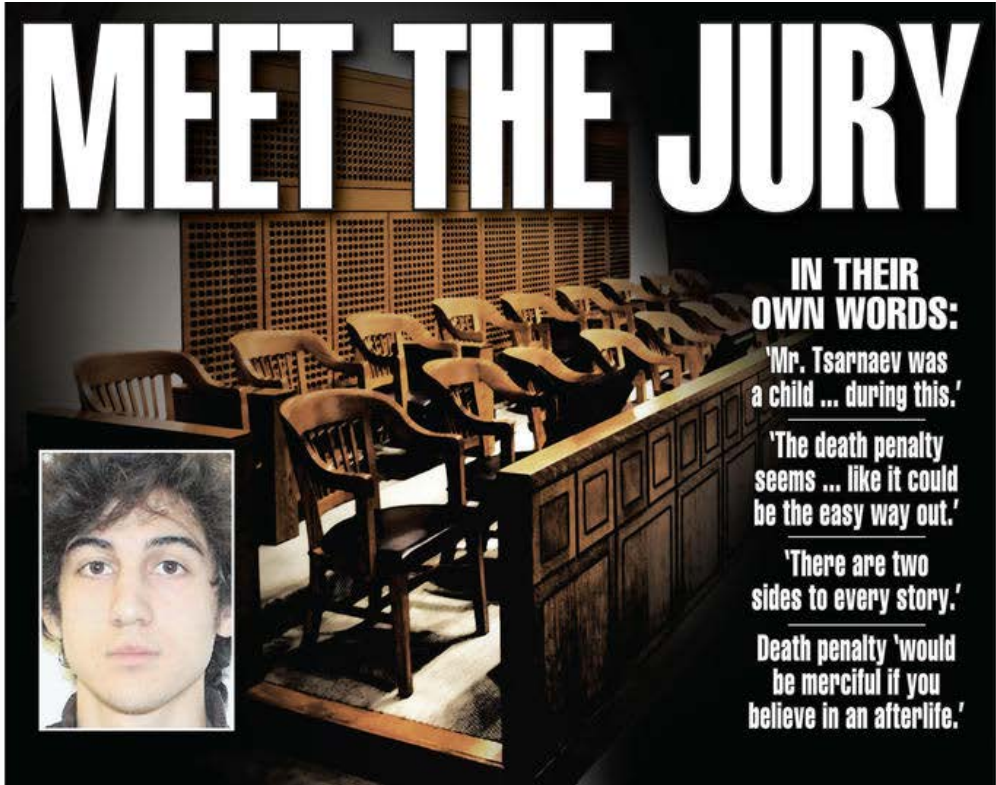
5. Capital punishment is arbitrary



Since 1977, the overwhelming majority of death row defendants have been executed for killing white victims, although African-Americans make up about half of all homicide victims.

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6. There are problems in selecting juries



MEET THE JURY


IN THEIR OWN WORDS:

'Mr. Tsarnaev was a child ... during this.'

'The death penalty seems ... like it could be the easy way out.'

'There are two sides to every story.'

Death penalty 'would be merciful if you believe in an afterlife.'



SOURCE: LITTELL GUNDMAN

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7. Most murderers are not really responsible for their actions



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8. Capital punishment is cruel

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9. Capital punishment is brutalizing and barbaric for society

