

EDWARD I. KOCH

Death and Justice: How Capital Punishment Affirms Life
Edward Koch, *The New Republic*

Last December a man named Robert Lee Willie, who had been convicted of raping and murdering an eighteen-year-old woman, was executed in the Louisiana state prison. In a statement issued several minutes before his death, Mr. Willie said: "Killing people is wrong.... It makes no difference whether it's citizens, countries, or governments. Killing is wrong." Two weeks later in South Carolina, an admitted killer named Joseph Carl Shaw was put to death for murdering two teenagers. In an appeal to the governor for clemency, Mr. Shaw wrote: "Killing was wrong when I did it. Killing is wrong when you do it. I hope you have the courage and moral strength to stop the killing."

It is a curiosity of modern life that we find ourselves being lectured on morality by cold-blooded killers. Mr. Willie previously had been convicted of aggravated rape, aggravated kidnapping, and the murders of a Louisiana deputy and a man from Missouri. Mr. Shaw committed another murder a week before the two for which he was executed, and admitted mutilating the body of the fourteen-year-old girl he killed. I couldn't help wondering what prompted these murderers to speak out. Is it that they entered the death house door? Did their newfound reverence for life stem from the realization that they were about to lose their own? Life is indeed precious, and I believe the death penalty helps to affirm that fact. Had the death penalty been a real possibility in the minds of these murderers, they might well have stayed their hand. They might have shown moral awareness before their victims died, and not after. Consider the tragic death of Rosa Velez, who happened to be home when a man named Luis Vera burglarized her apartment in Brooklyn. "Yeah, I shot her," Vera admitted. "She knew me, and I knew I wouldn't go to the chair."

During my twenty-two years in public service, I have heard the pros and cons of capital punishment expressed with special intensity. As a district leader, councilman, congressman, and mayor, I have represented constituencies generally thought of as liberal. Because I support the death penalty for heinous crimes of murder, I have sometimes been the subject of emotional and outraged attacks by voters who find my position reprehensible or worse. I have listened to their ideas. I have weighed their objections carefully and still support the death penalty. The reasons I maintain my position can be best understood by examining the arguments most frequently heard in opposition.

1. The death penalty is "barbaric."

Sometimes opponents of capital punishment horrify with tales of lingering death on the gallows, of faulty electric chairs, or of agony in the gas chamber. Partly in response to such protests, several states such as North Carolina and Texas switched to execution by lethal injection. The condemned person is put to death painlessly, without ropes, voltage, bullets, or gas. Did this answer the objections of death penalty opponents? Of course not. On June 22, 1984, the *New York Times* published an editorial that sarcastically attacked the new "hygienic" method of death by injection, and stated that "execution can never be made humane through science." So it's not the method that really troubles opponents. It's the death itself they consider barbaric.

Admittedly, capital punishment is not a pleasant topic. However, one does not have to like the death penalty in order to support it any more than one must like radical surgery, radiation, or chemotherapy in order to find necessary these attempts at curing cancer. Ultimately we may learn how to cure cancer with a simple pill. Unfortunately, that day has not yet arrived. Today we are faced with the choice of letting the cancer spread or trying to cure it with the methods available, methods that one day will almost certainly be considered barbaric. But to give up and do nothing would be far more barbaric and would certainly delay the discovery of an eventual cure. The analogy between cancer and murder is imperfect, because murder is not the "disease" we are trying to cure. The disease is injustice. We may not like the death penalty, but it must be available to punish crimes of cold-blooded murder, cases in which any other form of punishment would be inadequate and, therefore, unjust. If we create a society in which injustice is not tolerated, incidents of murder—the most flagrant form of injustice—will diminish.

2. No other major democracy uses the death penalty.

No other major democracy—in fact, few other countries of any description—are plagued by a murder rate such as that in the United States. Fewer and fewer Americans can remember the days when unlocked doors were the norm and murder was a rare and terrible offense. In America the murder rate climbed 122 percent between 1963 and 1980. During that same period, the murder rate in New York City increased by almost 400 percent, and the statistics are even worse in many other cities. A study at M.I.T. showed that based on 1970 homicide rates a person who lived in a large American city ran a greater risk of being murdered than an American soldier in World War II ran of being killed in combat. It is not surprising that the laws of each country differ according to differing conditions and traditions. If other countries had our murder problem, the cry for capital punishment would be just as loud as it is here. And I dare say that any other major democracy where 75 percent of the people supported the death penalty would soon enact it into law.

3. An innocent person might be executed by mistake.

Consider the work of Hugo Adam Bedau, one of the most implacable foes of capital punishment in this country. According to Mr. Bedau, it is “false sentimentality to argue that the death penalty should be abolished because of the abstract possibility that an innocent person might be executed.” He cites a study of the seven thousand executions in this country from 1892 to 1971, and concludes that the record fails to show that such cases occur. The main point, however, is this. If government functioned only when the possibility of error didn't exist, government wouldn't function at all. Human life deserves special protection, and one of the best ways to guarantee that protection is to assure that convicted murderers do not kill again. Only the death penalty can accomplish this end. In a recent case in New Jersey, a man named Richard Biegenwald was freed from prison after serving eighteen years for murder; since his release he has been convicted of committing four murders. A prisoner named Lemuel Smith, who, while serving four life sentences for murder (plus two life sentences for kidnapping and robbery) in New York's Green Haven Prison, lured a woman corrections officer into the chaplain's office and strangled her. He then mutilated and dismembered her body. An additional life sentence for Smith is meaningless. Because New York has no death penalty statute, Smith has effectively been given a license to kill.

But the problem of multiple murders is not confined to the nation's penitentiaries. In 1981, ninety-one police officers were killed in the line of duty in this country. Seven percent of those arrested in the cases that have been solved had a previous arrest for murder. In New York City in 1976 and 1977, eighty-five persons arrested for homicide had a previous arrest for murder. Six of these individuals had two previous arrests for murder, and one had four previous murder arrests. During those two years the New York police were arresting for murder persons with a previous arrest for murder on the average of one every eight and a half days. This is not surprising when we learn that in 1975, for example, the median time served in Massachusetts for homicide was less than two and a half years. In 1976 a study sponsored by the Twentieth Century Fund found that the average time served in the United States for first-degree murder is ten years. The median time served may be considerably lower.

4. Capital punishment cheapens the value of human life.

On the contrary, it can be easily demonstrated that the death penalty strengthens the value of human life. If the penalty for rape were lowered, clearly it would signal a lessened regard for the victim's suffering, humiliation, and personal integrity. It would cheapen their horrible experience, and expose them to an increased danger of recurrence. When we lower the penalty for murder, it signals a lessened regard for the value of the victim's life. Some critics of capital punishment, such as columnist Jimmy Breslin, have suggested that a life sentence is actually a harsher penalty for murder than death. This is sophistic nonsense. A few killers may decide not to appeal a death sentence, but the overwhelming majority make every effort to stay alive. It is by exacting the highest penalty for the taking of human life that we affirm the highest value of human life.

5. The death penalty is applied in a discriminatory manner.

This factor no longer seems to be the problem it once was. The appeals process for a condemned prisoner is lengthy and painstaking. Every effort is made to see that the verdict and sentence were fairly arrived at. However, assertions of discrimination are not an argument for ending the death penalty but for

extending it. It is not justice to exclude everyone from the penalty of the law if a few are found to be so favored. Justice requires that the law be applied equally to all.

6. Thou Shalt Not Kill.

The Bible is our greatest source of moral inspiration. Opponents of the death penalty frequently cite the sixth of the Ten Commandments in an attempt to prove that capital punishment is divinely proscribed. In the original Hebrew, however, the Sixth Commandment reads “Thou Shalt Not Commit Murder,” and the Torah specifies capital punishment for a variety of offenses. The biblical viewpoint has been upheld by philosophers throughout history. The greatest thinkers of the nineteenth century—Kant, Locke, Hobbes, Rousseau, Montesquieu, and Mill agreed that natural law properly authorizes the sovereign to take life in order to vindicate justice. Only Jeremy Bentham was ambivalent. Washington, Jefferson, and Franklin endorsed it. Abraham Lincoln authorized executions for deserters in wartime. Alexis de Tocqueville, who expressed profound respect for American institutions, believed that the death penalty was indispensable to the support of social order. The United States Constitution, widely admired as one of the seminal achievements in the history of humanity, condemns cruel and inhuman punishment, but does not condemn capital punishment.

7. The death penalty is state-sanctioned murder.

This is the defense with which Messrs. Willie and Shaw hoped to soften the resolve of those who sentenced them to death. By saying in effect, “You’re no better than I am,” the murderer seeks to bring his accusers down to his own level. It is also a popular argument among opponents of capital punishment, but a transparently false one. Simply put, the state has rights that the private individual does not. In a democracy, those rights are given to the state by the electorate. The execution of a lawfully condemned killer is no more an act of murder than is legal imprisonment an act of kidnapping. If an individual forces a neighbor to pay him money under threat of punishment, it’s called extortion. If the state does it, it’s called taxation. Rights and responsibilities surrendered by the individual are what give the state its power to govern. This contract is the foundation of civilization itself.

Everyone wants his or her rights, and will defend them jealously. Not everyone, however, wants responsibilities, especially the painful responsibilities that come with law enforcement. Twenty-one years ago a woman named Kitty Genovese was assaulted and murdered on a street in New York. Dozens of neighbors heard her cries for help but did nothing to assist her. They didn’t even call the police. In such a climate the criminal understandably grows bolder. In the presence of moral cowardice, he lectures us on our supposed failings and tries to equate his crimes with our quest for justice.

The death of anyone—even a convicted killer—diminishes us all. But we are diminished even more by a justice system that fails to function. It is an illusion to let ourselves believe that doing away with capital punishment removes the murderer’s deed from our conscience. The rights of society are paramount. When we protect guilty lives, we give up innocent lives in exchange. When opponents of capital punishment say to the state, “I will not let you kill in my name,” they are also saying to murderers: “You can kill in your own name as long as I have an excuse for not getting involved.” It is hard to imagine anything worse than being murdered while neighbors do nothing. But something worse exists. When those same neighbors shrink back from justly punishing the murderer, the victim dies twice.