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Title: The Secular Death Penalty

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11/21/2014—Yesterday, I participated in a debate with the very able proponent of the death penalty, William Otis, who teaches at Georgetown Law School and has had an illustrious career in government. I learned a great deal.

I spoke first and presented the understanding of a religious death penalty—how it prescribes a penalty that is not final from its perspective and which allows the condemned prisoner a second chance to inherit eternal life, or the Kingdom of God, or whatever its understanding of ultimacy is. I contrasted this with our current death penalty practice, which I called brutal, bureaucratic and hate-filled.

Professor Otis spoke next and reminded the audience of just what the death penalty deals with—a series of chilling and violent acts by extremely dangerous men, who were obviously beyond any kind of rehabilitation. He did not seek to justify the system of the death penalty, only the justification of the death penalty for such actions and such men.

Here is what I learned. Justice in the abstract is not at the heart of the proponent's interest, for a simple death by lethal injection is not what men such as this deserve. They deserve to be tortured to death, to experience the kind of pain that they inflicted.

My point, which was not well expressed, was that since, for whatever reason, we are not going to meet out justice, how do we decide which lesser penalty to inflict? Why does death recommend itself to the proponent, if justice does not demand it?

Now you could answer that death is closer to death by torture, which is what they deserve, than is a sentence of life imprisonment without parole. But there are a number of answers to that. Yes, but it is also closer to something about death by torture that even the proponent shies away from. Yes, but it is not necessary. Both penalties do the same thing: the prisoner is in jail until he dies. Yes, but although the prisoner will have some joy in life, his suffering in prison will also go on for his whole life, thus increasing the penalty.

Professor Otis implied two other reasons to choose death over life, even when justice does not uniquely demand death. One is that the prisoner's existence mocks us. (One prisoner did that expressly by trying to contact the victim's family). Second, the prisoner cannot be redeemed.

Here we see the difference between a religious death penalty and a secular one. The religious death penalty seeks to improve the ultimate existence of the wrongdoer. Punishment is not the enemy of the prisoner and he is not the enemy of the community—the prisoner is like the rest of us, only more so. It is the heart of the religious death penalty that the prisoner can be redeemed. He must be punished, but redemption is always the goal. In the Talmud, the prisoner prays, "may my death be expiation for my sin."

So, in the end, the secular death penalty is a garbage disposal while the religious death penalty is not. I cannot prove that this garbage disposal is bad for society, but I believe it to be. And I am not certain that the proponents of the death penalty that Professor Otis invoked, in particular Abraham Lincoln, shared his conception of the death penalty. I am pretty certain that Lincoln did not view the men he sentenced to death as beyond redemption.