

In a large midwestern city, a rash of child kidnappings and crimes holds the city on edge. The faces of missing children are placed any place someone might help identify their whereabouts. A young girl is assaulted and killed. During the investigation, intense pressure is placed on the authorities to find her killer. At the same time there is a resident at a psychiatric facility who becomes obsessed with her case. He researches. He listens to any source for even small pieces of information to feed his obsession. Then this mentally deranged man contacts the police, saying he knows who assaulted this young girl. During their interrogation, the young man is deceptively encouraged to confess to the crimes himself. He is told this will help authorities understand the motive of the real killer. But when he confesses as he is told, the prosecutors have the man indicted and put to trial, using his so-called confession against him! The police say they've caught the killer and the city is heartened. Once the man is convicted, the judge turns to him at sentencing and dramatically states that he only wishes the state would allow him the option of the death penalty. The punishment of prison he says, is "inadequate... and the only justifiable sentence," the judge says, is "termination by extreme constriction."

A riveting story, right? Like a perfectly suspenseful crime novel. Only it's not fiction! This story happened when I was in high school. I remember the coverage in Michigan when Eddie Joe Lloyd was convicted in the death of Michelle Jackson. (Detroit Free Press, August 26, 2002 and Lansing State Journal, August 28, 2002) DNA evidence later conclusively proved that Eddie Lloyd was not the killer. He spent seventeen years in prison, and had Michigan allowed the death penalty, this wrongfully convicted man would have been sealed in its book of death by now!

Here in Ohio, he could easily have been killed. Here the death penalty is no idle threat. Since Gregg v. Georgia, Ohio has carried out 56 executions. In some such as the 2014 execution of Dennis McGuire it took nearly a 1/2 hour of gasping, snorting, suffering and torture or worse.

I know the instinct for retribution. We all do. We might personally want to kill the person who killed a person dear to us. But should the justice system really rely on our rage to determine its measure for the rule of law? Is that what justice is supposed to look like? For me, this is not a hypothetical issue. During my first pulpit, I had a rare experience. My last day as a Baltimore rabbi was spent taking part in a congregant's funeral who had, the night before, been put to death by the state. Seventeen years earlier he had, in a drug-induced rage, committed horrific assaults and murders. It didn't matter how clean or penitent or well-behaved he was, Steven Oken was going to be incarcerated for the rest of his life, a fate his mom and dad and sister accepted. But for the previous two years, the state had instituted a moratorium on capital punishment until it could respond to a study that had shown, among other concerns, serious questions on geographic disparity, state's attorneys acting on public pressure, and racial bias in terms of both victim and perpetrator of crimes.

Unfortunately, when a new Governor was elected, without any response to the data, he lifted the moratorium and set a day in early June of 2004 to kill Steven in retribution for his crimes. I was aghast and remain so, because one of the aspects of our system that is supposed to mitigate against unfairness is that governors have discretionary power to assure the justice system works properly before signing a death warrant. There are issues of proper representation, and concerns of fairness in how juries are instructed. There are issues with the morality of experimenting with the death-inducing drug cocktail most recently in use in Ohio. By and large in our state and across our nation, the inmates on death row are there because they committed capital crimes against white victims. This is true even though most capital crime victims are people of color. How horribly damning is this valuing of black lives vs. white lives.

Justice, justice you shall pursue, says the text of Torah! (Deuteronomy 16:20) With the idea that the justice system itself must be an exemplar of discernment, as Jews emerged as a religious community capital punishment became at odds with our vision of justice. Jewish legal texts states that a court causing an execution once in seven years was an cruel court. A later tradition amended the number to apply it to a

court that kills once in seventy years. Finally, our sages said: “Were we members of the court, no person would ever be put to death.” (Mishna Makkot 1:10)

Familiarity with these teachings was likely part of the inspiration for the work of Jewish American Barry Scheck, a law professor at the Cardozo School of Law of Yeshiva University. Mr. Scheck helped to found The Innocence Project to be sure that courts were not allowing capriciousness, cruelty and revenge to guide the determination of death sentences. Scheck wanted, at the very least, to be sure that forensic DNA testing would be used to affirm proper verdicts and overturn wrongful convictions for those on death row or incarcerated elsewhere in the system. For as he looked closely at capital cases, the more disturbed he was to see “tremendous arbitrariness” in the pursuit of the death penalty. How can we not strengthen safeguards against executing those who got to death row under the heat of public pressure or with inadequate representation? How can we respond to the disparity between those with resources to pursue appeals and those without, or those executed for killing white citizens rather than black? And finally, how can we continue to ask penal authorities to administer a method of execution that may in fact torturously choke an inmate to death?

As early as the 18th century, death penalty advocates spoke of 3 purposes for this punishment. The 1st was deterrence, the 2nd retribution or revenge and the 3rd purpose was penitence. (Stuart Banner, *The Death Penalty: An American History*) Repentance before death was once considered “indispensable” to the death penalty? It is why we still call our prisons “penitentiaries” even though we no longer think of them as sites of penitence. That is why our authorities no longer invite clergy to executions. Neither do we perform them in public, as we once did, first having a clergyman speak before hanging prison inmates in a staged drama before a crowd. We apparently thought that observing the death of a person in public would deter future criminality among witnesses. Now such rituals have been shunned for they are hard to carry out, AND we no longer buy the idea that seeing an execution is a deterrent. Instead, we execute people behind the shroud of state facilities. The idea to us that criminals consider the possibility of death before committing crimes is just plain implausible!

With penitence and deterrence struck down, all that’s left to justify the death penalty is revenge. Societal revenge IS the most persuasive force encouraging us to retain the status quo. For each of us honestly knows in our hearts the instinct for retribution. Certainly, we can relate to the idea that victims of crimes ought to be avenged after their deaths. For this reason, many believe that the families of the victims deserve to have their thirst for revenge quenched by an execution in response to a capital crime. But just as there are many victim families who advocate for the death penalty, there ARE others who have chosen to promote reconciliation and healing instead.

For example, Pat Clark of the Southern Poverty Law Center was sent to visit an African American woman whose son had been lynched by a Klan group. As she talked with the mother, she found the woman’s rage had not subsided, but her heart was guided by mercy. The mother did not press for the death penalty. While clearly, she wanted for those killers to suffer, she chose life in prison, as the punishment to pray for the judge to order. “Her reason was powerful and simple. She said she never wanted another mother to experience the agony she had in losing a child.” Nothing can ever bring our loved ones back, not the death of a killer nor the killer’s eye for our loved one’s eye. For some, there is temporary relief. But in the end the specter of a loved one’s death often haunts them. And the mother whom Pat Clark met with, while furious with God, surely acted in God’s own image. This moment in history holds the potential to be a time of compassion. Ohio must not take any more lives for the sake of exacting our vengeance.