

# On The Death Penalty

By Chris Abbott

I find it very difficult to discuss the death penalty, for all the usual reasons: the possibility of innocence, cruel and unusual punishment, the desire to move from “eye for an eye” to “turn the other cheek.” At the same time, when I read such cases as “People V. Kelly,” or consider the crimes of Jeffrey Dahmer, my immediate reaction is that we’re letting the victims down by allowing their predators to live—and worse, live off the public dole. Prison is no great place to live, I know, but we’re still paying for their food and shelter and granting them the right to life. Something they didn’t do, themselves.

In “People V. Kelly,” a jury found that defendant Horace Edwards Kelly murdered and attempted to rape Sonia Reed on November 16, 1984, and murdered, raped, and robbed Ursula Houser the next day. Both murders were committed in San Bernardino.

The prosecution also presented evidence of criminal activity involving Kelly’s use of force or violence in Riverside County which occurred a few days after the Reed/Houser murders but went to trial before the San Bernardino matter. According to evidence presented in Riverside County, Kelly assaulted 13- year-old Shannon P. and her 11-year-old cousin, Danny O., as they were walking down a path. Kelly grabbed Shannon, then fatally shot Danny twice when the boy attempted to come to her aid. The second shot—between the eyes at close range—came as Danny was pleading for his life. Shannon escaped. Kelly was convicted of first degree murder with special circumstances in the case.

David R. Dow is the Cullen Professor at the University of Houston Law Center and the Rorschach Visiting Professor of History at Rice University. He teaches and writes in the areas of contract law, constitutional law and theory, and death penalty law. At the UH Law Center, Dow runs a death penalty clinic in which law students assist in the representation of inmates facing execution. Over the past twenty years, Dow and his team have represented more than one hundred death row inmates at every stage of their state and federal appeals.

In a “Ted Talk” filmed in Austin, Texas, February of 2012, Dow discusses one particular case in which he defended a convicted murderer named Will. “He was from North Texas,” Dow states. “He never knew his father very well, because his father left his mom while she was pregnant with him. And so, he was destined to be raised by a single mom, which might have been all right except that this particular single mom was a paranoid schizophrenic, and when Will was five years old she tried to kill him with a butcher knife.

“She was taken away by authorities and placed in a psychiatric hospital, and so for the next several years Will lived with his older brother until he committed suicide by shooting himself through the heart. And after that Will bounced around from one family member to another, until, by the time he was nine years old, he was essentially living on his own.”

David Dow describes Will’s final crime as a horrible, tragic murder, but he doesn’t give any more detail than that. Although Dow is arguing against the death penalty, he doesn’t give his audience any information about Will’s crime which makes it easier to sympathize with Will and give no thought to what his victim may have suffered. Instead he moves to what he believes could be a solution for the Death Penalty, which he sees as a miscarriage of justice.

“We could be providing early childhood care for economically disadvantaged and otherwise troubled kids,” Dow says, “and we could be doing it for free. And we could be nudging kids like Will off of the path that [he’s] on. ...

“We could be providing special schools, at both the high school level and the middle school level, even in K-5, that target economically and otherwise disadvantaged kids, and particularly kids who have had exposure to the juvenile justice system. ... “

I’m certain Dow’s audience agreed with him. So do I. I don’t want to see a single child grow up to be Jeffrey Dahmer. But by all accounts, Jeffrey Dahmer didn’t have the horrendous childhood that Will had. No one seems to know what caused Dahmer to torture, kill, and cannibalize his victims. But they know what didn’t cause it. It wasn’t because he had insane parents or was left alone by the age of nine.

I think the death penalty has merit—not for revenge or for “closure,” which people on both sides of the argument agree is a fallacy. Rather, I think there are people born who are missing some part of their brain or their soul; who have no ability ever to feel compassion for another and who will, if given the opportunity, continue to torture, maim and kill other human beings no matter what opportunities are afforded them to rehabilitate.

Take the case of Richard Kuklinski. He was a Polish immigrant who became a hit man for the Mafia. He committed multiple murders and, if torture was requested as part of the job, he enjoyed concocting the most barbaric ways to fulfill his obligation. He would tie his victims up and videotape rats eating them alive. Does this man deserve either compassion or life?

We want to think we're better than these killers because we don't stoop to their level. We let them live. And as we're congratulating ourselves on our moral superiority, we're passing legislation to allow women to have partial birth abortions right up to their due dates. I cannot comprehend how women, the loudest proponents of partial birth abortion, can tolerate the thought that they are killing a human being. If you believe that right up to delivery a fetus is nothing more than nonviable tissue, you need to glance at the California penal code system which states that if you kill a fetus, it's murder. Unless it's the mother who wants to commit the act.

Somehow our society has become schizophrenic. We don't want to put to death someone who has had a chance to live a life and has committed despicable acts on other human beings, yet we're willing to kill a fetus who has done nothing but inconvenienced its mother. And by the way, for those who say it isn't human because it isn't viable outside the mother's womb, I say then let's make it legal to kill them until they're two years old on the same premise.

I know this sounds like a flip comment to a complicated problem. Sometimes, however, it can be helpful to reduce an argument to its simplest level in order to see the absurdities in it.

The law could be argued endlessly. But I honestly believe that the death penalty is only part of our greater problem. We don't know who should live, who should have rights, who should receive benefits, who should succeed. We've moved from a world populated by societies who believed in very black-and-white codes and who had rules handed down to them from the heavens to clear up any ambiguities to a world in which we want diversity, equality, enlightenment and — well — I'd choose no income tax! Of course these are all ideals we need to strive for. I just haven't a clue how we reconcile ISSA with the Ku Klux Klan.

I admire and appreciate the work being done by the Innocence Project and by individuals like David Dow, who donate their time and money to eradicate the injustices they see in the world. I don't want anyone to live his life out in prison, nor do I want to be responsible for the execution of another human being. Still, I cannot overlook the horrendous crimes these defendants perpetrated against their victims. Where is their justice?

As to the death penalty: if we're going to abolish it, as maybe we should, we need to repeal a whole lot of other laws to make room for all the killers we're going to be housing, feeding and rehabilitating. Only I wouldn't go to the bank on that last one.

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At the UH Law Center, Dow runs a death penalty clinic in which law students assist in the representation of inmates facing execution. Over the past twenty years, Dow and his team have represented more than one hundred death row inmates at every stage of their state and federal appeals. He is also the founder and director of Texas's oldest innocence project, the Texas Innocence Network, an organization that uses UH law students to investigate claims of actual innocence brought by Texas prisoners. In 2014, he started the Juvenile and Capital Advocacy Project, which is also located at the UH Law Center.

The author of six books and scores of scholarly articles, Dow's work also regularly appears in such popular publications as *The New York Times*, *The Washington Post*, *The Houston Chronicle*, and *The Daily Beast* (a full list is available on his c.v.); and his TED talk on the death penalty has been viewed more than one million times.

Dow's critically acclaimed memoir, *The Autobiography of an Execution*, was a finalist for the National Book Critics Circle award and the winner of the 2010 Barnes & Noble Discover Award for nonfiction. His most recent book, *Things I've Learned From Dying*, was published in January 2014.