

# Executing justice: Second thoughts on the death penalty

by [John Dart](#) in the [February 13, 2002](#) issue

In the death chamber at San Quentin just after midnight on January 28, a confessed killer was executed by lethal injection. He was convicted two decades ago for the murder of an 81-year-old woman during a botched burglary in which he cooked noodles in her kitchen as she died. California Governor Gray Davis, a liberal Democrat and steadfast backer of capital punishment, denied clemency in the case—as he had for two other death row inmates in the past three years.

Several dozen protesters outside San Quentin held signs, “Don’t kill for me.” Vigils elsewhere included one by the Los Angeles Episcopal Diocese’s Task Force Against Capital Punishment, which plans an all-day conference in April at the diocesan headquarters. Episcopalians and mainline Protestants for decades have sought to end use of the death penalty. And Democrats, Davis notwithstanding, tend to oppose capital punishment more than Republicans, even though polls show that a majority of Americans endorse imposing the ultimate sentence in heinous murder cases.

Calls for greater clemency or abolishing executions remain a liberal religious and political cause, but a new reexamination of the death penalty has arisen from the conservative Christian and Republican side. Pat Robertson and Jerry Falwell sought clemency in 1998 for Karla Faye Tucker in Texas who was convicted of murdering two people with a pickaxe. Her Christian conversion served as a catalyst for the two television evangelists to echo growing national concerns over whether the death penalty is often administered unjustly. After Tucker’s execution, *Christianity Today*, the evangelical monthly, urged abolishing the death penalty, saying the law had “outlived its usefulness.”

In 2000, Republican Governor George Ryan of Illinois declared a moratorium on state executions, pending a review of the judicial processes. Ryan made his decision after several prisoners were released because new evidence exonerated them. “Until I

can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate,” he said.

Catholic Church teaching on the death penalty shifted significantly from past approval when Pope John Paul II issued the encyclical *Evangelium Vitae* in 1995. High-level Catholic opposition has escalated visibly ever since. It was reflected in doctrinal catechisms, statements by U.S. bishops and papal appeals, including John Paul’s clemency request to President Bush for Oklahoma City bomber Timothy McVeigh, who was executed on June 11, 2001.

If those religiously charged opinions auger change ahead for capital punishment, a well-attended conference on Religion and the Death Penalty held January 25 at the University of Chicago Divinity School presented a much less clear prospect. More than 450 attended the gathering sponsored by the Pew Forum on Religion and Public Life. The primary draw was Supreme Court Justice Antonin Scalia.

To begin the conference, Protestant, Jewish and Islamic scholars noted the range of opinions in their respective faiths. One outspoken critic of hardline Muslims, Khaled Abou El Fadl, an acting professor of law at UCLA, spoke via telephone because police had advised him against traveling—for his own protection.

Among Protestants generally, the death penalty “is not forbidden but not required,” said Christian ethicist Gilbert Meilaender of Valparaiso University. He added that, in light of Romans 13, “the greatest danger is undercutting the authority of government” to act for the public when mass murders occur. Nevertheless, Meilaender conceded that “on a list of my moral concerns, retaining the death penalty is not high.”

Cardinal Avery Dulles of Fordham University said he agreed with John Paul II’s encyclical on limiting executions. The document, while saying that retribution is the prime purpose of punishment, also argues that capital punishment should not be used “except in cases of absolute necessity . . . when it would not be possible otherwise to defend society”—instances the pope said would be rare. But the Jesuit theologian said that “we are obliged under certain circumstances” to end life, as in the McVeigh case. Dulles suggested that the mid-20th-century mass atrocities ordered by Stalin and Hitler shook “presumptions of the state to exercise its supreme power” and fed Catholic opposition to executions in Europe.

Justice Scalia interpreted European thinking differently, attributing the shift to “post-Freudian secularist” notions “that people are what their history and circumstances have made them, and there is little sense in assigning blame.” Moreover, “the more Christian a country is, the less likely it is to regard the death penalty as immoral,” said the sharp-tongued conservative, contrasting “post-Christian Europe” and the “churchgoing United States.” Death is not disastrous for the heaven-bound Christian, he said, but for the nonbeliever “to deprive a man of his life is to end his existence—what a horrible act.”

Scalia said he rejects the 1995 papal encyclical, which he noted is not binding on Catholics. “That is not to say that I favor the death penalty,” he added. “I am judicially and judiciously neutral on that point. It is only to say that I do not find the death penalty immoral.” As for the latest Catholic catechism, “I assumed that is just the phenomenon of the church bureaucracy saying, ‘Yes, boss,’ ” Scalia said.

Following Scalia at the rostrum was former Illinois Senator Paul Simon, a Lutheran. The question for him was not whether the death penalty is moral or constitutional, but “Is it wise?”

Not only has Western Europe outlawed the death penalty, said the longtime Democratic lawmaker, but Canada and Mexico have abandoned it, and the U.S. stands with China, Saudi Arabia and Iran as the four biggest users of capital punishment. And it is expensive. It has cost Illinois, over 25 years, “\$800 million more for executing people than for putting people in prison for life,” said Simon, who cochairs Governor Ryan’s commission reviewing the death penalty. “But I think the great cost is desensitizing us to death and to using violence as an instrument for civilized society,” said Simon, adding that a murder trial “sensationalizes the whole thing almost unwittingly.”

As statistics show, the poor and racial minorities receive death row sentences disproportionately. “If the victim is white, in the state of Florida you’re 4.8 times more likely to get capital punishment; in Illinois, 4 times more likely; Oklahoma, 4.3 times more likely,” he said.

Yet Oklahoma Governor Frank Keating had told the luncheon audience that those judged responsible for deaths who are executed are less than 1 percent in his state. Keating conceded that his law-enforcement background influences his backing for executions of the worst killers.

But Keating indicated he is open to reforms, commending the Illinois moratorium. “I would have done the same thing: stop the wheels and get to the bottom of it.” Keating said his state does DNA testing when a convict’s life may depend on it, despite the expense. He questioned the alternative of giving dangerous killers life imprisonment. “If we could be assured they could be segregated forever in prison, it might be OK,” he said, but wondered how many correctional officers would do such work.

The final forum speaker, Beth Wilkinson, is a supporter and a critic of the death penalty. In 1997, as lead prosecutor at McVeigh’s sentencing in Oklahoma, she asked jurors to “serve justice; speak as the moral conscience of the community.” Later she co-chaired Georgetown University’s Death Penalty Initiative that issued 18 recommended reforms in 2001. “The biggest problem was good representation of the defendant,” she said, though adding that this was not a flaw in the McVeigh trial.

Asked about any regrets as McVeigh’s execution neared last year, she said, “Even as a Christian, I felt nothing for McVeigh. I felt a lot for the victims, the families and a deep sadness for the country having suffered through this.”

Because of inequities in the legal system, however, Wilkinson described herself as “a struggling supporter of the death penalty.” Putting it succinctly: “I have very little difficulty believing, like Justice Scalia, that the death penalty is moral, but I am struggling more like Senator Simon over whether it is wise.”