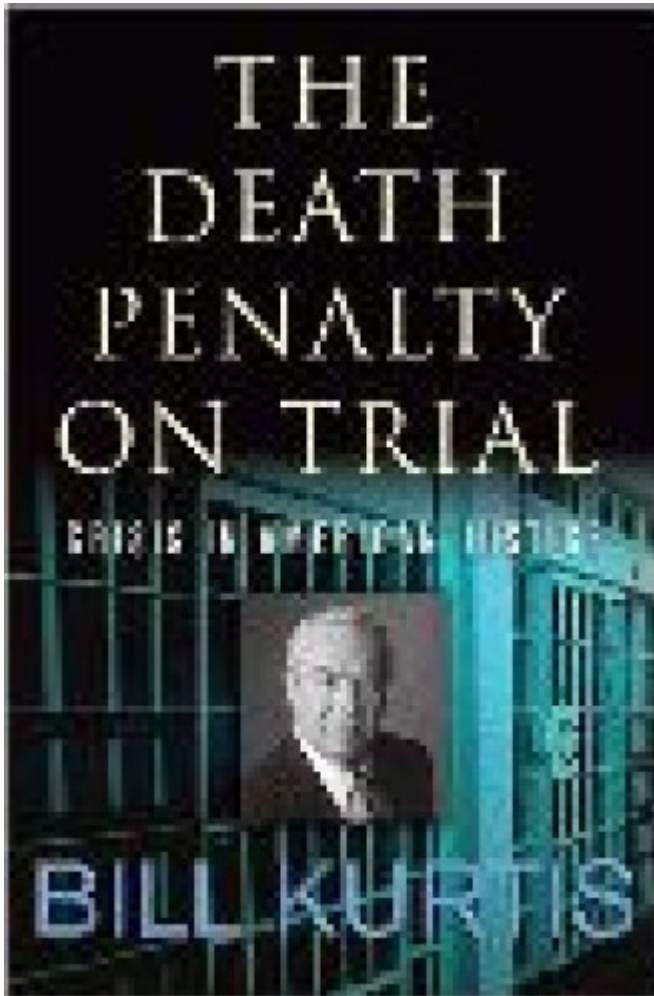


Crime and punishment

By [Elizabeth Morgan](#) in the [October 3, 2006](#) issue

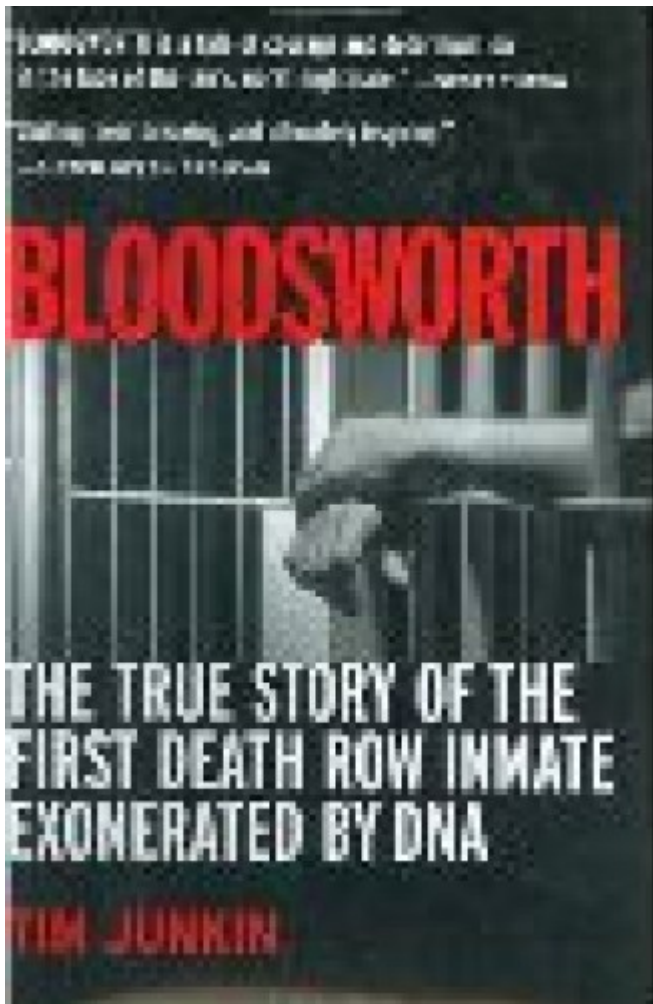
In Review



The Death Penalty on Trial: Crisis in American Justice

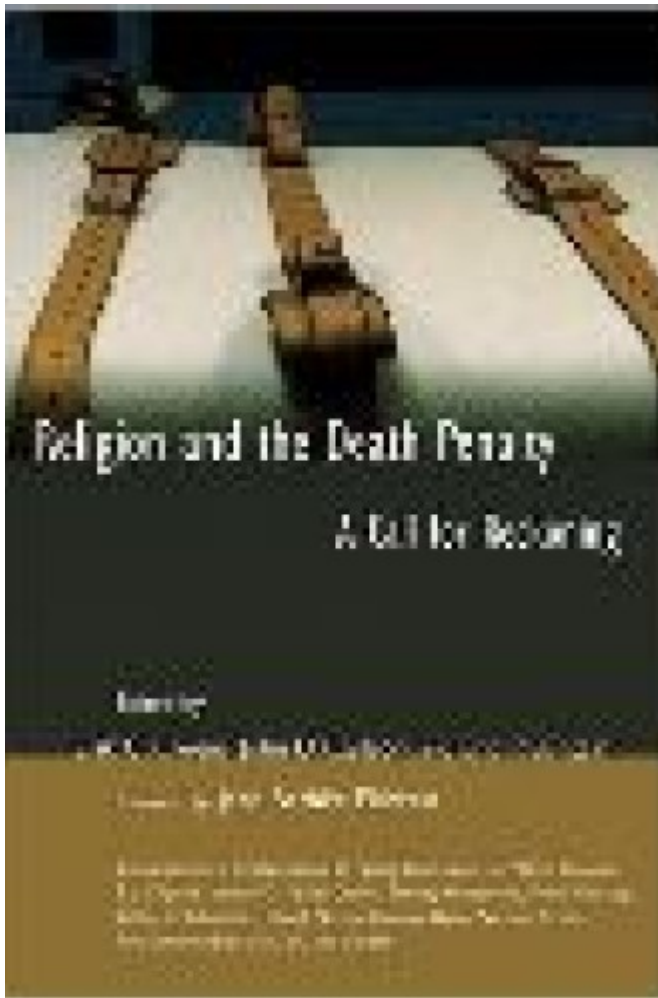
Bill Kurtis

PublicAffairs



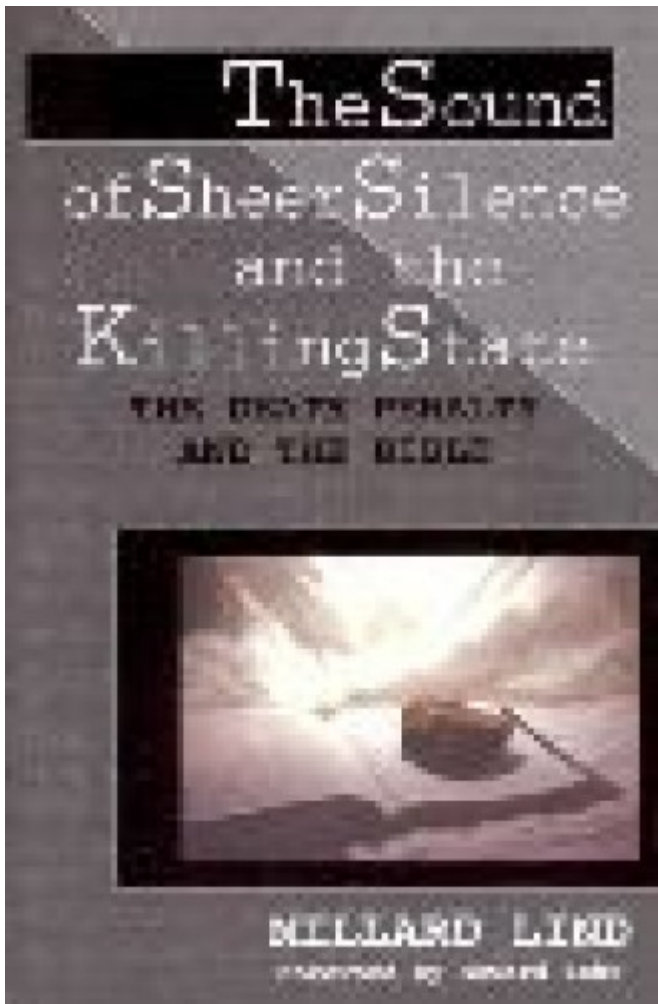
Bloodsworth: The True Story of the First Death Row Inmate Exonerated by DNA

Tim Junkin
Algonquin



Religion and the Death Penalty: A Call for Reckoning

Erik C. Owens, John D. Carlson and Eric P. Elshstein, eds.
Eerdmans



The Sound of Sheer Silence and the Killing State: The Death Penalty and the Bible

Millard Lind
Cascadia

Everyone has an opinion about the death penalty. Theoretically (and abstractly) I have always been opposed to it, for the usual reasons: there are too many mistakes for such a permanent solution; there are too many racial, IQ and class inequities; there is no conclusive evidence that the death penalty deters violent crime—and there is a good bit of evidence that it *is* violent crime. Also, it seems to me as a Christian that it contradicts the gospel call for forgiveness and truncates the possibility of transformation.

I've never been able to forget a story I heard on public radio told by a man called Race Horse. Having been evangelized by no one, Race Horse found himself in the

worst conditions of solitary confinement—"the hole" in a southern prison. It was dark, the guards had taken his clothes, he was defenseless. Inexplicably and quite suddenly, he was caught up in the assurance that God loved him, and his life was never the same.

But all of these fine sentiments about capital punishment were tested eight years ago when my 25-year-old niece was brutally murdered, along with two young co-workers, in a Starbucks in the upscale Georgetown community of Washington, D.C. It was the end of a Fourth of July weekend, there was an accumulation of money in the safe, and Cait was the manager in charge of clean-up. An assailant with two firearms entered the coffee shop and killed all three of them without taking a penny. Cait died from three gunshot wounds to the head and chest, with the keys to the safe clutched in her hand. The Starbucks manual expressly tells employees not to use heroic measures in the face of violent crime, but certain young people will ever be brave. Because it was Georgetown, because there were three victims, news clips of the three body bags being removed from the scene played on TV over and over again.

The search for the assailant went on for a year and a half. The FBI became involved because the prime suspect had committed several violent crimes—he had killed a security guard and wounded a Prince George's County police officer—and because he was involved in interstate drug running. The District of Columbia does not have capital punishment; the feds do.

When Janet Reno called for the death penalty, we had to face facts: we were a divided family. My mother, my sister and I continued to stand firmly against capital punishment; others were less sure. Luckily the assailant, Carl Cooper, took a plea bargain and confessed to enough crimes to get him life in prison without parole. But all of this caused me to become much clearer in my own reasoning.

What do families expect to glean from execution? Closure? Some books cannot be closed. Cait's could not. The arrest brought great relief, but we don't want closure on her life or even her death, for the way she died tells us a great deal about the world we live in and the kind of work that needs to be done to make all of our neighborhoods safer places to live.

Justice? What was done to Cait and Emory and Aaron was grossly unjust. Killing Carl Cooper would not take that away. Killing everyone on death row would not take that

away. It is an affront that will remain on the record until all injustice is wiped away by divine intervention. There are some injustices that human law cannot reconcile—and ought not try to reconcile.

Peace? If we had waited until Cooper's trial and ultimate execution for our peace, we would be troubled people indeed. In such a rending of life and family, peace needs to be immanent, continually sought, recognized in small acts. Planning the memorial service, filled with poetry and scripture, meant much to me. At the service itself, during the last hymn, "Amazing Grace," people spontaneously moved into the aisles so they could hold one another—and hold on. Witnessing Cooper's execution would have been cold comfort indeed compared with these events.

I later received a letter from my sister in which she reflected on the memorial service for Cait. She said: "I can only think on it with pleasure: turning destructive hate/venom into love and forgiveness, good memories of this essentially good child. There's no doubt that I think Carl Cooper—having admitted to at least five murders—should be imprisoned. I have no idea how to redeem him, to correct his hurts and terrible passions, nor do I have much hope for that—though as I think about it, I may try to visit him someday."

That is my story. We need stories because they humanize the abstract and allow both teller and hearers to locate themselves within a shifting landscape of moral values.

Of four recent books confronting and critiquing the death penalty in the U.S., two illustrate the important difference between telling and *storytelling*. Their authors speak from knowledge of persons who were exonerated after spending years on death row. Bill Kurtis, CBS correspondent and anchor of *Cold Case Files*, launches *The Death Penalty on Trial* with the statistics that convinced former Illinois governor George Ryan to declare a moratorium on executions in his state in 2000 and, three years later, to commute all death sentences. For example, since reinstatement of capital punishment in the 1970s, Illinois had exonerated and released more death row inmates than it had executed. With this recent history as context, Kurtis works his way through the cases of Ray Krone (whom DNA evidence proved innocent of the murder of a woman in Chicago) and Thomas Kimball (who was exonerated after a careful vetting of circumstantial evidence). Kurtis reluctantly concludes that any of us could be caught in the trap of a judicial system that makes the kinds of mistakes he painstakingly narrates.

Attorney and novelist Tim Junkin presents a single case in *Bloodsworth*. Dawn Hamilton was nine years old when she took a walk in the woods near her home in Essex, Maryland, in July 1984. Later her body was found; she had been raped and brutally murdered. Her anxious parents wanted the perpetrator arrested and erased from society, and they put terrible pressure on detectives to round up suspects quickly.

Kirk Bloodsworth, an ex-marine who was going through a bad time—drifting from job to job, drinking, smoking pot, at odds with his girlfriend and parents—presented an easy target. After he was arrested, bungled police procedures, bad forensic science and overreliance on investigative techniques such as psychological profiling, composite sketching of suspects and unreliable eyewitness accounts skewed the case. Bloodsworth found himself on death row, facing Maryland’s gas chamber and the brutal threats aimed at anyone in the prison system who has been accused of child rape. He continued to assert his innocence, writing hundreds of letters to anyone who would listen and scouring the prison library for material pertaining to his case and others like it. Eventually he was exonerated by DNA evidence, a fact readers discover in the first chapter—which colors one’s journey through this labyrinthine account with incredulity.

Bloodsworth is a fast-paced thriller with a happy ending, but the real hook of the story is what happened to the suspect—something that, again, could happen to any of us. Bloodsworth, who is presently an advocate for criminal-justice reform, drives this home: “And if it can happen to me, it can happen to you. It can happen to your child, your son, your daughter—it can happen to anybody.” For a moment the reader becomes as vulnerable as the protagonist.

Because it focuses on a single case, *Bloodsworth* is more effective than *The Death Penalty on Trial*, which does not allow for the same depth of reader engagement. But the storytelling approach works well for both, bringing readers to the verdict that the death penalty is a highly dangerous judgment that perhaps ought to be “put down” itself.

And yet, in an ironic turn, both authors are highly suspicious of the narrative approach when it is used to influence a verdict in court. Kurtis reminds readers of the musical *Chicago*, in which lawyer Billy Flynn tells Roxie Hart, on trial for the murder of her boyfriend, “You’ve got nothing to worry about, kid. It’s all about show business, and I’m a star.” Flynn intends to win acquittal by using the old “razzle-

dazzle” on the jury. Kurtis sees this scene repeated in almost any courtroom where “two lead actors—the prosecuting and defense attorneys” face off in an effort to create “a persuasive story” that will “make the jury think the way [they] think.” Highlighting the rhetorical skills of one prosecutor, Kurtis concludes, “All he needs are a few pieces of evidence and he [can] construct a palace.” Talk about razzle-dazzle!

Junkin also highlights the lawyer’s socially perceived role, enhanced by televised celebrity trials, as dramatic entertainer. “A trial is a game. A contest. A re-creation that may or may not bear any semblance to what it purports to mimic. The lawyer’s job is to win this contest.” Junkin contends that “walking into the courtroom is like walking into a theater” and that, depending on how the show plays, the defendant can feel caught inside “some insane theatrical production” with no exit. Both Kurtis and Junkin also point out the vast difference in state resources that go to the prosecution compared to the defense; prosecuting attorneys tend to get top billing.

The genius of stories is that the hearers and readers cannot remain outside the text but have to play the game the story sets up, entering the gaps the storyteller strategically leaves for just that purpose. Kurtis and Junkin contend that closing statements at a trial are quite different. While acknowledging the humanity of the participants, the attorney ought to construct a linear argument, a coherent and exhaustive arrangement of empirical facts that can bear the weight of scientific scrutiny. Kurtis and Junkin argue that in the adversarial and contentious U.S. system of justice, a lawyer is almost required to be a showman. The assumed goal is to win the fight by any means possible, not necessarily to aid the court in discovering facts. So when, in Junkin’s account, Judge Smith of Baltimore County admonishes a prosecutor who has lost sight of the difference between fact and fiction—“It isn’t gamesmanship we are playing here. It is truth”—he is holding up an enviable distinction that both Junkin and Kurtis wish were in place. While it is accurate to say that story produces truth, it is not the beyond-a-reasonable-doubt kind of truth that ought to be the goal in a court of law.

This distinction resolves the tension between Kurtis and Junkin’s narrative methods and their critique of courtroom histrionics. As they present their stories of persons exonerated from death penalty judgments, both authors seek their readers’ interpretive complicity in evaluating the effects that tragic legal oversights have on defendants and communities. Both strive to be factual, but neither argues the case or pretends to do so.

The other two books in this foursome are explicitly expository. *Religion and the Death Penalty*, which emerged from the Pew Forum on Religion and Public Life, and Millard Lind's *The Sound of Sheer Silence and the Killing State* offer much to extend and challenge thinking about capital punishment.

Religion and the Death Penalty is organized around religious traditions, specific religious arguments and policy applications of moral theory. Some highlights of this collection are Khaled Abou El Fadl's eloquent explication of the complexities and restraints behind implementation of the death penalty under Islamic law; an interesting intersection between Fadl's discussion of reticence in the use of the death penalty and David Novak's review of capital cases in Jewish tradition; Stanley Hauerwas's unequivocal claim that the cross is justice (negatively in terms of Jesus' execution according to human law and positively in terms of the ultimate meaning of the cross as mercy and forgiveness); and, conversely, the claim by Beth Wilkinson, prosecutor in the Timothy McVeigh case, that "Even as a Christian, I felt nothing for Mr. McVeigh."

What I brought away from this collection of essays is the humbling realization that Christians hardly have the last word in terms of complex moral reasoning and that Christians hardly agree, even on religious principles, about something so radically central as the right of the state to engage in premeditated murder. Even Supreme Court Justice Antonin Scalia, a proponent of the death penalty on moral and constitutional grounds, soberly admits that he is part of a "machinery of death."

The target audience for *Religion and the Death Penalty* is quite different from that of Kurtis's and Junkin's narratives. It was compiled for academic and policy-oriented persons and contains few personal stories; the authors seem to be after our minds and souls, not particularly our hearts. *The Sound of Sheer Silence and the Killing State* has an even narrower target audience—serious biblical Christians and seminarians. Lind is a Mennonite, so readers will be pretty sure where he is heading with his analysis, but if they have an interest in the fine points of biblical hermeneutics, the journey on which he takes them is quite enlightening. Readers may not understand every point, but there is no danger of getting completely lost. Lind establishes the design of his argument, executes it and then reminds readers of what they have read. It is significant and validating to observe that many of the points he raises are echoed by the Christian, Jewish and Muslim scholars writing in *Religion and the Death Penalty*.

Lind rejects the notion that the Old Testament *lex talionis* (an eye for an eye) is about revenge; rather, he claims, it is about ensuring that no punishment exceeds the crime. Likewise, he contends, God's covenant with Noah establishing that those who shed the blood of human beings will have their own blood shed is not about the death penalty. Rather, he argues, God was using a parable to remind the descendants of Noah that human life is worthy because it reflects the image of God.

Lind reminds readers that the Decalogue is preceded by a "motive-model sentence" assuring the Israelites that they have been granted liberation and grace by God, who brought them out of slavery. He also reminds them of how complicated the prophets' dealings with hubristic death-dealing kings were and of how beautifully Jesus builds on the work of the prophets.

While acknowledging that God allows his people to practice the death penalty, Lind illustrates how closely that allowance is governed by moral and procedural checks, and he notes that it is never condoned by Jesus: "For Jesus, the solution to the problem of the broken human relationship is not retribution—not even the limitation of the *lex talionis*, equal damage—but forgiveness to infinity."

The Sound of Sheer Silence and the Killing State is a valuable addition to the literature of biblical exegesis on the death penalty, but it will not reach beyond a fairly small circle of specialized readers. More problematically, it glosses over the question of reasoning biblically with the secular state, an issue much better handled by David Novak and Stanley Hauerwas in *Religion and the Death Penalty*.

A weakness of both theoretical volumes is that the authors cite few contemporary cases to validate and complicate the points they make. Like the first two books treated here, these are not courtroom arguments that lead to a single irrefutable point. They are speculative works designed to engage their readers in discourse. For that purpose, readers would have been well served by the use of diverse stories to illustrate important ideas. All readers desire the integration of theory and praxis, of mind and heart. This is not about adversarial razzle-dazzle, it's about incarnational thinking. Who knows when any of us might have to face this issue in the flesh? As someone who has been forced to do so, I welcome all the information—factual, philosophical *and* personal—that I can get.