

The Role of Moral Language in Death Penalty Advocacy

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ABSTRACT

This essay examines the methods of argumentation used in death penalty cases and suggests that the inclusion of moral and ethical arguments, largely absent in modern death penalty challenges, remains vital to the success of the abolitionist movement. While there is good reason for advocates' hesitancy to include these arguments, a look at the role religion and morality have historically played in abolition movements illustrates their importance. This essay proceeds to make two primary arguments for including moral arguments in death penalty advocacy: a philosophical argument and a pragmatic argument. First, these arguments combat moral distancing in the administration of the criminal justice system, which allows implied moral assumptions to go unchallenged on their own terms. Second, interest convergence theory illustrates the pragmatic benefit these arguments provide to the abolitionist movement by creating a broader coalition that sees their interests accomplished through death penalty abolition.

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I. INTRODUCTION

The Supreme Court’s October 2024 term saw the Court rule in favor of capital defendants in three cases on the merits docket.¹ Across all three cases, there was no categorical discussion of the death penalty using moral or ethical language at either the petition or merits stages. This fact will surprise no one familiar with modern death penalty defense practices. While these advocates are doing their best to represent their clients’ interests, death penalty abolitionists’ exclusion of moral and ethical arguments is an exclusion detrimental to the movement. With much of the public discourse and jury arguments focused on compliance with procedural requirements, cost, and prosecutorial abuse, the critical questions surrounding the imposition of the death penalty center on “how can the state execute these people?” rather than “should the state execute them at all?”²

In recent decades, anti-death penalty advocacy has largely adopted a procedural, empirical, and ostensibly “neutral” vocabulary—eschewing overtly moral or ethical language in favor of arguments grounded in cost, error rates, racial disparities, and administrative inefficiency. While this shift has contributed to some important litigation victories and policy shifts, it has also fostered a form of *moral distancing*—a rhetorical and strategic posture in which the fundamental immorality of state execution is deliberately left unspoken. This distancing may have been intended to enhance the legitimacy of abolitionist arguments in secular courts and policy circles, but it has come at the cost of abandoning the moral resonance that historically energized abolitionist movements and forged broad-based coalitions.

1. See Kelsey Dallas, *The State of the Death Penalty*, SCOTUSBLOG (Sept. 30, 2025), <https://perma.cc/7FDR-9ZZJ>; see also Andrew v. White, 604 U.S. 86, 86 (2025); Glossip v. Oklahoma, 604 U.S. 226, 226 (2025); Gutierrez v. Saenz, 606 U.S. 305, 305 (2025).

2. At the outset, it is important to clarify the scope of my argument. At various times in this essay, I group the terms “moral,” “ethical,” and “religious” together simply for the benefit of concision and rhetorical ease. Obviously, these are all independent fields of study and each includes unique processes of analysis and development. See Henry S. Richardson, *Moral Reasoning*, in *The Stanford Encyclopedia of Philosophy* (Edward N. Zalta ed., Fall ed. 2018), (describing “moral reasoning as a species of practical reasoning – that is, as a type of reasoning directed towards deciding what to do and, when successful, issuing in an intention,” in contrast with the theoretical practice of ethics). Nevertheless, this essay refers to these practices together as distinct, but related, methods of categorical inquiry into whether the death penalty *ought* to exist rather than descriptive or procedural inquiries into whether its administration complied with existing requirements.

This essay argues that anti-death penalty advocates should make an intentional effort to include moral arguments in their abolitionist advocacy for two reasons: one pragmatic and one normative. First, Professor Derrick Bell's theory of interest convergence and the past role that morality and religion played in abolition movements show us that a coalition of diverse perspectives and motivations is necessary for a lasting abolitionist movement. Second, the moral distancing created by a lack of moral argumentation is a danger to a moral society. Certainly, moral arguments may not be appropriate in every case or for every client. Still, such arguments are necessary to disrupt the moral detachment that characterizes much of the current discourse and appeal to constituencies that procedural and economic challenges do not reach. In short, moral convergence is a necessary condition for lasting legal and political change.

This essay proceeds in two main parts. First, it outlines the historical role of moral, ethical, and even religious argumentation in death penalty abolition movements to illustrate the importance of moral convergence and coalition building. Second, it describes the issue of moral distancing and argues that moral arguments are necessary to gird against the dehumanization of defendants, jurors, and victims alike.

II. THE HISTORICAL ROLE OF MORALITY AND RELIGION IN DEATH PENALTY

Moral, ethical, and religious arguments have always played significant—if not primary—roles in shaping views on criminal law and punishment.³ From early Quaker opposition in colonial times to contemporary papal condemnations, moral and religious perspectives have long served as a foundation for critiques of capital punishment. Understanding the historical centrality of these perspectives helps us understand the need for their inclusion today.

3. See Davison Douglass, *God and the Executioner: The Influence of Western Religion on the Death Penalty*, 9 WM. & MARY BILL OF RTS. J. 137, 146 (2000) (“Lactantius, for example, had condemned capital punishment in the pre-Constantinian era: ‘It does not matter whether you kill a man with the sword or with a word, since it is the killing itself that is prohibited. And so, there is no exception to this command of God. Killing a human being, whom God willed to be inviolable, is always wrong.’ But after Constantine's conversion, Lactantius took a different view of the state's right to impose capital punishment, declaring that the emperor was ‘God's divinely appointed agent to restore justice and exact divine vengeance on the wicked.’”).

A. *Early Movement*

During the American Revolution, there was “an unprecedented assault on the death penalty.”⁴ A society that had just fought against the political control of another government recognized the dangers of expansive state power and the *wrongness* of killing predominated the public discourse.⁵ The Quakers, among the first organized abolitionists, opposed capital punishment on the grounds that it violated the sanctity of life and the possibility of divine redemption.⁶ One of the most well-known and influential sources of religious and moral arguments for abolition in this time period was Dr. Benjamin Rush.⁷ Dr. Rush published numerous essays in the late 18th century arguing that capital punishment was “antithetical to the mild and benevolent principles” of government,⁸ and “a repudiation of the Lord’s vision that humankind displays forgiveness and compassion.”⁹ This view—that the death penalty was incompatible with Christian teachings on mercy, forgiveness, and the fallibility of human judgment—often arose alongside the movement to abolish slavery as well.¹⁰ By the early 20th century, religious opposition had become semi-institutionalized. Mainline Protestant denominations, such as the Methodist Church and the Presbyterian Church (U.S.A.), issued statements condemning the death penalty as inconsistent with Christian values.¹¹ Catholic perspectives have evolved over time, initially accepting

4. LOUIS P. MASUR, RITES OF EXECUTION: CAPITAL PUNISHMENT AND THE TRANSFORMATION OF AMERICAN CULTURE, 1776-1865, 50 (1989).

5. *See id.* at 3–5.

6. *See id.*

7. *See* MASUR, *supra* note 4, at 62 (describing Dr. Benjamin Rush as “the most influential physician in America, a signor of the Declaration of Independence, and a prolific essayist”).

8. BENJAMIN RUSH, CONSIDERATIONS ON THE INJUSTICE AND IMPOLICY OF PUNISHING MURDER WITH DEATH 19 (1792) (“Considerations”); *see also* BENJAMIN RUSH, AN ENQUIRY INTO THE EFFECTS OF PUBLIC PUNISHMENTS UPON CRIMINALS AND UPON SOCIETY (1787).

9. Alan Bigel, *Justices William J. Brennan, Jr. and Thurgood Marshall on Capital Punishment: Its Constitutionality, Morality, Deterrent Effect, and Interpretation by the Court*, 8 NOTRE DAME J. L. ETHICS & PUB. POL’Y 11, 40 (1994) (citing RUSH, *supra* note 8, at 16).

10. *See* Jolie McLaughlin, *The Price of Justice: Interest-Convergence, Cost, and the Anti-Death Penalty Movement*, 108 NW. L. REV. 675, 683 (2014); Jeffrey Kirchmeier, *Another Place Beyond Here: The Death Penalty Moratorium Movement in the United States*, 73 COLO. L. REV. 3, 6–7 (2002) (describing the anti-death penalty’s abolition efforts in the 1800s).

11. *See, e.g.*, UNITED METHODIST GENERAL CONFERENCE JOINT STATEMENT (1956), <https://perma.cc/S6EX-97K9>; *see also* THE BOOK OF DISCIPLINE OF THE UNITED METHODIST CHURCH, Social Principles para. 164.G (2016), <https://perma.cc/DVG5-X6SQ> (“[T]he death penalty denies the power of Christ to redeem, restore, and transform all human beings.”).

capital punishment under certain conditions, but increasingly emphasizing mercy and the dignity of the human person.¹²

Similarly, secular moral philosophers influential at the time of the founding likewise condemned the practice of capital punishment.¹³ Among the most famous of these thinkers was an Italian named Cesare Beccaria. Beccaria is credited as “the main catalyst for [a] paradigm shift” toward the reform of criminal justice systems.¹⁴ Beccaria’s writings reflected profound influence of predecessor thinkers like Montesquieu and Thomas More.¹⁵ Similarly, Beccaria’s writings had a significant influence on political and philosophical leaders in England and early America.¹⁶ During this era, the abolitionist movement was animated not by procedural compliance but by moral questions like “[b]y what alleged right can men slaughter their fellows?”¹⁷

B. *The Furman Era*

The mid-20th century civil rights movement reinvigorated moral critiques of the death penalty, particularly around race and justice. Justice Thurgood Marshall, both as a lawyer and later as a Supreme Court Justice, framed capital punishment as morally indefensible in a system marked by racial inequality. In *Furman v. Georgia*, Justice Marshall contended that the death penalty, so irrevocable, so severe, so degrading, could not be

12. See CATECHISM OF THE CATHOLIC CHURCH, part III, § 2, ch. 2, art. 5, no. 2267 (rev. ed. 2018), <https://perma.cc/6KZR-DLN6> (“Recourse to the death penalty on the part of legitimate authority, following a fair trial, was long considered an appropriate response to the gravity of certain crimes and an acceptable, albeit extreme, means of safeguarding the common good. Today, however, there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, at the same time, do not definitively deprive the guilty of the possibility of redemption. Consequently, the Church teaches, in the light of the Gospel, that ‘the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person,’ and she works with determination for its abolition worldwide.”) (citing Pope Francis, *Address to Participants in the Meeting Organized by the Pontifical Council for the Promotion of the New Evangelization*, THE HOLY SEE, (Oct. 11, 2017), <https://perma.cc/QBR2-5QD5>).

13. See Mugambi Jouet, *Death Penalty Abolitionism from Enlightenment to Modernity*, 71 AM. J. COMP. L. 46, 56 (2023).

14. *Id.* at 57.

15. See *id.* at 58-59.

16. See, e.g., Voltaire, PRIX DE LA JUSTICE ET DE L’HUMANITE 101–02 (1778) (including commentary on Beccaria’s writings on torture and corporal punishment); see also STUART BANNER, THE DEATH PENALTY: AN AMERICAN HISTORY 91–94 (2002) (describing the influence that Beccaria’s writings had on founding fathers such as Thomas Jefferson and Benjamin Franklin).

17. CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 48 (David Young trans., 1986).

justified in a civilized society that claims to value human dignity.¹⁸ While much of his opinion addressed precedent, history, and popular political views, the undercurrent was unabashedly moral: “[The death penalty] is morally unacceptable to the people of the United States at this time in their history.”¹⁹

Though perhaps a forgotten chapter of the *Furman* story, the Supreme Court took up *Furman* in consolidation with the case *Aikens v. California*,²⁰ with the Aikens brief being significant for the following reason:

The *Aikens* brief presented [its] main constitutional claim under the Eighth Amendment, [distinct from the procedural unfairness dominating the *Furman* opinion. The *Aikens* brief argued that] the death penalty is inherently cruel and dehumanizing. *Aikens* was mostly forgotten to history after it [was determined] moot, which left *Furman* as the main case before the Court. But the succinct *Furman* brief specified that the *Aikens* brief “fully develops” the constitutional challenge to the death penalty.²¹

While the *Furman* decision frames the issue as one of due process and procedural equality, the overall litigation strategy centered on moral concerns and human dignity, reflecting the horror inherent in the death penalty.²² The fact that Anthony Amsterdam founded a heavy portion of the *Aikens* brief on the idea that any execution is categorically inhumane seems to contradict the common understanding of modern civil rights litigators that you should *not*, for example, cite Albert Camus in your brief.²³ But this common understanding is founded on compelling reasoning. As Professor Carol Steiker has underlined, the notion that the death penalty is intrinsically a violation of human dignity is “much less prominent in, if not absent entirely from, American debates about abolition versus retention” in comparison to Europe, where it has carried the day.²⁴

18. See *Furman v. Georgia*, 408 U.S. 238, 314–71 (1972).

19. *Id.* at 360.

20. See *Aikens v. California*, 406 U.S. 813 (1972).

21. Mugambi Jouet, *A Lost Chapter in Death Penalty History: Furman v. Georgia, Albert Camus, and The Normative Challenge to Capital Punishment*, 49 AM. J. CRIM. L. 119, 121 (2022).

22. See *id.*

23. See CAROL S. STEIKER & JORDAN M. STEIKER, *COURTING DEATH: THE SUPREME COURT AND CAPITAL PUNISHMENT* 50, 248 (2016).

24. Carol S. Steiker, *Capital Punishment and American Exceptionalism*, in AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 57, 86 (Michael Ignatieff ed. 2005).

Professor Mugambi Jouet marshals a compelling argument that calls into question what he refers to as “the ‘standard *Furman* narrative’”—that the opinion was primarily “concerned [with] administrative [and] procedural issues.”²⁵ In his article, Professor Jouet contends that the “neglected story” of Amsterdam’s brief in *Aikens* is vital to rebut “the ‘standard *Furman* narrative’” about what methods of argumentation prevailed in *Furman*.²⁶ As Professors Steiker and Steiker argue, procedural reasoning evoked “an obvious invitation to future . . . litigation” where “a constitutional abolition that firmly rejected the death penalty as inconsistent with contemporary values would have rendered later attempts to reinstate capital punishment extremely difficult.”²⁷

C. *The Post-Furman Shift*

After *Furman*, “twenty-eight states passed new death penalty statutes” attempting to comply with the Court’s requirements for constitutionality.²⁸ When the Supreme Court upheld these newly revised capital sentencing schemes,²⁹ abolitionist litigation entered a new phase. Advocates pivoted away from sweeping moral arguments toward narrower procedural and empirical challenges. This strategic turn was driven in part by a common understanding of *Gregg* and *McCleskey* which made clear that the Court would not entertain broad Eighth Amendment challenges based on moral or philosophical grounds alone. This understanding is not necessarily incorrect.³⁰

In *Gregg v. Georgia*, the Supreme Court majority re-authorized the death penalty based on new procedures for capital trials and sentencings without any reference to human dignity or morality, despite those concerns playing a significant role for many of the justices in *Furman* four years earlier.³¹ Likewise, the Court rejected a major challenge to the racial

25. Jouet, *supra* note 21, at 123.

26. *Id.* at 123, 125.

27. *Id.* at 163; STEIKER & STEIKER, *supra* note 23, at 75.

28. McLaughlin, *supra* note 10, at 687; see HERBERT HAINES, *AGAINST CAPITAL PUNISHMENT: THE ANTI-DEATH PENALTY MOVEMENT IN AMERICA, 1972–1994*, 5 (1996).

29. See generally *Gregg v. Georgia*, 428 U.S. 153 (1976).

30. Justices Brennan and Marshall, however, continued their intentional use of moral framing in analyzing the death penalty throughout their time on the Court. For example, in *McCleskey*, Brennan wrote that the Court’s refusal to recognize the racial bias in capital sentencing betrayed its “moral blindness.” He saw the death penalty not merely as unconstitutional, but as antithetical to “the evolving standards of decency that mark the progress of a maturing society,” an undoubtedly moral question. *McCleskey v. Kemp*, 481 U.S. 279, 300, 343 (1987) (Brennan, J., dissenting).

31. See *Gregg*, 428 U.S. at 228–30, 231–32 (Brennan, J., dissenting) (Marshall, J., dissenting).

disparity of the death penalty in 1987 without any reference to human rights or dignity—even from the dissenting justices.³² This trend also stood in stark contrast to the widening recognition of human rights and dignity arguments in other western nations.³³ With that historical development in mind, this article now turns to the moral distancing that has arisen from this shift and why it must be counteracted.

III. INTEREST CONVERGENCE AND ABOLITION LAWYERING

Originally articulated by Professor Derrick Bell in the context of racial justice, interest convergence posits that progress for marginalized groups is more likely to occur when their interests align with those of more powerful or dominant constituencies.³⁴ While the theory was developed to analyze school desegregation and other civil rights issues, its insights apply with equal force to the politics of capital punishment.

In accordance with interest convergence theory, death penalty abolition is more likely to succeed not when it is framed solely as a racial or human rights imperative, but when it also resonates with a broader coalition that includes fiscal conservatives, libertarians, and religious traditionalists. In this context, including moral language into legal arguments is not only normatively important—it is strategically indispensable. This language can catalyze convergence between communities that might otherwise have little in common but who can, for different reasons, unite around the shared goal of ending state executions.

A. *Origins and Core Principles of Interest Convergence Theory*

Following the Supreme Court's decision in *Brown v. Board of Education*, legal scholars and jurists discussed and debated Professor Bell's "sober assessment of reality"—that African Americans' pursuit of racial equality only achieved sufficient support from white Americans when that pursuit "converge[d] with the[ir] interests."³⁵ He based this principle on the social realities at the time that allowed *Brown* to come to fruition. According to Bell, the *Brown* decision created an opportunity for white Americans in "policymaking positions" who were aware of "the economic and political advances" of abandoning segregation.³⁶ For example, it was thought that the *Brown* decision would aid the U.S.'s interests in opposing communist countries in the minds of third-world

32. See generally *id.*

33. See FRANKLIN E. ZIMRING, *THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT* 25–27 (2003).

34. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

35. *Id.* at 523.

36. *Id.* at 524.

nations, creating at least the visage of American equal opportunity.³⁷ The decision also appeared to encourage African Americans to enlist in the military forces. Bell cited the prominent actor Paul Robeson who stated that it was “unthinkable . . . that [African] American[s] would go to war on behalf of those who have oppressed us for generations . . . against a country . . . which in one generation has raised our people to the full human dignity of mankind.”³⁸

Bell clarifies that these reasons did not serve as the only basis for the support of *Brown*; rather, they served to supplement the white Americans who were genuinely in favor of the opinion because they supported racial equality as a moral imperative.³⁹ The pragmatic interests described by Bell were insufficient to persuade all white Americans, evidenced by the famously extreme and forceful outcry against the opinion and Chief Justice Warren personally.⁴⁰ However, these converged interests allowed *enough* white Americans to concede that the desegregation of American society should not be fought. This interest convergence created broad enough support for the important goal of desegregation to be achieved.

Professor Bell’s “guiding principle”⁴¹ should be well-taken for those in favor of all causes. With the gift of hindsight, it now seems obvious—the convergence of previously exclusive interests allows for increased force behind a movement. Professor Bell’s argument can be applied to many contexts and, recognizing the historical examples of interest convergences, movement organizers of all types can ensure that their efforts are spent reaching the supporters necessary for their causes to succeed.

B. Application to Death Penalty Advocacy

Bell’s analysis makes the discounting of certain arguments as “futile” seem short-sighted.⁴² Moral, ethical, and religious arguments are uniquely suited to facilitate interest convergence. Moral arguments often humanize complex issues in ways that data cannot. Arguing that the state should not

37. *See id.*

38. *Id.* at 524–25 (citing D. Butler, Paul Robeson 137 (1976) (unwritten speech before the Partisans of Peace, World Peace Congress in Paris)).

39. *See id.* at 525.

40. *See id.*

41. *Id.* at 523.

42. *See, e.g.,* Daniel Williams, *The Futile Debate Over the Morality of the Death Penalty*, 10 LEWIS & CLARK L. REV. 625, 626 (2006) (arguing that moral debates over things like the death penalty show that “the entire enterprise of abstract moral theorizing, using the conventional moral categories of consequentialism and deontology, to somehow resolve disagreement over the highly politicized issue of capital punishment is futile.”).

kill because life is sacred speaks powerfully to both Buddhist teaching⁴³ and the principles underlying Evangelical Christian teaching on abortion.⁴⁴ In this way, moral arguments function as a kind of rhetorical bridge. They do not require that all groups agree on the same reasoning; they merely allow different groups to see their interests reflected in the same outcome.⁴⁵ The political weight of otherwise-divergent groups can only be fully captured when moral arguments are included along with empirical, procedural, and economic arguments to create space for unlikely allyship. Many Christian, Jewish, Muslim, and Buddhist teachings emphasize mercy, redemption, and the sanctity of life. Pope Francis has unequivocally condemned the death penalty as “inadmissible,” calling it an affront to human dignity.⁴⁶ Yet these communities are often underutilized in public campaigns toward social justice, in part because secular advocates hesitate to frame issues in explicitly moral or theological terms.

This hesitation represents a missed opportunity. Faith and moral traditions remain deeply influential in American political life, particularly among more conservative or rural constituencies where support for the death penalty remains high. Engaging these communities on their own moral terms does not require compromising secular commitments—it requires broadening the vocabulary of abolition to include appeals to shared ethical principles. Moral arguments can help overcome polarization, foster empathy, and bridge the divide between seemingly opposed groups. Ignoring them is not only a strategic misstep; it is a failure to speak to the full human experience of justice. To be clear, there are many instances where moral argumentation may be inappropriate. The idea that moral arguments should be included in every case or without conscientious consideration is overbroad. While advocates must act with

43. See Perrett, *Buddhism, Euthanasia, and the Sanctity of Life*, 22 J. OF MED. ETHICS 309, 310 (1996).

44. See, e.g., Southern Baptist Convention, *Annual Meeting: Resolution on Abortion*, SBC (June 1, 1980), <https://perma.cc/N5MY-MVB5> (“Be it therefore RESOLVED, That the Southern Baptist Convention reaffirm the view of the Scriptures of the sacredness and dignity of all human life, born and unborn . . .”).

45. There is excellent scholarship addressing the convergence possible by emphasizing financial and economic arguments to fiscal conservatives and libertarians. Studies consistently show that the death penalty costs states significantly more than life without parole. See DEATH PENALTY INFO. CTR., <https://perma.cc/HSG6-N7MT>, (last visited Mar. 12, 2026). See Michael E. Silverman, *Toward a Modern, Apolitical Death Penalty Abolition Movement in Georgia (and Other Conservative States)*, 3 SAVANNAH L. REV. 251, 258 (2016) (showing that the compound cost of a death penalty trial in Arizona exceeded \$3.2 million while the same defendant would have to reach 95 years of age in prison to come to the same cost).

46. Linda Bordoni, *Pope Francis: ‘death penalty inadmissible,’* VATICAN NEWS (Aug. 20, 2024) <https://perma.cc/AJW3-PLGM>.

discernment, there are many instances where we abandon moral arguments at our own peril.

IV. THE ISSUE OF MORAL DISTANCING

In addition to the pragmatic benefit of moral convergence, this essay contends that the inclusion of moral arguments into death penalty advocacy can also be justified to combat moral distancing. The term “moral distancing” here refers to the conscious or unconscious practice of stripping moral or ethical content from the administration of the death penalty.⁴⁷ In the death penalty context, this has manifested in myriad ways. Anthropologist Robin Conley has written about how the language used in capital trials “emphasizes moral distance (i.e., ‘the defendant’ rather than ‘David Johnson’) sever[ing] empathic feeling in a manner that denies the individuality and humanity of the accused.”⁴⁸ In turn, advocacy that centers around questions of procedural compliance, reliability, and cost over questions of human dignity and the moral legitimacy of state killing fails to bridge this distance.

A secondary consequence of this moral distancing arises outside of the jury box—when only proponents of capital punishment make moral or ethical arguments about “justice,” opponents of the death penalty are implicitly conceding that ground. Public officials who defend capital punishment often invoke moral language: they speak of “justice,” “accountability,” and the “evil” of the defendants.⁴⁹ Governors who sign death warrants rarely cite fiscal responsibility or procedural regularity; they describe executions as necessary acts of moral clarity.⁵⁰ In the absence of strong moral counter-narratives, these claims go largely unchallenged on their own rhetorical terms.

47. Craig Haney, *Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death*, 49 STAN. L. REV. 1447, 1450 (1997) (describing the survival of the death penalty as requiring distance between decisionmakers and the realities of their decisions).

48. Anna Offit, *Review Essay: Giving Life to the Death Penalty*, POL. & LEGAL ANTHROPOLOGY REV. 1, 4 (2016) (citing ROBIN CONLEY, CONFRONTING THE DEATH PENALTY: HOW LANGUAGE INFLUENCES JURORS IN CAPITAL CASES 256 (Oxford University Press 2016)).

49. See Exec. Order No. 14,164, Restoring the Death Penalty and Protecting Public Safety, 90 Fed. Reg. 8463, 8463 (Jan. 20, 2025) (“Our Founders knew well that only capital punishment can bring justice and restore order in response to such evil.”).

50. See Brad Little, *Gov. Little’s Statement on Death Penalty for Pedophiles*, OFFICE OF THE GOVERNOR (April 1, 2025), <https://perma.cc/7JND-34XJ> (“The sexual abuse of children is sickening and evil, and perpetrators convicted of these crimes deserve the ultimate punishment.”).

In response, there must be a clear moral, ethical, and, when relevant, even religious narrative in opposition to this moral reasoning in favor of capital punishment. Moral discourse has the capacity to inspire, mobilize, and unify across ideological and cultural divides. As stated above, when abolitionists rely exclusively on procedural or utilitarian arguments, they may lose the opportunity for persuasion in communities where moral or religious considerations are paramount—such as faith-based voters, conservative ethicists, or those personally affected by violence who seek meaning beyond legal remedy. In addition, however, the moral distancing inherent in the American death penalty weakens the ability of abolitionists to force those participating in the system to fully contend with their roles.⁵¹ If the death penalty is merely a flawed policy, then procedural protections are sufficient. If, however, it is a form of state violence that dehumanizes, no reform is sufficient to right its moral wrongs. It disproportionately targets the poor and the marginalized, often inflicting psychological torture through prolonged incarceration on death row.⁵² Procedural arguments alone cannot capture the existential weight of these realities. Only moral and ethical language—drawing on concepts like human dignity, the sanctity of life, and the possibility of redemption—can fully express the injustice at stake.

Importantly, reinvigorating moral advocacy does not require discarding empirical evidence or legal rigor. On the contrary, the most compelling abolitionist arguments combine empirical research that is buttressed by moral reasoning to form a coherent and persuasive narrative.⁵³ For example, the high rate of wrongful convictions on death row is an empirical fact, but when combined with the moral impact of unjustified execution or incarceration, it generates moral outrage at plain injustice. The racial disparities in sentencing are not just statistically significant but, when combined with the Christian belief in the *imago dei*,⁵⁴ they reflect a systemic devaluation of Black and Hispanic lives.

By framing empirical findings within a moral vocabulary, advocates can give empirical evidence or procedural failings normative value

51. See CONLEY, *supra* note 48, at 117 (describing how jurors are encouraged to minimize their empathy toward defendants which, in turn, makes rendering death verdicts easier).

52. See Robert Johnson, *Under Sentence of Death: The Psychology of Death Row Confinement*, 5 L. & PSYCH. REV. 141, 142–43 (1979).

53. See Jouet, *supra* note 21 at 121 (describing the arguments marshaled in the Petitioner's brief in *Aikens*).

54. See, e.g., DR. RYAN PETERSON, *THE IMAGO DEI AS HUMAN IDENTITY: A THEOLOGICAL INTERPRETATION* 5–17 (Penn State University Press 2016) (describing the historical and biblical interpretations of the *imago dei* doctrine as a belief that every human possesses divine characteristics as a reflection of the creator).

judgments that would otherwise be implicit at best. The possibility of redemption, the value of mercy, and the limits of human judgment are all moral questions that transcend the reach of data. These are questions that many Americans ask when they consider the death penalty. By including moral reasoning into death penalty advocacy, movement lawyers force those participating in the institution to contend with the moral valence of their actions and fight against the dehumanization that moral distance permits.

V. CONCLUSION

The abolition of the death penalty in the United States requires more than airtight procedural arguments and persuasive data—it demands a moral reckoning. For decades, abolitionist advocacy has leaned heavily on empirical critiques, constitutional technicalities, and litigation strategies that, while effective in some respects, have come at the cost of moral clarity. As a result, much of the public discourse around the abolition of capital punishment has become detached from the core moral question: *Should the state have the power to kill?*

This essay has argued that moral language should be reintegrated into the legal advocacy of the abolitionist movement—not merely for their rhetorical force, but for their strategic value. Moral language disrupts the distancing that allows the death penalty to exist as a neutral policy choice in the background of public life. Moral arguments humanize the people on trial, they appeal to conscience, and they invite broader engagement from communities that may not be engaged by technical legal discourse. Moreover, through the lens of interest convergence theory, moral and ethical arguments are essential to building coalitions. Abolition becomes more politically viable when it attracts support from people of diverse religious, moral, and ethical traditions. These groups may be motivated by different concerns—for example, the sanctity of life, human rights, and systemic racial discrimination—but if they converge on a shared conclusion that capital punishment should end, the movement becomes reinvigorated.

Of course, including moral language into legal advocacy is not a panacea. It must be deployed thoughtfully and with attention to the nuances of audience and context. But the risks of marginalizing moral discourse are far greater than the risks of embracing it. The death penalty is not just a policy flaw or a constitutional anomaly—it is a profound moral failure. And to adequately confront this failure, we must be willing to speak the language of morality. Reclaiming that language does not mean abandoning legal analysis or empirical critique. It means recognizing that legal institutions like capital punishment are not—and have never been—

morally neutral. They are shaped by the values elevated, the stories told, and the coalitions built. Ending the death penalty will not happen solely in courts, but in culture and conscience. As such, abolitionists must make the case for dignity, mercy, and life in ways that invite people of diverse faith and moral backgrounds to participate.