

# He'd refine death penalty

## Prof thinks some don't deserve it

1 assaults us at every turn: cop-killer Mumia Abu-Jamal as college commencement speaker and international icon; death row inmates as models on Benetton clothing ads.

Disagreement over the death penalty is no longer an academic debate, but a guerrilla conflict raging across the landscape.

Enter Robert Blecker with even more controversial food for thought.

Blecker, a professor at New York Law School, has problems with the death penalty, too — but not the usual problems of process that result in innocent people being wrongly executed.

Even if it could be guaranteed that only the guilty would be put to death, he said, that doesn't solve the "more intractable problem — not of the factually innocent but the morally undeserving."

"Of the 3,500 murderers on death row, only a small percentage are factually innocent, but hundreds do not deserve to die."

After 14 years of studying killers and other criminals in prison, Blecker is finishing a book that argues for the reform of capital punishment so that only truly evil killers are put to death and murderers of lesser villainy aren't.

Blecker says as a "retributivist" — someone who believes in retribution — he's as committed to executing those who deserve it as he is to sparing those who don't.

And while all murders cause equal harm, he said — the death of a human being — some need to be evaluated in the context of

the "street reality" in which they were committed, taking the killer's attitude into account.

The criminal justice system already differentiates crimes based on attitude, he said — separating manslaughter, say, from intentional murder — and the same needs to be done when applying the death penalty. If, for instance, a drive-by shooter knew and didn't care that innocent people might die when he sprayed gunfire at a crowd that included the person he was targeting, then he deserves the death penalty.

But if the drive-by killer opened fire on rival gang members hanging on a corner — because the gangs were at war and it was kill or be killed — then he doesn't deserve to die.

But what if one of those bullets penetrated a nearby house and killed a child, I asked?

Unless the killers were aware and indifferent to the fact that they were imperiling innocent people, it still wouldn't qualify for capital punishment under Blecker's criteria.

Remember, he cautions emphatically, he's not an apologist.

These crimes are terrible and the crimi-

nals need to be severely punished with life in prison. But they don't, by his code, deserve to be put to death.

Blecker said the stricter threshold he advocates might help eliminate the hypocrisy that taints capital punishment.

Murder for pecuniary reasons is generally considered a capital crime, for instance — whether it's a gun-for-hire or a killing committed in the course of a robbery.

But corporate executives who knowingly perpetuate dangerous conditions because of cost considerations — Blecker cited Ford executives who declined to recall the Pinto after calculating that lawsuits resulting from potential deaths would be less expensive than the recall — never face the death penalty.

"Killing for pecuniary motives pervades our society, only we single out the street killers for execution and place corporate killers on the boards of corporations and universities," Blecker said.

If robbery was eliminated from the felony murder category, he said, qualms about the unequal impact the death penalty has on minorities would diminish because robbery is disproportionately committed by the poor and minorities.



The killing of a police officer is another crime that shouldn't automatically qualify a murderer for death row, Blecker said. Assassinating a cop without provocation is one thing, he said, but returning fire is another.

"When you're fighting for your life and you didn't initiate the deadly force, you're not the worst of the worst," he said.

And that brings us to Mumia Abu-Jamal. Blecker said he had no first-hand knowledge of the case, but speaking hypothetically based on what he's read — he wouldn't put Abu-Jamal to death.

Abu-Jamal shot Daniel Faulkner under "extreme emotional disturbance," he said — either because Faulkner was beating his brother with a flashlight, as one version has it, or Abu-Jamal so hated police that the sight of Faulkner confronting his brother incited him.

And if the second shot Abu-Jamal fired at Faulkner at point-blank range came after Faulkner shot him, that would also mitigate against capital punishment, Blecker said.

I don't necessarily agree — and you can see how Blecker's theories might invite wrath and recrimination.

But if refining the death penalty ends the strident madness of the current debate — if it keeps killers like Abu-Jamal from being elevated to icons and featured in clothing advertisements — then it's something to consider. ■

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