Why Death-Penalty Opponents Can't Win

"Opponents of the death penalty believe that no one deserves to be executed.... So they spend all of their energy cherry-picking cases, gumming up the legal system, and talking about ‘uncertainty.’"

Jonah Goldberg is an award-winning journalist and both the founding editor and editor at large for the National Review Online. In the following viewpoint, Goldberg discredits death penalty opponents’ arguments, because, he asserts, they are selective about the cases they highlight in their public campaigns. He also points out that death penalty abolitionists base much of their opposition on the idea that there is no such thing as absolute certainty about guilt or innocence in the current system. Goldberg refutes this argument and contends that just because some defendants or convicts are found to be not guilty does not mean that others who are guilty should not be punished. He concludes that because death penalty opponents cannot argue effectively against execution when there is no doubt about the accused's guilt, they will never be successful in abolishing the practice.

As you read, consider the following questions:

1. According to Goldberg, why did Lawrence Russell Brewer claim he was innocent?
2. How many people did Timothy McVeigh admit to killing, according to the viewpoint?
3. Why, according to Goldberg, are death penalty opponents less eager to debate cases in which DNA evidence confirms criminals’ guilt?

On Wednesday, two men were lawfully executed. Both insisted they were innocent. If you've been watching the news or following Kim Kardashian's tweets, you've likely heard of one of these men, Troy Davis.

The other death-penalty "victim," Lawrence Russell Brewer, was until this week the more significant convicted murderer. Brewer was one of the racist goons who infamously tied James Byrd to the back of their truck and dragged him to death in Texas.

The case became a touchstone in the 2000 presidential race because then Texas governor George W. Bush had refused to sign a "hate crimes" law. The NAACP ran a reprehensible ad during the presidential election trying to insinuate that Bush somehow shared responsibility for the act.

Regardless, Brewer claimed that he was "innocent" because one of his buddies had cut Byrd's throat before they dragged his body around. Forensic evidence directly contradicted this.

Brewer's own statements didn't help either. Such as, "As far as any regrets, no, I have no regrets.... I'd do it all over again, to tell you the truth."

Brewer, festooned with tattoos depicting KKK symbols and burning crosses, was "not a sympathetic person" in the words of Gloria Rubac of the Texas Death Penalty Abolition Movement.

Which is why we didn't hear much about him this week. Instead, we heard a great deal about Davis. Many people insist Davis was innocent or that there was "too much doubt" about his guilt to proceed with the execution. Many judges and public officials disagreed, including all nine members of the Supreme Court, who briefly stayed the execution Wednesday night, only to let it proceed hours later.
There are many sincere and decent people—on both sides of the ideological spectrum—who are opposed to the death penalty. I consider it an honorable position, even though I disagree with it. I am 100 percent in favor of lawfully executing people who deserve the death penalty and 100 percent opposed to killing people who do not deserve it.

When I say that, many death-penalty opponents angrily respond that I'm missing the point. You can never be certain! Troy Davis proves that!

But he proves no such thing. At best, his case proves that you can't be certain about Davis. You most certainly can be certain about other murderers. If the horrible happens and we learn that Davis really was not guilty, that will be a heart-wrenching revelation. It will cast a negative light on the death penalty, on the Georgia criminal-justice system, and on America.

But you know what it won't do? It won't render Lawrence Russell Brewer one iota less guilty or less deserving of the death penalty. Opponents of capital punishment are extremely selective about the cases they make into public crusades. Strategically, that's smart; you don't want to lead your argument with "unsympathetic persons." But logically, it's problematic. There is no transitive property that renders one heinous murderer less deserving of punishment simply because some other person was exonerated of murder.

Timothy McVeigh killed 168 people including 19 children. He admitted it. How does doubt in Troy Davis's case make McVeigh less deserving of death?

We hear so much about the innocent people who’ve gotten off death row—thank God—because of new DNA techniques. We hear very little about the criminals who’ve had their guilt confirmed by the same techniques (or who’ve declined DNA testing because they know it will remove all doubt). Death-penalty opponents are less eager to debate such cases because they want to delegitimize “the system.”

And to be fair, I think this logic cuts against one of the death penalty’s greatest rationalizations as well: deterrence. I do believe there’s a deterrence effect from the death penalty. But I don't think that's anything more than an ancillary benefit of capital punishment. It's unjust to kill a person simply to send a message to other people who've yet to commit a crime. It is just to execute a person who deserves to be executed.

Opponents of the death penalty believe that no one deserves to be executed. Again, it’s an honorable position, but a difficult one to defend politically in a country where the death penalty is popular. So they spend all of their energy cherry-picking cases, gumming up the legal system, and talking about “uncertainty.”

That's fine. But until they can explain why we shouldn't have a death penalty when uncertainty isn't an issue—i.e., why McVeigh and Brewer should live—they'll never win the real argument.

Further Readings

Books

- Sanaz Alasti, Cruel and Unusual Punishment: Comparative Perspective in International Conventions, the United States and Iran. Lake Mary, FL: Vandeplas Publishing, 2009.


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