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> THE ABOLITIONISTS' COP-OUT
> By Jeff Jacoby
> The Boston Globe

> June 8, 2000

> Should capital punishment be abolished because of the risk that an
> innocent defendant might be killed? It is an increasingly popular argument.
> But is it a principled one?

> When the New Hampshire legislature voted in May to repeal the state's
> death penalty, state Senator Rick Trombly reversed his lifelong support for
> executing murderers. "If scientific evidence shows that we're making
> mistake
> after mistake after mistake," he said, "the legislature ought not to allow
> for the possibility of that mistake being made. The only way to do that is
> to
> abolish the death penalty."

> By "mistake after mistake after mistake," Trombly did not mean that New
> Hampshire had repeatedly sent innocent men to the chair -- New Hampshire
> hasn't executed anyone since 1939. Nor could he have been talking about any
> other state. In the 24 years since the Supreme Court authorized the
> resumption of capital punishment, 620 convicted murderers have been
> executed.
> Not one has subsequently been proven innocent, despite the intense scrutiny
> these cases draw from death penalty foes.

> What Trombly had in mind were the DNA tests that in recent years have
> led
> to the release of 63 convicted inmates, including eight men on death row.
> Opponents of capital punishment argue that these tests raise grave new
> doubts
> about the reliability of criminal justice in America.

> Trombly is not the only one the opponents have persuaded. In a recent
> column, George F. Will concluded that "Actual Innocence," a new book by
> death
> penalty abolitionists Barry Scheck, Peter Neufeld, and Jim Dwyer, "compels
> the conclusion that many innocent people are in prison, and some innocent
> people have been executed." Conservatives in particular, he said, should
> not
> assume too hastily that death row inmates are really guilty. "Capital
> punishment, like the rest of the criminal justice system, is a government
> program, so skepticism is in order."

> On the contrary. The growing infallibility of forensic science should if
> anything increase, not lessen, our confidence in the accuracy of criminal
> verdicts. And if that is true of convictions in general, it is especially
> true in death penalty cases, which are subject to multiple levels of

post-trial review and intricate layers of due process. Of all the sanctions in our criminal code, a death sentence is the *least* likely to be the result of error or caprice.

Nevertheless, let us suppose the worst. For the sake of argument, let us assume that the death penalty -- despite all our best efforts, despite all the safeguards and caution built into the system -- leads to the deaths of a few innocent people. Is that a good reason to do away with capital punishment?

Of course it isn't. Every institution that is of benefit to society also poses risks to society -- including the risk that innocent victims will die.

Patients die on the operating table because their surgeon made a mistake. Forty thousand Americans die in car accidents every year. Are those good reasons to abolish surgery and interstate highways? Anyone who said so would be dismissed as a crank.

Should policemen be allowed to carry guns? After all, if law enforcement officers go armed, innocent victims will sometimes lose their lives, as the recent deaths of Amadou Diallo in New York and Cornel Young in Providence, R.I., so tragically prove. If death penalty abolitionists really want to make sure that no one is unjustly killed by an agent of the state, they ought to call for disarming cops.

But *is* that what they really want? Is it the threat to innocent life that truly galvanizes the abolitionists, or is it simply their visceral dislike for capital punishment?

No one who genuinely worries about the legal system putting innocent people at risk can afford to waste time denouncing the death penalty. Not when probation and parole are costing so many Americans their lives. In one 17-month period, the US Department of Justice calculated in 1995, criminals released "under supervision" committed 13,200 murders (and 200,000 other violent crimes). Why is it that the enemies of capital punishment never have a word to say about *those* innocent victims?

To say that society should refrain from executing murderers for fear of making a mistake is not noble. It is a cop-out. A soldier on the battlefield who refuses to shoot at the enemy lest he inadvertantly hit the wrong man is no moral hero, and neither are those who demand that all murderers be kept alive so that we never face a risk -- however tiny, however remote -- of executing an innocent defendant.

Granted, it is not easy to condemn someone to death, still less to carry out the sentence. Executions are irrevocable and irreversible; to take away anyone's life -- even a brutal criminal's -- involves an assertion of moral certainty that might make many of us tremble.

But trembling or not, we have a duty to carry out. A duty to proclaim that murder is evil and will not be tolerated. That it is the worst of all crimes and deserves the worst of all punishments. And that while we will bend over backward not to hurt the innocent, we will not let that paralyze us from punishing the guilty.

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(Jeff Jacoby is a columnist for The Boston Globe.)

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