

The Death Penalty Is Not Pro-Life

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Society + Culture,

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By Marjorie Cohn

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Twenty years later, Rose Bird, one of the greatest chief justices ever to serve on the California Supreme Court, lost her confirmation election largely because of the way she voted in death penalty cases. In all 64 capital cases that came before her during her tenure, Bird voted to overturn every one. Her court as a whole reversed 61. Some of Bird's supporters advised her to affirm just one death verdict in order to win confirmation. Bird refused. She said, "It is easy to be popular. It is not easy to be just."

Republican Governor George Deukmejian and President Ronald Reagan both campaigned against Bird. "The defeat of Rose Bird was significant because it created a new danger in [California], the danger of politicizing a judicial branch that had not previously been subject to political pressures," Court of Appeals Justice J. Anthony Kline observed. Reagan's opposition to judges who "save the lives of killers" helped him in his bid for the presidency.

The fate of Stanley Tookie Williams now rests in the hands of California Governor Arnold Schwarzenegger. The governor is damned if he does and damned if he doesn't spare Williams's life. On the one hand, Schwarzenegger is under pressure from right-wing Republicans to refuse clemency. But there's also high-profile pressure on him in California to grant clemency and prove his campaign claims that he really is a moderate.

When Schwarzenegger denied clemency to Donald Beardslee, the governor was the subject of a mighty backlash in his native Austria, which has outlawed the death penalty. And he must deal with his conscience, much like Pat Brown did in 1960. Schwarzenegger said the Beardslee decision was "the hardest day" of his life.

If ever there was a condemned man who deserved clemency, Williams is the one. A co-founder of the Crips gang, Williams has undergone a remarkable transformation in the 24 years he has been in prison. The author of several children's books that decry gang violence (65,000 have been sold to schools and libraries), Williams has been nominated for the Nobel Peace Prize.

In 1993, Williams videotaped a message from death row supporting a truce between the Crips and the Bloods. He said, "Working together, we can put an end to this cycle that creates deep pain in the hearts of our mothers, our fathers, and our people, who have lost loved ones to this senseless violence." The videotape was shown during a peace summit meeting attended by over 400 gang members. If Schwarzenegger refuses Williams's plea, what message will it send to our children?

By granting clemency to Williams, Schwarzenegger would affirm the ideal of rehabilitation he claims to favor. A governor's pardon of Williams would signal that people can be redeemed, that mercy, not just retribution, is a worthy goal. "I have a despicable background," Williams said. "I was a criminal. I was co-founder of the Crips. I was a nihilist. But people forget that redemption is tailor-made for the wretched."

But even if Schwarzenegger pardons Stanley Tookie Williams, we must ask ourselves if we want to continue to engage in the state-sponsored killing of our people. "The reason to oppose capital punishment," the Los Angeles Times wrote in a recent editorial, "has to do with who we are, not who death row inmates are. The death penalty is inappropriate in all situations because it is unbecoming of a civilized society. Williams' case, though poignant, is irrelevant to this argument."

As it deliberates the nomination of Judge Samuel Alito, the Senate must also deal with what it means to be "pro-life." Alito, who claims to be pro-life when it comes to abortion, is pro-death when it comes to the death penalty.

During his tenure on the Court of Appeals, Alito has shown little solicitude for death row inmates bringing habeas corpus petitions, particularly claims based on ineffective assistance of counsel and racial discrimination in jury selection. His positions in these cases run contrary to recent Supreme Court decisions emphasizing the importance of both race-neutral jury selection and constitutionally adequate counsel.

In 2001, Alito voted to affirm the death judgment of an African-American man convicted by an all-white jury in Delaware. The prosecutor had struck all prospective African-American jurors from the jury pool. That same prosecutor had struck every prospective African-American juror in 3 other capital murder trials in the same county during the prior year. When Alito refused to infer racial discrimination from that pattern, he said, flippantly, "Although only about 10% of the population is left-handed, left-handers have won five of the last six presidential elections ... But does it follow that the voters cast their ballots based on whether a candidate was right- or left-handed?"

A majority of the full court accused Alito of "minimiz[ing] the history of discrimination against prospective black jurors and black defendants."

Stanley Tookie Williams, an African-American, was also convicted and sentenced to death by a jury cleansed of all prospective African-American jurors by the prosecutor, based on the testimony of paid police informants. Williams maintains his innocence.

If confirmed as a Supreme Court justice, Alito would have a powerful influence over whether many of our citizens live or die. In the past 5 years, the Court decided only 3 cases concerning abortion, but over 3 dozen involving the death penalty.

Capital cases are complex and often laden with error. A recent study at Columbia University found that 67 percent of death penalty cases had been reversed for serious constitutional error. Recurring features in these cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence, or confessions; and inadequate defense representation. There is a growing number of cases where DNA or other evidence has proved conclusively that death row inmates are factually innocent. In some cases, that evidence has surfaced too late - after innocent people have already been executed.

The United States is the only Western democracy that still executes its citizens. In 2004, 97 percent of all known executions took place in China, Iran, Vietnam and the United States. Several major international human rights treaties eschew the death penalty. None of the 3 international criminal tribunals - the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda - permit the death penalty as a sentencing option for the most heinous of crimes over which they have jurisdiction.

Scientific studies have consistently failed to find convincing evidence that that the death penalty deters crime more effectively than other punishments, according to Amnesty International.

"The deliberate institutionalized taking of human life by the state is the greatest conceivable degradation to the dignity of the human personality," US Supreme Court Justice Arthur L. Goldberg wrote in a 1976 article in the Boston Globe. We must not be a society that rewards the meanest judges and elected officials. Let us choose and affirm life, not death.

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