



Written by [Jack Kenny](#) on February 18, 2013

Koch Death Penalty Arguments Still Persuasive

The passing of former New York Mayor Ed Koch (shown) on February 1 brings to mind one of the most controversial things he ever did as a Democrat in the heart of American liberalism. In 1985, the three-term (January 1, 1978 - December 31, 1989) mayor wrote an essay defending the death penalty. He even had the temerity to declare, "Life is indeed precious and I believe the death penalty helps to affirm that fact."



Though it outraged liberals and "progressives" among the nation's esteemed "intelligentsia," Koch's essay reflected the convictions of most Americans, then as now, as opinion polls have consistently shown a substantial majority in favor of the death penalty. Yet the issue has been hotly debated for decades, based on claims concerning the morality of a state-imposed sentence of death. In June 1972 the U.S. Supreme Court, in *Furman v. Georgia*, found the death penalty to be unconstitutional when sentences are handed down and executions are carried out in ways that are arbitrary or influenced by racial bias. The decision resulted in a de facto ban on executions nationwide, pending further word from the Court. They were resumed in 1976 under guidelines meant to provide greater consistency and eliminate racial discrimination in capital cases.

In broader terms, however, arguments have often centered on the issue of deterrence. Death penalty defenders have argued that the electric chair, the gas chamber, the hangman's noose, or lethal injection deterred people from killing others. Opponents argue the possibility of facing the death sentence has no deterrent effect on those who kill in crimes of passion or those who believe they won't get caught. One argument that defies refutation is that whomever else it may or may not deter, capital punishment surely deters the killer who has been caught, duly tried, and executed. That one will not kill again. Death penalty opponents argue, however, that we can achieve that goal just as well with sentences of life without parole.

Koch, writing at the time the electric chair was either still in use or within recent memory, cited the example of a man who boasted of being undeterred because the death penalty was not in force. "Consider the tragic death of Rosa Velez, who happened to be home when a man named Luis Vera burglarized her apartment in Brooklyn," Koch wrote. Vera admitted he shot and killed the woman. "She knew me, and I knew I wouldn't go to the chair," he later admitted.

Yet death penalty opponents would have us feel guilty as citizens when the state puts a killer to death for his crime or crimes. We are asked to believe that the state is hypocritical for punishing killing with killing. To recall a refrain from the 1960s, "Why do we kill people who kill people to show people that killing people is wrong?" One might say the same about a prison sentence for a kidnapper. Is the state wrong to imprison people for imprisoning people because imprisoning people is wrong? What should we do, short of treating every crime as a sickness that can be cured with shock therapy or some other form of "extreme makeover"?

Koch cited as a "curiosity of modern life" the spectacle of convicted murderers, when facing execution, lecturing the rest of society on the immorality of the death penalty. Such special pleading suggests the



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condemned killer is as much, if not more, sinned against than sinning. He may have killed someone in a fit of passion or desperate need for a quick financial gain. The state, on the other hand, will calmly and coolly throw the switch or inject the needle as a matter of simple retribution. An individual made a rash and foolish judgment. The state should know better.

But retribution is an essential component of justice and society, like individuals, has a right to self-defense against homicide. Again, death penalty abolitionists argue that a sentence of life without parole fulfills that need. Some death penalty defenders argue that the care and feeding of murderers until they die of old age in prison simply costs the state too much money. Opponents contend the legal costs of imposing the death penalty, after all the prisoner's appeals have been exhausted, outweighs the cost of imprisonment. Either argument is crass and hardly relevant in a debate over the sanctity of life and the demands of justice. Not everything can or should be determined by a cost-benefit analysis.

A problem with the life sentence alternative is that killers sometimes escape prison. Or they murder guards or other prisoners with impunity. Already sentenced to life, with the death penalty not available to the state, what do they have to lose? Then there is the question of proportionality. Are there not some crimes so heinous that the execution of the perpetrators is the only punishment that even remotely fits the crime?

The Bible has been argued over with more heat than light in the debate over the death penalty. "Thou shalt not kill" is undoubtedly one of the Ten Commandments, though it is clear the meaning in that context is "murder," or unlawful killing. Only committed pacifists believe killing an aggressor threatening one's own life or the life of another is inherently evil, or that killing soldiers of an invading army is murder. And the law that came by Moses was not written for pacifists. God in the Old Testament frequently sent the Israelites off to war. And Exodus and Deuteronomy, where the Ten Commandments are found, prescribe the death penalty for a wide range of crimes. In Genesis, God is heard not only affirming the death penalty, but also offering a reason for it that anticipates Koch's argument; "Whosoever shall shed man's blood, his blood shall be shed: for man was made to the image of God." (Genesis 9:6).

Abolitionists often cite the New Testament story of the woman caught in adultery (John 8: 1-11) in an effort to enlist Jesus as a death penalty opponent. The law, the crowd pointed out, prescribed death by stoning for such an offense. (One shudders to think of the mortality rate if adultery were a capital crime in modern America.) But surely the fact that one might oppose a death sentence in some cases does not necessarily mean he would oppose it in all cases. Besides, even in those pre-Miranda times, the accused was entitled to some semblance of due process. And the gang that dragged the woman to Jesus appeared more like a lynch mob than a jury.

Koch in his essay offered the following simple and compelling argument: If we reduced the penalty for rape, he asked, would that show a greater or a lesser respect for women and human sexuality? The question really answers itself. So what does abolishing the death penalty say about our respect for life? "When we lower the penalty for murder," Koch wrote, "it signals a lessened regard for the value of the victim's life." The mayor also dismissed as "sophistic nonsense" the argument advanced by some death penalty opponents that a life sentence is actually a harsher punishment than the penalty of death. "A few killers may decide not to appeal a death sentence," he wrote, "but the overwhelming majority make every effort to stay alive."

Here is another question: Suppose the killer of the 20 first-graders and six faculty members at Sandy Hook School in Newtown, Connecticut, last December had not killed himself, but were sitting now in a



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jail cell awaiting trial. Suppose he were found legally sane. Would death penalty foes oppose the ultimate penalty for him? The question would be hypothetical even under those conditions, since Connecticut has abolished its death penalty. But if you were the parent of a six-year-old with a dozen bullet holes in his dead body, would you oppose a sentence of death for the child's killer?

No doubt some people would, holding fast to their allegedly humane principles. Such principles are marvelously flexible, however, as seen from the fact that many of the most ardent opponents of the death penalty are equally zealous in support of "abortion rights." They would spare the lives of convicted murderers, but not the lives of innocent pre-born babies. Their consciences forbid them from opposing a woman's "right to choose," even if it has cost an estimated 55 million lives since the U.S. Supreme Court's 1973 *Roe v. Wade* ruling prohibiting states from protecting prenatal life. Ours has been an age peculiar for the passage of laws to protect human health and the repeal of laws to defend human life. And yet we have consolation with us: At least those aborted in the womb have been spared the dangers of second-hand smoke.

What more should we expect from the purveyors of "progressive" thought in what T.S. Eliot described as "an age which advances progressively backwards?"

Photo of Ed Koch: AP Images



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