

PART V
LEGAL
ISSUES

PROPERTY RITES

With police on hand to try to maintain order, the Loudon County (Virginia) board of supervisors recently imposed severe restrictions on the building of homes, despite angry protesters. The board's plan allows only one house to be built for every 10 acres in some places and for every 20 or 50 acres in other places.

Opponents of these restrictions accused the supervisors of violating their property rights. One of their signs read: "Thou shalt not steal."

Property rights are one of the most misunderstood things in law and one of the most disregarded things in politics. The vast amount of land that the Loudon County supervisors are micro-managing does not belong to them or to Loudon County. It belongs to its respective individual owners.

According to the Constitution of the United States, the government cannot take private property without compensation. However, judges have been letting governments get away with doing just that for about half a century now. So long as the title to the property remains in the hands of its owners, the courts let local, state and federal governments do pretty much what they please, even if that destroys much of the value of the property.

From an economic point of view, there is no real difference

between confiscating half of someone's property and reducing its value by half. When county officials drastically restrict the uses to which land can be put, that land becomes less valuable on the market. A farmer cannot sell his land to someone who wants to build an apartment complex if the county regulations make it illegal to build an apartment complex.

When the use of land is restricted to ways that only the wealthy can afford, that eliminates a major part of the demand for that land—and a major part of its value. Land use laws are just one way that governments can confiscate much of the value of private property without having to compensate the owner. Where there are stringent rent control laws, as in New York City, the cost of the services that a landlord is required to provide can exceed the rents he is allowed to collect, so that an apartment building can end up with a zero value—or even a negative value.

That is why thousands of buildings in New York have been simply abandoned by their owners and ended up boarded up. The entire value of the building has been destroyed by government, without compensation.

One of the reasons property rights do not get all the protection that the Constitution prescribes is that they are seen as special benefits to the affluent, which must give way to the general welfare. The old leftist phrase “property rights versus human rights” summarizes this mindset.

This ignores the value of property rights to the society as a whole, including people who own no property. Most Americans do not own agricultural land, but they get an abundance of food at affordable prices because farmers own both land and its produce as their private property, and therefore have incentives to produce far more efficiently than in countries where the land is owned by the government. The Soviet Union was a classic example of the latter, with hungry people despite an

abundance of fertile land, inefficiently used under government control.

Loudon County illustrates another danger in political confiscation of private property. It is precisely the wealthy and the affluent who gain by restricting other people's property rights. Although the average rich person—by definition—has more money than other people, the non-rich often have far more wealth in the aggregate, simply because they are more numerous.

In a free market with undiluted property rights, the non-rich would out-bid the rich for much land and use that land in ways that suit the circumstances of ordinary people. For example, grand estates would be broken up into smaller plots for more modest homes or used for building apartment complexes. That is what the affluent and the wealthy strive to prevent by government-imposed restrictions on land use. Such restrictions also increase the value of the existing estates of the rich.

California pioneered in such restrictions, years ago, which is why California real estate prices and apartment rents are out of sight. But Loudon County is one of many other places that are now catching up, using the same legalistic techniques and the same political rhetoric about the environment, preventing "sprawl," and other pieties that beguile the gullible.

LOVE THOSE KILLERS!

Most of us were horrified to learn that Andrea Yates had killed five of her own children by drowning them—one at a time—in a bathtub. But that may be because we are not among the morally anointed. Big time celebrities like Rosie O'Donnell and Today Show hostess Katie Couric apparently see things differently.

“I felt such overwhelming empathy for her of what it must have been like for her to do that,” said Rosie O'Donnell. “When you've been on the edge you can understand what it's like to go over.”

Katie Couric on the Today Show seemed likewise to think the big issue was Mrs. Yates' psyche. She said: “Mrs. Yates, after you drowned your five children, how did that make you feel?”

The Today Show put on the screen information showing where to send donations to the legal defense fund for Andrea Yates. In Houston, the local chapter of the National Organization for Women formed something called “The Andrea Yates Support Coalition” and is planning to raise money for her defense.

This has apparently become a so-called woman's issue because the claim is being made that Mrs. Yates suffered from postpartum depression and that either that or the drugs she had to take caused her to kill her children. But of course the

reason we hold trials is to find out which claims by either side can stand up in court.

The judge has slapped a gag order on the attorneys in this case, in order to prevent pre-trial publicity from biasing the jury. But, in reality, that just means that the public will hear only Andrea Yates' side of the story before the trial. We will of course never hear the children's side of the story.

Unfortunately, the vogue of leaping to the defense of killers is not limited to women or even to the United States. Just this summer, two teenage boys who had sadistically murdered a two-year old toddler in Britain when they were ten years old were released from prison—and given new identities, so that they would not suffer any bad consequences from members of the public who were not as much in tune with current non-judgmental fashions.

What other people might suffer from these young killers in the course of another half century or more of their lives did not seem to raise nearly as much concern. Shrinks said that they were no danger to others—which is what shrinks said about some of the American teenagers who later killed their schoolmates in shooting sprees.

At a cost of about \$2 million to the British taxpayers, the young British killers and their families have been set up in three-bedroom homes. They have even been given spending money, with which one of the parents has bought a car.

Even before being released from "imprisonment"—in facilities without bars but with TV and other amenities, including karate lessons and spending money for Christmas—the young killers were allowed out on supervised furlough to see sports events and even visit shopping malls. It was at a shopping mall that they had lured the little toddler away and then tortured him to death.

The foreman of the jury that convicted them recalls seeing

the terrible pictures of the little toddler's body and then catching the eye of one of the young killers—who smirked in the courtroom. However, the politically correct line in Britain, as in the United States, is that expressed by a “penal reform” advocate, who said: “If children do something wrong, they should be dealt with through the care system and not the criminal justice system.”

Meanwhile, the liberal media in England has vilified the mother of the murdered child, who has protested these boys' early release and the posh life provided for them and their families. The media “compared her unfavourably with more forgiving mothers,” according to *The Guardian* newspaper. Apparently all mothers should be non-judgmental about their babies' sadistic young killers.

Back in the 1960s, it was considered eccentric, at least, when Norman Mailer took up the cause of a convicted murderer and managed to get him released from behind bars. It was no doubt considered somewhat more than eccentric by a man that the ex-con killed after being released. But today, what was once considered eccentric is par for the course in certain elite circles.

Outcries of outrage from the public only confirm the anointed in their own smug sense of being special—nobler and wiser than the common herd. What a price to pay so that some people can feel more non-judgmental than thou or simply affirm within their own little coterie that they are one of Us instead of one of Them.

MICROSOFT AND ANTI-TRUST “LAW”

The biggest question about anti-trust law is whether there really is any such thing. There are anti-trust theories and anti-trust rhetoric, as well as judicial pronouncements on anti-trust. But there is very little that could be called law in the full sense of rules known in advance and applied consistently.

Federal judge Thomas Penfield Jackson’s recent ruling in the anti-trust case against Microsoft is a classic example of lawless “law.” Just what specific law did Microsoft violate and how did they violate it?

While Judge Jackson’s long pronouncement opens with a brief reference to sections 1 and 2 of the Sherman anti-trust act, this is little more than a passing formality. What follows is a lengthy exposition of theoretical conclusions about the economic meaning of Microsoft’s actions. Is Microsoft supposed to have violated a theory or to have violated a law? What was it that they should have known in advance not to do?

Courts have declared laws against vagrancy to be void because of their vagueness, which gives the individual no clear understanding of just what they are supposed to do or not do. But vagrancy laws are a model of clarity compared to Sections 1 and 2 of the Sherman Act, which forbid conspiracies “in restraint of trade” or any “attempt to monopolize.”

Just what does that mean? It means whatever Judge Thomas Penfield Jackson or any other federal judge says it means—at least until they are reversed on appeal.

But what does it mean to a company that is supposed to obey this law? It means that there is no law, just a cloud of legal uncertainties, from which lightning can strike at any time.

In economics, “monopoly” means simply one seller. If you could invoke this provision of the Sherman Act only when there was just one seller, lots of Justice Department lawyers would be out of work, because there are very few products sold by only one company.

The ploy that prevents unemployment among anti-trust lawyers is to claim that some company sells a high percentage of some product—or, in the rhetoric of anti-trust, “controls” a large share of the market. And the way to produce statistics showing large shares is to define the market as narrowly as possible.

Judge Jackson does this by defining the market for operating systems like Microsoft’s Windows as being only those operating systems using Intel’s processors and their clones. That means we don’t count Apple computers or computer systems relying on the Linux computer language.

These kinds of definitional games have been played throughout the history of anti-trust “law.” The net result is that there are statistics showing many more “dominant” companies with “market power” in these narrowly defined industries than there would be if industries were defined in some economically meaningful way. Judge Jackson’s pronouncements are larded with such ominous rhetoric.

What also runs through Judge Jackson’s statements—and through the whole anti-trust tradition—is a confusion between competitors and competition. Harm to Microsoft’s

competitors is equated with harm to competition in the software industry. But nothing harms particular competitors like competition.

When Microsoft spent \$100 million to develop its Internet browser and included it in Windows free of charge, to Judge Jackson that showed monopoly power and hurt competition. But why would a monopoly have to blow \$100 million to improve its product?

It was precisely because Microsoft was not as optimistic as Judge Jackson about a lack of competition that they spent the money to keep their customers. Is it a violation of law to operate on a different economic theory than the one a judge believes in?

But suppose, for the sake of argument, that Microsoft was guilty of every terrible thing the Judge came up with. All the contract provisions he doesn't like can be forbidden and all the competitors who were supposed to have been harmed can be compensated to the tune of millions of dollars.

Why then is the Justice Department involved? Because they want the power to oversee and second-guess the computer software industry. Microsoft's competitors in Silicon Valley may rejoice at its legal misfortunes, but once Washington bureaucrats start calling the shots in the computer industry, their joy may be very short-lived. Silicon Valley rivals of Microsoft could turn out to be like those Democrats of a few years ago, who voted for special prosecutors as if they were only going to prosecute Republicans.

LESSONS NOT LEARNED

With all our looking back at the 20th century, we have missed some of its most blatant and most horrifying lessons. The worst horrors of that century, under both the Nazis and the Communists, came from concentrations of political power, brought about by heady rhetoric, powerful visions and emotional manipulations. Yet we remain as susceptible to all these things as if none of these horrors had happened.

The constitutional barriers that stand between us and the tyrannies that have swept over other peoples around the world are treated as things to be brushed aside or finessed when those who are skilled with words manipulate our emotions.

The constitution's proclamation of "equal protection of the laws" for all Americans is swept aside by saying the magic word "diversity," while creating preferences and quotas for some at the expense of others. Cry "Big Tobacco!" and due process of law vanishes into thin air. The first amendment to the constitution says that the right of free speech cannot even be infringed, but that is all forgotten in the stampede for "campaign finance reform."

There is nothing wrong with changing the constitution, which itself prescribes procedures for doing so. But we are playing with fire when we simply ignore the constitution or

find clever ways around it. Without a constitution, we are at the mercy of whatever phrase or fashion sweeps across the political landscape.

Even Supreme Court justices, who are supposed to be guardians of the constitution, have often treated it as a nuisance to be gotten around or, worse yet, as political cover for using their power to advance whatever ideas they personally want to impose on the country. The federal government has only the powers specifically granted to it in the constitution, but many judges feel free to grant it more power when they happen to agree with its policies.

In a recent decision, Justice David Souter upheld campaign contribution restrictions on grounds that big contributions create “the perception of impropriety.” Where does the constitution give the federal government the power to stop anything that creates the perception of impropriety? If it did, then any of our freedoms could be abolished just by using this magic phrase. Indeed, this decision opens the door to such an erosion in the years ahead.

Particular bad policies are the least of the dangers created by playing fast and loose with the constitution. Lawless power is the far greater danger—and has been for centuries, though its worst horrors seem to have been reserved for the 20th century.

Yet our judges, politicians and the intelligentsia play with fire as if they had never seen the conflagrations.

The constitution is only the most visible part of a cultural heritage that has given us freedoms which hundreds of millions of others around the world do not have. But dismantling that heritage is something that is being done every day—whether in anger or in fun—in our schools and colleges across the country, by people who congratulate themselves on being agents of “change.”

Traditions distilled from the experiences of many generations past are treated as just somebody else's opinion, while we have a right to our own opinion, even when we are not yet a decade old. Children are told to discover their own ways of doing mathematics or of using the English language. They are encouraged to respond emotionally, rather than to analyze logically, on issues ranging from the environment to homelessness. "Public service" assignments give them emotional experiences without either the knowledge or the mental discipline to see below the surface.

In short, we and our children are being trained to be sheep and to respond automatically to words that strike an emotional chord. We are being set up to be played for suckers by anyone who wants to take up where the totalitarian movements of the 20th century left off.

The very tactics of those totalitarian movements—intimidation, demonization, and disregard of all rules in favor of politically defined results—have become hallmarks of political correctness today. Some people think political correctness is just silly. But many people thought Hitler was just silly before he took power and demonstrated how tragically mistaken they were.

Probably most of the people who go along with the destructive and dangerous trends of our time are no worse than the "useful idiots" who made totalitarianism possible. But that is bad enough.

LAW ON TRIAL

Law itself is on trial in an Albany courtroom where four New York City policemen are accused of murder in the shooting death of Amadou Diallo, an African immigrant. For a shockingly large number of people, the fact that the cops are white and the man who was shot was black is all they need to know in order to take sides.

And taking sides is the issue for them, not finding the truth or dispensing justice. This approach has already been tried extensively throughout the South during the Jim Crow era. It took decades of struggle and sacrifice—including the sacrifice of lives—to break down that system of double-standard “justice.” Now it has come back into fashion again, with a new color scheme.

The tragic facts of the Diallo shooting are pretty plain. Even before the police arrived on the scene, Amadou Diallo was—for whatever reason—stationed in a doorway at night and periodically looking both ways up and down the street. Another resident of the area, coming home from work, was struck by what this resident says seemed to him at the time to be “suspicious” behavior. The prosecuting attorney immediately objected to this word and the judge immediately ordered it stricken from the record.

When a police car with four cops inside rolled by later,

after midnight, they too considered Diallo's behavior suspicious. When they stopped the car and got out, Diallo fled back inside the building. There, in a dimly lit hallway, he reached inside his jacket and pulled out a black object and held it out toward the cops. One of the policemen yelled "Gun!" By a horrible coincidence, another policeman toppled backwards off the steps onto the sidewalk, as if he had been shot, and his fellow officers opened fire on Diallo.

The driver of the car rushed toward the fallen officer and asked where he had been hit. But he had not been hit. He had just lost his balance and fallen back off the steps. Nor did Diallo have a gun. He had taken out his wallet and held it out toward the police. It was a tragedy of errors.

Enter the race hustlers, the politically correct media and politicians in an election year. Al Sharpton, who first gained fame by making wild accusations against policemen in the Tawana Brawley hoax, has of course jumped in with both feet and mobs of supporters. Hillary Clinton has called it "murder"—and she is a lawyer who should know better, especially with a trial going on.

Even in the courtroom, the atmosphere of intimidation has continued, unchecked by the judge who considered it offensive when a witness said that he found Diallo's actions suspicious.

Witnesses who have anything to say that might support the policemen's testimony have had wholly unnecessary identifying information publicized and read into the record. The witness who said that his suspicions caused him to pay attention to Diallo as he walked home after parking his truck not only had his address, but his apartment number as well, identified by the prosecutor in open court.

Supposedly this was to show that he lived in the rear and could not have seen what happened after he got home. But

the witness had never claimed to have seen anything from his apartment. What this uncalled-for statement did was put the witness on notice in the courtroom that local neighborhood hotheads now knew where to find him and his family. It was a shot across his bow, a warning not only to him, but to any other witness who might say anything that would support what the policemen had said.

Do we wonder why witnesses don't come forward?

A nurse who heard the shots while attending a patient across the street was asked for the name of her patient, even though the patient was not a witness and never claimed to have seen or heard anything. When that was objected to, she was then asked whether the patient was male or female and how old. This was unconscionable in the atmosphere of hostility and lawlessness that has been whipped up over this shooting.

As someone who taught pistol shooting in the Marine Corps, I was not the least bit surprised by the number of shots fired—or by the fact that most of them missed. Nobody counts his own shots, much less other people's shots, in a life-and-death situation. This is not an arcade game, where lights go off to tell you whether you hit the target. You shoot until it looks safe to stop.

A lot of lights ought to go off about this trial and the way both witnesses and justice itself are being threatened, inside and outside the courtroom.

ABORTED KNOWLEDGE

A certain professor who teaches students who aspire to become speech pathologists begins by showing them the development of the various organs involved in speech. When he shows his class an ultrasound picture of the development of the palate in an unborn baby, it is not uncommon for one or two women in his class to have tears in their eyes, or to say to him afterward that they have had an abortion and were very much affected by seeing what an unborn baby looks like.

For too long we have been led to believe that an abortion is the removal of some unformed material, something like having an appendix operation. The very expression “unborn baby” has almost disappeared from the language, being replaced by the more bloodless and antiseptic term “fetus.”

Many vocal advocates who declare themselves “pro-choice” do not want women to have the choice of knowing just what they are choosing before having an abortion. Feroocious opposition has stopped the showing of pictures of an abortion in process—even in schools or colleges that show movies of naked adults performing various sex acts. Still photographs of aborted fetuses have been banned as well.

The particularly grisly procedure known as “partial-birth abortion” cannot even be referred to in much of the media, where it is called a “late-term abortion”—another bloodless

term and one that shifts the focus from what happens to when it happens.

What happens in a partial-birth abortion is that a baby who has developed too far to die naturally when removed from his mother's body is deliberately killed by having his brains sucked out. When this is done, the baby is not completely out of his mother's body because, if he were, the doctor would be charged with murder. There is no medical reason for this procedure, which has been condemned by the American Medical Association. There is only a legal reason—to keep the doctor and the mother out of jail.

All this is smoothly covered over in the media by calling such actions a “late-term abortion” and refusing to specify what happens. Such patterns of determined evasions and obfuscations show that “pro-choice” in practice often really means pro-abortion. Knowledge is the first thing being aborted.

Philosophical questions about when life begins may pre-occupy some people on both sides of the abortion controversy. But the raw physical facts of what happens in various kinds of abortion have turned many others, including physicians, from being pro-abortion to being anti-abortion. One doctor who had performed many abortions never performed another one after seeing an ultrasound movie of the baby's reactions.

With most other medical procedures, “informed consent” is the watchword. But, when the issue is abortion, great efforts are made to keep “choice” from becoming too informed.

Politically and legally, the abortion issue is too complex for any easy resolution. We have gone through a quarter of a century of bitter controversy precisely because the Supreme Court went for an easy resolution back in 1973 with the *Roe v. Wade* decision.

Before then, various states had made differing efforts to wrestle with and balance the weighty concerns on both sides of the abortion issue. But Supreme Court Justice Harry Blackmun rushed in where angels fear to tread, with a one-size-fits-all decision, washed down with the blatant lie that this was based on the Constitution.

Far from settling things, *Roe v. Wade* has led to polarization and escalating strife all across the country, including bombings and assassinations. It has corrupted the media, academia and other sources that are supposed to inform us, but which have instead become partisan organs of political correctness.

However this highly-charged issue is ultimately resolved—and there is no resolution on the horizon today—surely honesty must be part of that resolution. Political catch-phrases like “a woman’s right to do what she wants with her own body” cannot be applied to situations where a baby is killed at the very moment when he ceases to be part of his mother’s body.

One of the few signs of hope for some ultimate resolution is that most people on both sides of this controversy are not happy about abortions. The women who shed tears at the very sight of an unborn baby may not be politically committed to either side of this issue, but their feelings may be part of what is needed to bring opposing sides together.

MURDER IS MURDER

Everyone should be outraged by the murder of Matthew Sheppard—not because he was gay, but because he was a human being. We can only hope that the murderers' lawyers don't find a shrink who will say that "homophobia" is a disease and try to use that to get reduced sentences.

Already there are attempts to politicize this young man's murder by seeking laws against "hate crimes" and other items on the homosexual lobby's political agenda. In an era when so many people are so easily stampeded by words, we need to step back and think about what we are saying when we talk about "hate crimes." If Matthew Sheppard was not gay and was murdered for his insurance, would that make it any less of a crime?

People who glibly talk about "hate crimes" ignore both the past and the implications for the future in what they are advocating. It took centuries of struggle and people putting their lives on the line to get rid of the idea that a crime against "A" should be treated differently than the same crime committed against "B."

After much sacrifice and bloodshed, the principle finally prevailed that killing a peasant deserved the same punishment as killing a baron. Now the "hate crime" advocates want to undo all that and take us back to the days when punishment

did not fit the crime, but varied with who the crime was committed against.

In the olden days, at least the law could readily apply its standard, even if it was a bad standard, because everyone could tell a peasant from a baron. But, once we make the punishment depend on motivation, we have entered never-never land, where opposing shrinks tell opposing stories to bewildered jurors, taking up lots of time in already overcrowded courts.

People who automatically respond to any problem by saying, "There ought to be a law" never seem to consider whether they are spreading existing law enforcement resources thinner and thinner. When new laws are passed, there is seldom even a consideration of whether to hire more police and more judges, much less build more courtrooms and more prisons.

Apparently it is OK just to spread the existing resources thinner. That makes sense only if the purpose of laws is to make people feel that they have "made a statement"—regardless of what the actual consequences may turn out to be.

Even more disturbing than such irresponsible uses of the law is the notion that there should be "gay rights," "women's rights" and various ethnic group "rights." The Fourteenth Amendment provides for equal rights and equal protection of the laws. If you want more than that, then you are no longer talking about rights, but about special privileges.

Unfortunately, the rhetoric of victimhood has been used repeatedly over the past few decades to claim special privileges—and not just by homosexuals. The time is long overdue for everyone to wake up and not let this game go on forever—or until it has us all at each others' throats.

Special privileges are poisonous to a whole society. Often those who claim these privileges become victims of the backlash.

Even when the privileges are not put into the law but consist only of special indulgences for rotten behavior that would not be tolerated by other members of the society, this too is poisonous in itself, as well as breeding inevitable backlashes.

Many of those who are loudest in their demands for “gay rights” and in breast-beating over their “identity” show the least respect for other people’s rights and even go out of their way to insult Catholics or others who do not share their lifestyle. Homosexuals do not need my approval, but neither do they have a right to my approval—or to propagandize a captive audience of children in the public schools to get their approval or to acquire new recruits.

Homosexuals are not unique in trying to cash in victimhood for privileges, if only the privilege of insulting other people with impunity. But neither they nor anyone else should be allowed to get away with this.

It is not at all clear that most homosexuals go along with the goals and tactics of those who proclaim themselves their “leaders.” When you consider how many other groups’ “leaders” advocate things to which most members of those groups are opposed, there is little basis for taking “gay rights” advocates at their word, much less let what they say be the last word for the whole society.

McVEIGH AND THE DEATH PENALTY

The execution of Timothy McVeigh has again raised the issue of capital punishment. Much of the case against capital punishment does not rise above the level of opaque pronouncements that it is “barbaric,” by which those who say this presumably mean that it makes them unhappy to think of killing another human being. It should. But we do many things that we don’t like to do because the alternative is to have things that make us even more unhappy.

As Adam Smith said, two centuries ago, “Mercy to the guilty is cruelty to the innocent.” Those who lost loved ones in the Oklahoma City bombing do not need to spend the rest of their lives having their deep emotional wounds rubbed raw, again and again, by seeing Timothy McVeigh and his lawyers spouting off in the media. McVeigh inflicted more than enough cruelty on them already and they need to begin to heal.

Sometimes those who oppose capital punishment talk about “the sanctity of human life.” Ironically, many of these same people have no such reluctance to kill innocent unborn babies as they have to execute a mass murderer. But the issue of capital punishment comes up only because the murderer has already violated the sanctity of human life. Are we to say

that his life has more sanctity than the life or lives he has taken?

Shabby logic often tries to equate the murderer's act of taking a life with the law's later taking of his life. But physical parallels are not moral parallels. Otherwise, after a bank robber seizes money at gunpoint, the police would be just as wrong to take the money back from him at gunpoint. A woman who used force to fight off a would-be rapist would be just as guilty as he was for using force against her.

It is a sign of how desperate the opponents of capital punishment are that they have to resort to such "reasoning." Since these are not all stupid people, by any means, it is very doubtful if these are the real reasons for their opposition to executions. A writer for the liberal *New Republic* magazine may have been closer to the reason when he painfully spoke on TV about how terrible he felt to watch someone close to him die.

Nothing is more universal than the pain of having someone dear to you die, whether or not you witness it. Nor should anyone rejoice at inflicting such pain on someone else. But one of the fatal weaknesses of the political left is its unwillingness to weigh one thing against another. Criminals are not executed for the fun of it. They are executed to deter them from repeating their crime, among other reasons.

Squeamishness is not higher morality, even though the crusade against capital punishment attracts many who cannot resist anything that allows them to feel morally one-up on others.

It is dogma on the political left that capital punishment does not deter. But it is indisputable that execution deters the murderer who is executed. Nor is this any less significant because it is obvious. There are people who would be alive today if the convicted murderers who killed them had been executed for their previous murders.

Glib phrases about instead having “life in prison without the possibility of parole” are just talk. Murderers kill again in prison. They escape from prison and kill. They are furloughed and kill while on furlough. And there is no such thing as life in prison without the possibility of a liberal governor coming along to pardon them or commute their sentence. That too has happened.

The great fear of people on both sides of the capital punishment debate is making an irretrievable mistake by executing an innocent person. Even the best legal system cannot eliminate human error 100%. If there were an option that would prevent any innocent person from dying as a result of our legal system, that option should be taken. But there is no such option.

Letting murderers live has cost, and will continue to cost, the lives of innocent people. The only real question is whether more innocent lives will be lost this way than by executing the murderers, even with the rare mistake—which we should make as rare as possible—of executing an innocent person.

As so often in life, there is no real “solution” with a happy ending. There is only a trade-off. Those who cannot bring themselves to face trade-offs in general are of course unable to face this most painful of all trade-offs. But they have no right to consider their hand-wringing as higher morality. People are being murdered while they are wringing their hands.