

The death penalty and the culture of death

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Last week the Nebraska legislature abolished the state's death penalty, overcoming the governor's veto to do it. *First Things* editor Matthew Schmitz, writing in *National Review*, adds [a salutary note of caution](#) to the celebration that followed: viewing abolition as moral progress allows us to "overlook the countless cruelties of our criminal-justice system as we congratulate ourselves on the elimination of a relatively rare punishment."

This is most certainly true. The justice system is riddled with caprice and cruelty at every level, not merely when life and death are at stake. This Schmitz blames not so much on America's yawning economic inequalities or the persistence of white supremacy but, with a measure of fairness, on a utilitarian view of punishment that makes the system "sterile, hygienic, and cruel."

Calling America's justice system "sterile" and "hygienic" pushes the metaphorical capacity of language to its very limit, but the point is still an important one. Much ink and activism have been spilled on the system's lack of humanity, and efforts are afoot to promote restorative rather than purely retributive justice. The astonishing thing is the turn Schmitz makes from this point: "if we are to erect a criminal-justice system that is less cold and cruel, we could do worse than to defend *and extend* the death penalty" [emphasis added].

This is rather like saying one should continue *and increase* one's heroin intake on the grounds that methadone is habit-forming, too. For decades, Catholic social teaching has been moving steadfastly away from executions as a tool of social policy, even as secular and religious critiques of America's legal system have become more devastating and urgent. What could possibly support the extension of a penalty that is currently being implemented by [states purchasing veterinary drugs from unlicensed suppliers](#)? For Schmitz, it is the moral tutelage of punishment:

Simply as a sign that punishment is not just about the carrots and sticks of deterrence but that it is an inevitably moral project concerned with right

and wrong, justice and injustice, the death penalty has much to teach us still.

What have we learned, as a society, from the death penalty? For one thing, we have learned that capital murder is a crime committed [almost exclusively by people too poor to hire their own lawyers](#). Wealthier people kill, but are charged with lesser offenses or given lighter sentences. (They perhaps do not grasp the superior mercy of execution.) We have learned, moreover, that [the justice system values false convictions more than true acquittals](#). We've learned that [people holding lives in their hands will lie or dissemble without compunction or consequence](#). We've learned, of course, that [black life is cheaper, procedurally speaking, than white life](#)—for defendants and victims alike. We've learned who we are in this ghastly mirror.

Above all, we've learned that our processes and representatives cannot be trusted with mass execution. This is ultimately what is at stake in any case for extending the death penalty.

One might concede the necessity of executing the Nuremberg criminals, who even in prison could have functioned as sources of resistance for Nazi ideologues. One might concede the necessity of responding to, say, battlefield desertions with speed and severity. But the notion that the common morals will be aided—instead of more gravely perverted—by strapping more indigent (and even innocent) people to gurneys and injecting them with a fatal dose of veterinary tranquilizers is deeply at odds with our history and our culture. Refraining from capital punishment might not necessarily make us a better society, but indulging in it always seems to make us worse.

Late last year, a judge in South Carolina [overruled the 1944 conviction of George Stinney](#), a 14-year-old African American convicted of a double murder. The all-white jury deliberated for ten minutes before condemning Stinney to death by electrocution. This was, death penalty advocates will object, a long time ago. The courtroom had only recently started to assume the functions of the lynch mob, and many due process principles were not then in place. The Supreme Court forbade the execution of children and people with mental disabilities all the way back in 2005 and 2002 respectively. And only eight U.S. states still countenance the killing of a person by a massive blast of electricity to his or her body.

But the haunting thing about Stinney's case is that if he'd somehow been given a sentence of life in prison—that penalty we are told is much crueler than death

itself—he might still have been alive to see his vindication.