

CRIME, THE CHRISTIAN AND CAPITAL JUSTICE

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Much has been written in recent times about the “culture wars” that are said to be raging.¹ A common feature that unites virtually all of the pressing social issues of our day is a sobering loss of moral reasoning and deterioration of moral discourse.² Behavior that was once deemed deviant by society has been redefined, so that acts that were previously thought to be morally repugnant are recast as being “normal” or at least tolerable. Daniel Patrick Moynihan has described this project of moral leveling as “defining deviancy down.”³

As a corollary to this, fundamentally moral issues are increasingly seen as matters of health or one’s environment. Thus the social pathologies afflicting American culture have been successfully divorced from universal moral norms. It is here that the Christian community—and the Christian community alone—must make its presence felt. Clashing in western culture are two opposing worldviews. The one is propelled by a view of human nature that refuses to acknowledge moral accountability. The other is undergirded by a Biblical anthropology that reminds our culture that we in fact do live in a moral universe. It stresses, nonnegotiablely, that there are

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¹ E.g. J. D. Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic, 1991); “America At War with Itself,” *Washington Post* (September 13, 1992) C1, C4; H. O. J. Brown, “The Continuing *Kulturkampf*,” *Religion and Society Report* (December 1992) 1–5. In somewhat different terms W. E. Johnston, Jr. (“The Crisis of the West: Machiavelli, Rousseau, and the Imperative of Salvation,” *First Things* [June/July 1990] 35–42) and A. Wolfe (*America at Century’s End* [Berkeley: University of California, 1991]) posit a similar thesis.

² C. H. Sommers, “Teaching the Virtues,” *Imprimis* (November 1991) 1–5; W. Kilpatrick, *Why Johnny Can’t Tell Right from Wrong: Moral Illiteracy and the Case for Character Education* (New York: Simon and Schuster, 1992); J. Q. Wilson, *The Moral Sense* (New York: Free Press, 1993); “What Is Moral, and How Do We Know It?,” *Commentary* (June 1993) 37–43; D. Prager, “Can We Be Good without God?,” *Ultimate Issues* 9/1 (1993) 3–22; John Paul II, “Veritatis Splendor,” *Origins* 23/18 (1993) 297–336; F. P. Close, “The Case for Moral Education,” *The Responsive Community* 4/1 (1993/94) 23–29.

³ D. P. Moynihan, “Defining Deviancy Down,” *The American Scholar* (Winter 1993) 17–30. More recently C. Krauthammer has looked at “the other half of the story.” A complimentary social phenomenon is that now the normal must be found to be deviant. To illustrate, while deviancy has been “defined down” for criminals, for the ordinary bourgeois deviancy has been defined up. The real deviants of society stand unmasked. And who are they? Not Bonnie and Clyde, but Ozzie and Harriet. The moral deconstruction of traditional norms, notes Krauthammer, has been quite successful. Three areas of success are crime, family life and mental health (C. Krauthammer, “Defining Deviancy Up,” *The New Republic* (November 22, 1993) 20–25.

consequences for our actions. These consequences, moreover, affect not only the individual but all of society as well.

Nowhere is this clash of life views more apparent than with the issue of crime. And nowhere is American society's failure to give account of itself more tragic than in the sphere of violent crime. Sloppy, sentimental thinking not only exists in surrounding secular culture but also can be found in some Christian circles. Apart from people like William Bennett, who has consistently and courageously addressed cultural trends, where are thoughtful and articulate Christians who can contribute to national debate on any significant moral issues?

Two authors offer the following commentary on the potency of religion in America:

Religion has little impact on the moral life of the majority of Americans. Most Americans aren't sure of their church's position on the great moral issues of the day—from school busing, capital punishment, book-banning, affirmative action, birth control, homosexuality, teaching creationism in the public schools, pornography, and premarital sex to civil rights. Eighty-four percent of Americans report being willing to violate the teachings of their own faith if those teachings conflict with their own personal sense of right and wrong. And . . . only eleven percent report believing in all ten of the Ten Commandments.⁴

Part of the problem underlying the broader impotency of the Christian community is theological. We are Biblically illiterate. Part of the dilemma, however, is ethical—that is, we have not thought through the implications of a Biblical worldview as it touches every area of life. Public policy will be predicated on one ascendant worldview, whichever it is. Avoiding both extremes of cultural isolation and uncritical social activism, the Church is called upon to influence the surrounding culture through gentle yet forceful persuasion—a persuasion that respects the voluntary nature of people to choose or reject moral revelation. In being faithful to its cultural mandate, the Church will preserve both its theological and ethical integrity. In so doing it will speak with much-needed prophetic authority to a culture that is bereft of moral reasoning—a culture that is well nigh criminally insane.⁵

In the present essay I wish to propose a test case for the application of Biblical ethics. (It should be noted that the preference for my choice of terms—a “Biblical” rather than merely “Christian” framework—is not incidental. It suggests a unified ethic that encompasses the full range of Biblical data.) My test case has to do with violent crime—specifically, capital punishment in the context of premeditated murder.⁶

Not long ago I took part in an interview and call-in on a Washington-area radio talk show. The subject was capital punishment, and the host noted before going on the air that he simply could not find anyone willing to discuss the topic, or at least willing to air his views publicly. This is indeed unfortunate—not because we take delight in speaking about issues

⁴ J. Patterson and P. Kim, “The Decline and Fall: An Alarmed Perspective,” *The Responsive Community* 4/1 (1993/94) 48.

of life and death or the shedding of blood, but because of all people in society it should be Christians who are able to inform public debate on the great moral issues of our day.⁷

It should be conceded from the outset that committed Christians are on both sides of this issue. Thus being a proponent or an opponent of the death penalty in no way constitutes a test of fellowship. Nevertheless what normally goes unsaid in the debate over capital punishment is tragic. Proponents are often caricatured as cold-hearted Pharisees who are utterly lacking in compassion. This caricature in and of itself can tend to quash meaningful dialogue. But if Christians do not shape the contours of the ethical debate, who will? Who will fill the vacuum? We may be assured that others will—people such as Supreme Court Justice Harry Blackmun, for example. In February of 1994 Blackmun announced to the nation that after twenty-five years of service on the Court he was now convinced that capital punishment was “unconstitutional.”⁸ Blackmun, who is not unaccustomed to whims of rhetorical drama, is the one Americans will ever remember as

⁵ Visiting America some one hundred sixty years ago, the Frenchman Alexis de Tocqueville noted three indispensable pillars in maintaining a democracy. One of these was religion. He wrote: “Upon my arrival in the United States, the religious aspect of the country was the first thing that struck my attention; and the longer I stayed there the more I did perceive the great consequences resulting from this state of things, to which I was unaccustomed. . . . In the United States, the sovereign authority is religious . . . ; there is no country in the whole world in which the Christian religion retains a greater influence over the souls of men than in America. . . . While the law permits the Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash or unjust. . . . Christianity, therefore, reigns without any obstacle, by universal consent; the consequence is . . . that every principle of the moral world is fixed and determinate, although the political world is abandoned to the debates and the experiments of men. Thus the human mind is never left to wander across a boundless field . . . [for] it is checked from time to time by barriers which it cannot surmount” (A. de Tocqueville, *Democracy in America* [London: Oxford University, 1965] 233–238).

⁶ A more thorough discussion of the ethics of capital punishment can be found in J. D. Charles, “Outrageous Atrocity or Moral Imperative?: The Ethics of Capital Punishment,” *Studies in Christian Ethics* 6/2 (1993) 1–14.

⁷ Consider the role of the electronic and print media in the highly publicized 1992 executions of Robert Alton Harris (California) and Roger Keith Coleman (Virginia). The American public was thereby treated to an absolutely numbing display of sentimentality. The state of California was finally able to execute Harris after thirteen years of legal roadblocks and an eleventh-hour attempt to televise the execution. The execution proceeded only because the Supreme Court intervened to put an end to the bewildering volley of last-minute stays of execution issued by judges on the United States Court of Appeals. The Coleman episode climaxed in a last-minute gambit by Coleman’s lawyers to “take it to the people” through interviews on “Nightline,” “Donahue” and “Larry King Live,” not to mention a *Time* magazine cover story. In the end, responsible public debate is suppressed by the media. With select audio and visual bites and highly sympathetic portrayals of death-row inmates as “victims,” moral discourse is effectively silenced.

⁸ J. Biskupic, “Blackmun Turns Away from Legal Machinery of Death,” *Washington Post* (February 23, 1994) A1. In a November 1993 “Nightline” interview, Blackmun suggested that he was reevaluating his views on capital punishment, no longer being “certain at all that the death penalty can be constitutionally imposed.” (Since the death penalty was not “cruel and unusual” but already existent in 1791 when the Eighth Amendment was enacted, it cannot legitimately be adduced as an argument against capital punishment *per se*.)

having authored the *Roe v. Wade* decision, which in a bold constitutional stroke of interpretation asserted that women had a “right” to abortion.⁹

I. VIOLENT CRIME AND THE CHRISTIAN

Aside from health care, violent crime is arguably the hottest political issue to date. And even more than health care it is the most politicized issue going. Talk on tough measures, public fears, gun control and “root causes” abounds. Politicians—including the president—can be counted on to climb all over each other’s backs to prove who is tougher, particularly in an election year.

But neither funding, nor the number of policemen on the streets, nor the accessibility of firearms, nor even politics itself lies at the root of the problem. For the Christian community to address the issue of crime at its root, one must consider the nature of the thinking that ends up becoming public policy. This thinking, remarkably, is often visibly at odds with what most citizens believe intuitively. Several years ago the Gallup organization confirmed what the majority of Americans instinctively believe concerning penal justice. The survey indicated, not surprisingly, that seventy-six percent of Americans favor the death penalty, a level of support that had risen from forty-nine percent in 1956.¹⁰ Strangely, in all of Christendom only one denomination—the conservative Missouri Synod Lutheran Church—acknowledges that capital punishment is “in accord with Holy Scriptures.” All other bodies—the larger Evangelical Lutheran Church in America, the United Methodist Church, the Roman Catholic Church, the Presbyterian (U.S.A.) Church, the American Baptist Churches, the United Church of Christ, the Disciples of Christ, and so on—oppose the death penalty,¹¹ as does the National Council of Churches and all major Jewish groups. The divergence between the average layperson and American religious denominations is telling. It points to the near wholesale incorporation of secular ethical assumptions by American “religious” into mainline American reli-

⁹ At the same time that the blood of innocent victims cries out for justice, Justice Blackmun failed to apply the same moral reasoning in *Roe*. As one social commentator has suggested, it is morally deceitful to wring one’s hands over the lethal injection of a needle into a man convicted of premeditated murder while at the same time claiming constitutional liberty to inject another needle into the womb of a mother and sanction the violent death of the unborn (see C. Thomas, “Death as Revealed by Blackmun,” *Washington Times* [February 27, 1994] B1). The prophetic warning to a culture swaggering in the throes of divine judgment is thereby accomplished: Evil is recast as good and good as evil. Woe to that society that performs such moral and linguistic subversion (Isa 5:20)!

¹⁰ A. Gallup and F. Newport, “Death Penalty Support Remains Strong, But Most Feel Unfairly Applied,” *Gallup Poll News Service* (June 26, 1991) 104.

¹¹ Note for example various resolutions published by denominational bodies: the American Baptist Convention in 1960, the Lutheran Church in America Biennial Convention in 1966, the 1974 U.S. Catholic Conference, the 1975 Church of the Brethren Annual Conference, the 1978 Presbyterian Church in the U.S.A. General Assembly, and the 1978 U.S. Catholic Conference Committee on Social Development and World Peace, to name but a few.

gious belief.¹² The result is that the Church has unwittingly contributed to America's moral wasteland.

Throughout the centuries the Church has, broadly speaking, defended the right of the state to impose capital punishment for certain heinous crimes. Among the Church fathers one finds varying perspectives on the death penalty though a general recognition of the state's responsibility in implementing capital justice. Tertullian (late second century) and Lactantius (late third century) affirmed that, in the case of murder, divine law consistently required a life for a life. Theodosius II (mid-fifth century), who called for the Council of Ephesus (431) in the hope of settling the Nestorian controversy, enacted a legal code specifying capital crimes. While Augustine among others acknowledged the role of the state in mediating capital sanctions, various councils from the seventh century (Eleventh Council of Toledo) to the thirteenth (Fourth Lateran Council) followed the lead of Leo the Great (fifth century) in seeking to forbid clerics from engagement in matters of capital justice. The patristic and medieval periods in the main suggest the Church's tacit recognition of capital punishment.

Late- and post-medieval theologians generally maintained that the state had a rightful duty before God to impose capital sanctions upon murderers. Aquinas insisted that the community had the right to "cut away" an individual "in order to safeguard the common good," since the community is a moral body and heinous moral defects are the equivalent of putrefaction of the body. Thomas writes: "The common good is better than the good of the individual. . . . The life of certain pestilent fellows is a hindrance to the common good, that is, to the concord of human society. Such persons therefore are to be withdrawn by death from the society of men."¹³

Even the so-called left wing of the Protestant Reformation (from which domain modern religious opposition to capital punishment is said to derive) endorsed the death penalty. The Schleithem Confession (1527), an exemplary document adopted by the Swiss Brethren, reads: "The sword is an ordinance of God. . . . Princes and Rulers are ordained for the punishment of evildoers and putting them to death." This Anabaptist declaration concurs with the Lutheran Formula of Concord (1580), which prescribes for "wild and intractable men" a commensurate "external punishment."

In light of penal excesses during the late medieval and early modern period of England's history, not a few influential eighteenth- and nineteenth-century thinkers called for the abolition of the death penalty. Among its opponents were Montesquieu, David Hume, Benjamin Franklin, Thomas Paine, Cesare Beccaria, Voltaire, Jean Jacques Rousseau, Benjamin Rush, Jeremy Bentham and Karl Marx. Widespread use of torture and the inadequate state of criminal law gave rise to a growing movement in western Europe to abolish the death penalty or greatly restrict its use. The abolitionist argument, however,

¹² Some evangelicals as well, craving a measure of respectability in the eyes of secular culture, tend to be infatuated with a "peace and justice" approach to cultural issues.

¹³ T. Aquinas, *Summa Contra Gentiles* 3.147.5.

was fueled not by the Church but by Enlightenment thinkers who were notably secular in their worldview.

(Post-modern thinking has grown increasingly intolerant of meting out criminal punishment that smacks of being “cruel” or “barbaric.” This was not the case, however, in 1791, when both the Eighth and Fourteenth Amendments were enacted. Since the death penalty in America was not “unusual” in 1791, the Eighth Amendment cannot have been intended to apply to capital punishment *per se*. Opposition to the death penalty may be understood as but one highly visible facet of cultural aversion to punishment in general, and this in a society where human life at both ends of the life spectrum has been steadily cheapened in horrific fashion.)

It should be observed that as late as 1955 the Catholic Church, more recent pastoral letters aside, defended the role of the state in upholding capital justice. In addressing Italian Catholic jurists, Pius XII reaffirmed the Church’s historic recognition of vindictory as well as therapeutic penology, noting that this was “in conformity with what sources of revelation and traditional doctrine teach regarding the coercive power of legitimate human authority.” The mandate of Rom 13:4, noted the pontiff, is “as little determined by time and culture as the nature of man and the human society by nature itself.”¹⁴

Thus the witness of the Church through the centuries, contrary to the position taken by many contemporary religious leaders, is one of affirming the state’s role in executing capital justice for capital crimes. The contention that legitimate purposes of punishment do not justify the imposition of the death penalty stands in bald contradiction to virtually the whole of the history of the Church, in addition to demonstrating a deficient understanding of Biblical theology.

No serious student of the historic Church’s social teaching can fail to note that opposition to capital punishment is only a very recent phenomenon among the religious. Seeing the big picture will help the Christian community preserve its integrity both in theological and ethical matters.

II. THEOLOGICAL FOUNDATIONS OF LAW

Unhappily, the theological and religious underpinnings of law are dying in western culture.¹⁵ America’s public philosophy of choice has shifted from a religious to a secular theory of law, from moral-theological to political-pragmatic. Justice, however, depends on something beyond itself. It requires a foundation of transcendent moral truth. When law loses what only a conviction of ultimacy can bestow, as observed by Herbert Schlossberg,¹⁶ it de-

¹⁴ Pius XII, “Address to the Tenth International Congress on Penal Justice,” *ActApS* 47 (1955) 81–82.

¹⁵ H. J. Berman, *Faith and Order: The Reconciliation of Law and Religion* (Atlanta: Scholars, 1993).

¹⁶ H. Schlossberg, *Idols for Destruction: Christian Faith and Its Confrontation with American Society* (Wheaton: Crossway, 1990) 47.

generates into pragmatic utilitarianism, and a moral-cultural breakdown ensues. It follows that when transcendent moral value is denied, commandments or laws become little more than opinions, since no compelling sanction can be invoked. Thus the moral capital of any culture is indebted to Biblical law.

It is important to note the meticulous nature of legislation in the OT relative to capital punishment. Capital sanctions were by no means indiscriminate. Numerous constitutive safeguards were integral to the system. Corroborative evidence via multiple witnesses was requisite for the execution of an accused murderer.¹⁷ Specific instances of homicide, it should be noted, did not qualify for capital punishment.¹⁸ Nevertheless cities of refuge, intended to serve as asylums for manslaughterers, were not for the purpose of granting immunity to the murderer. The congregation of Israel would have adjudicated with well-defined criteria by which to distinguish between unintended manslaughter and premeditated murder. In the case of the former, deliverance out of the hand of the avenger was facilitated, whereas in the latter the accused was to be put to death.

Law as the contextualized expression of divine character was integral to the life of Israel. Disregard for the law inevitably resulted in a rotting of Israelite social character. When the unity of divine revelation and human cooperation fails, chaos and calamity follow, until which time unity and order are restored. All of history (pre- and post-cross) attests to this basic pattern. Frequently overlooked in the Biblical framework for criminal justice is the central role of purification.

Commenting in 1976 on the relationship between temporal punishment and cleansing/purification from sin, Karol Wojtyla, at that time Archbishop of Cracow, delivered a memorable series of homilies at the invitation of Pope Paul VI. The occasion was the annual Vatican Lenten retreat. In this remarkable series, sustained reflection was given to the question of man's purification from sin in the present life, whereby the future pontiff demonstrated keen insight into the divinely-ordained virtues of punishment. Guilt incurred by sin constitutes a debt in the present life that must be paid. Punitive dealings, he maintained, provide the necessary atonement and restore the balance of justice and moral order that has been disturbed. They prepare man for a destiny in eternity. The "law of purification," noted the Archbishop, "reveals both the temporal and the eternal perspectives of mankind."¹⁹ Purification comes by way of suffering. It prepares the individual to meet his Maker.²⁰

¹⁷ Num 35:30. Cf. also Deut 17:6; 19:15.

¹⁸ Num 35:6–29.

¹⁹ K. Wojtyla, *The Sign of Contradiction* (Rome: St. Paul, 1979) 166–169.

²⁰ The Lamb of God was slain, not so that earthly punishment would never be meted out for wrongdoers but that the eternal weight of punishment and separation from God might be dealt with. In terms of ethics and law, the debt still must be paid in the present life—whether for speeding or strangulation (pre- or post-conversion). Temporal punishment, moreover, is a foreshadow of eternal punishment. It points the way to higher, eternal realities.

Biblical ethics, then, are rooted in a universal moral code. This ethic, which antedates and transcends Mosaic legislation, can be said to be binding for pre-exilic Israel and first-century Rome as well as twentieth-century America. Modern Christians, with their "raised consciousness," do not have the luxury of accepting as binding the prohibition of personal vengeance in Romans 12 while rejecting as nonbinding the role of the state as God's "servant" to bear the sword in "executing wrath on the wrongdoer."²¹ While taking justice into one's own hands is proscribed by the apostle, the derived authority of the magistrate in executing retributive justice, the *ius gladii*, is affirmed, irrespective of the moral character of those in office. The implication of Rom 13:1–7 is that by not carrying out their divinely instituted duty in maintaining social order the authorities in effect "praise" evil and negate what is good and just.²² The Church then, by reason of its very mission, is to inform the magistrate on matters of social justice.

Typically, religious abolitionists found their bias against capital punishment on a misreading of Jesus' teaching that locates and extracts a so-called love ethic. Jesus' attitude toward the law as an ethical standard is clearly illustrated in Matthew 5. One of Matthew's concerns in writing is to deal with the charge being echoed in the synagogues of his day that the Nazarene was repudiating the ethical standard revealed in the OT Scriptures. Matthew's burden is to show that ethical living for the disciples was not based on a new moral code. Jesus did not forbid the law of the talion. Rather, he taught that true righteousness issues out of a proper understanding of the law, minus the distortions of oral tradition ("You have heard, but I say . . .").²³

The tendency of Christians to confuse mercy and justice, salvific and moral-legal categories, has the effect of placing Jesus at odds with Paul, Peter and, of course, the whole of the OT.²⁴ Tragically, the result of this

²¹ Rom 13:4.

²² Paul's teaching here cannot be misconstrued. Three times in vv. 1–7 the civil authorities are designated God's "servant": *diakonos* (v. 4, twice), *leitourgoi* (v. 6). This, furthermore, is asserted in spite of a worst-case scenario, politically speaking. On the imperial throne sits a homosexual schizophrenic maniac. Nonetheless Paul can write that the civil authorities fulfill a God-appointed function in bearing the sword. The servant/minister terminology of 13:4, 6 strengthens the underlying thesis of 13:1: Because God governs the world and entrusts power to rule, civil authority is not unbridled. Rather, it is limited. Rulers, as God's "deacons," are to be held accountable to the Sovereign Lord to exercise their rule justly. The Church's role is eminently prophetic *vis-à-vis* the ruling authorities.

²³ C. S. Lewis, "Why I Am Not a Pacifist," *The Weight of Glory and Other Addresses* (New York: Macmillan, 1980), notes that in Matt 5:38 Christ's admonition to turn the other cheek is not intended to mean that we should passively accept evil: "Does anyone suppose that Our Lord's hearers understood him to mean that if a homicidal maniac, attempting to murder a third party, tries to knock me out of the way, I must stand aside and let him get his victim?" In addition, Jesus' use of the "eye for an eye" maxim, often thought by moderns to bespeak vengeance, in fact was understood by Israel of old and Jesus' rabbinic contemporaries as a canon of restitution and not retaliation. Jewish courts would appear never to have read physical punishment into "eye for an eye." The talion principle, rather, was a rule of thumb for the civil magistrate to ensure that restitution matched the loss resulting from the criminal act. It was never intended to afford the individual's right to revenge based on personal injuries.

²⁴ The frequent contention that dispensing with capital punishment would be to act in harmony with the teaching and example of Jesus erects an altogether false dichotomy that does not

highly selective reading of the Scriptures is an undermining of God's eternal ethical standards. In the words of one commentator, such despises both the image of God in the victim as well as the death of the Lamb of God.²⁵ The prohibition of the commandment "Thou shalt not kill" means that an individual shall not take away another person's remaining years of life. It does not mean that killing is unethical under all circumstances.²⁶ The Torah knows the difference between manslaughter and murder, accident and intention, negligence and deliberation.²⁷ Jesus in no way sets aside this ethical imperative.

III. REHABILITATING HUMAN DEPRAVITY

One must question the moral judgment of religious spokespersons who contend that conditions in contemporary American society do not justify the imposition of the death penalty. A culture whose annual harvest includes the abortion of 1.5 million unborn children and the murder of 24,000 citizens is apparently ethically superior and in no need of retributive justice. Thus the irony is complete: Blood may be shed in the womb, with the truly innocent being slaughtered, while convicted murderers receive mercy at the hands of the criminal justice system, since the death penalty is deemed "uncivilized." In truth, the conditions that presently typify American society are precisely those that brought about God's judgment on the antediluvian world: excessive wickedness and violence filling the earth, which grieved the heart of God.²⁸ The twentieth century—doubtless the most secularized period of human history—can hardly qualify as benign, contrary to the wishful thinking of many religious leaders. One political historian has estimated that roughly 170 million lives worldwide have been deliberately sacrificed in this century alone due to political-ideological (i.e. nonmilitary) reasons.²⁹ This of course does not take into account the untold millions of abortions in the United States alone.

Murderers generally do not rehabilitate.³⁰ Yet it is remarkable how insistent abolitionists can be in denying the likelihood that punishment will deter the violent criminal. Perhaps the most comprehensive analysis of the criminal mindset was done some years ago by Samuel Yochelson and Stanton Samenow in their landmark work, *The Criminal Personality*. This study

exist. Jesus in no way sets aside civil-legal and moral stipulations that the OT had stressed. The teaching recorded in Jesus' sermon on the mount is meant to address personal issues of the heart in the disciple's life, not the duties of the civil magistrate.

²⁵ W. C. Kaiser, Jr., *Toward Old Testament Ethics* (Grand Rapids: Zondervan, 1983) 166–167.

²⁶ Protecting the community against violent criminals or engagement in a just war are two examples of justifiable force. Even the consistent pacifist will need to acknowledge that justifiable force on various levels has been recognized throughout much of the Church's history.

²⁷ Thus J. Neusner, "Killing," *Chronicles* (December 1992) 18.

²⁸ Gen 6:5–12.

²⁹ Z. Brzezinski, "New World, New Disorder," *Crisis* (May 1993) 40.

³⁰ Moving stories about death-row inmates who convert to faith in Christ should be kept in proper perspective. Death-row converts, most importantly, are ready to meet their Maker. They

was based on sixteen years of observing 255 criminal patients at St. Elizabeth's Hospital in Washington, D.C. The two researchers' conclusions were nothing short of controversial. Criminals were found neither to be victims of society nor of "character disorders." Rather, they acted with deliberation and were in control of their behavior.³¹

The authors concluded that the fear of death was very strong in their patients. Some crimes, as it happened, were ruled out because of these fears. The fear of the courts and the fear of losing one's life, it must be emphasized, are two totally distinct matters.³² It is indeed ironic that the burden of proof for the efficacy of capital punishment as a deterrent rests on the shoulders of its advocates. The entire criminal justice system historically has been based on the common-sense notion that the more severe the penalty the greater its deterrent effect on the would-be offender. Economists, it should be noted, wholly subscribe to this proposition. The law of demand posits a negative relationship between the price of a commodity and the amount actually demanded for it. Can anyone really doubt the same when applied to the realm of crime? Most human beings, after all, are inclined to avoid situations that are likely to be unpleasant, painful or fatal. (This is the essence of Rom 13:3–4: "If you do evil, be afraid [of the magistrate], for he does not bear the sword in vain; he is God's servant, an avenger.")

The wisdom of Ecclesiastes, uttered nearly three millennia ago, holds true for a contemporary framework of criminal justice: "When the sentence for a crime is not quickly carried out, the hearts of the people are filled with schemes to do wrong." What in fact has undermined the deterrent effect of the death penalty in modern society is not capital punishment in principle but the inconsistency with which it has been applied. A law that is not enforced will not be feared, and a law that is not feared will not deter. "Then all Israel will hear and be afraid" is a recurring statement found in the Pentateuch. From the standpoint of the Biblical writer,

have made peace with their Creator God, much the same way as the one thief on the cross. Moreover, tragic as an innocent execution may be, it is far less frequent—and tragic—than the sobering realities of the criminal justice system as it presently stands. Innocent deaths resulting from released or paroled criminals are infinitely more common than the potentially innocent person on death row. Moreover, normally forensic evidence exists for the convicted murderer of which the general public has no knowledge.

³¹ The conclusions of Yochelson and Samenow departed radically from conventional behavioral thinking. At the time they were published they drew everything from high praise from those concerned with the bankruptcy of corrections to knee-jerk criticism from those whose "humanitarian" model was being devastated. In this regard Christians are called to be more discerning. Any optimism about human nature that circumvents the justice of God in favor of mere mercy is a false caricature of the character of God. To be punished—however severely—because we in fact deserved it is to be treated as a dignified human moral agent, created in the image of God.

³² This distinction, which is a moral-legal catastrophe, cannot be overestimated. According to the National Center for Policy Analysis, in 1990 the expected punishment for murder was 1.8 years in prison, for rape 60 days, and for aggravated assault 6.4 days.

punishment educates, and the threat of temporal judgment has a decidedly deterrent effect.³³

Abolitionists normally fail to confront with painful honesty the ethical imperatives of Genesis 9. Premeditated murder constitutes the initiation of force against an innocent person and the ultimate expression of despising divine authority. When in defense of an innocent victim and society the civil authorities execute a murderer, no inalienable right is being violated. The frequent cry that capital punishment is “barbaric” depends fundamentally on how a society perceives the moral difference between crime and punishment. To abandon the criteria for just punishment—punishment commensurate with the crime—is to abandon all criteria for punishment.³⁴ In truth, the sentences imposed by many state systems bear almost no resemblance to time actually served, thus breeding disrespect for the criminal justice system on the part of criminals themselves, jurists, victims and the general public.

In a moral vacuum, retribution³⁵ and restoration are indistinguishable from revenge. A view of life that acknowledges proportionality for crime, contrarily, is not “uncivilized.” Rather, it is predicated on life’s inherently sacred character.³⁶ Hence the universal proscription against premeditated murder in Genesis 9, a proscription that transcends the old covenant. Since there is no possibility of offering restitution in the case of murder, “by man (*bā’ādām*)” the blood of the murderer is to be shed (9:6). Murder, it should

³³ It seems tragic that, from the abolitionists’s standpoint, deterrence must be “proven.” What is instilled within the human conscience and woven into the fabric of the moral universe—namely, that immoral acts receive their just reward—is acknowledged instinctively by all peoples everywhere, with the exception of social/policy elites and some religious activists in western culture. Generally speaking, among social theorists and some policymakers there exists an unwillingness to acknowledge that deterrence in fact is (or can be) statistically verifiable. Among those studies done that can be adduced as evidence of deterrence are the extensive sixteen-year research project undertaken by Yochelson and Samenow already cited; I. Ehrlich, “Participation in Illegitimate Activities: An Economic Analysis,” *Essays in the Economics of Crime and Punishment* (ed. G. S. Becker and W. M. Landes; New York: Columbia University, 1974); “The Deterrent Effect of Capital Punishment: A Question of Life and Death,” *American Economic Review* (June 1975) 397–417; “Deterrence: Evidence and Inference,” *Yale Law Journal* (December 1975) 209–227; “Capital Punishment and Deterrence: Some Further Thoughts and Additional Evidence,” *Journal of Political Economy* (August 1977) 741–788; S. K. Layson, “Another View of the Canadian Time-Series Evidence,” *Canadian Journal of Economics* (February 1983) 52–73; *A Reexamination of the U.S. and Canadian Time-Series Evidence on Homicide and Deterrence* (dissertation; Chicago: University of Chicago, 1983); “Homicide and Deterrence: U.S. Time-Series Evidence,” *Southern Economics Journal* 52 (1985) 68–89.

³⁴ This was argued persuasively by C. S. Lewis earlier in this century in his critique of “humanitarian” punishment; “The Humanitarian Theory of Punishment,” *God in the Dock* (Grand Rapids: Eerdmans, 1970) 287–294.

³⁵ In speaking of retribution I wish to distinguish between emotions of hatred and the Biblical understanding of requital that satisfied true justice by restoring a moral balance previously disturbed.

³⁶ Thus the abolition of the death penalty for premeditated murder is not more humane, as many would contend. Rather, it is a fundamental misunderstanding of the holiness, righteousness and justice of God.

be emphasized, constitutes no less a heinous (and thus punishable) crime in the NT than in the OT.

Abolitionists gloss over the ultimate in morally repugnant acts when they argue that through the death penalty the criminal is prevented from restitution—that is, doing something for his evil. The Biblical witness is that murder cannot be atoned for,³⁷ inasmuch as it is the ultimate crime against God: effacing the *imago Dei*. Furthermore atonement for capital crimes is not pushed off into the *eschaton*. Rather, criminal justice is to serve as a (present) shadow of eternal punishment.

This in no way negates the mercy of Christ extended to the sinner. It merely recognizes that consequences for our sins are not obliterated by the fact of Christ's redemption. Therefore the murderer can in fact stand forgiven in the sight of God, while he at the same time undergoes the capital sanction that God himself imposes through the civil authorities. Christ's mercy is not a mercy that erases penalties for human crimes. Rather, it is a mercy that offers the thief a place in paradise.³⁸ The time to consider the magnitude of murder is before the sanction is imposed, not after the fact. Such is designed to instill within all members of society the fear of God.³⁹

The rationale for the capital sanction in the case of murder is none other than the safeguarding of human life. Genesis 9:5–6 is to be understood foremost as an institution that protects life, and the retribution sanction has the social effect of discouraging invasions upon the sanctity of the human creature. An assault on human life is comparable, as it were, to an assault against God.⁴⁰

IV. CONCLUSION

The ethics of capital punishment do not rest on sentimental reasoning that frequently accompanies the debate over the death penalty. The arguments commonly cited by both secular and religious abolitionists—purported Eighth Amendment immunity, executing the innocent, lack of statistically

³⁷ This is the strongest implication of Gen 9:6 and the explicit declaration in Num 35:31 (an announcement that follows meticulous instructions on the cities of refuge for involuntary manslaughter in 35:6–29). Even the most secular of contemporary legal authorities acknowledges the difference between involuntary manslaughter and premeditated murder. Thus the Church cannot legitimately argue that capital punishment in the case of premeditated murder is unjust.

³⁸ Luke 23:39–43. Luke is careful to note that the thief in fact deserved his temporal punishment (“We are receiving the due reward for our deeds, but this man has done nothing wrong”). Legal sanctions exist for Christians and non-Christians alike. In our culture they encompass everything from speeding to strangulation. Religious folks are no less subject to the penalties than nonreligious, regardless of their beliefs in Christ's forgiveness.

³⁹ While the civil authorities exercise the function of the executioner, it is the murderer who calls this fate upon himself. He imposes the death penalty upon his own life. Such should temper our feelings of sympathy and expressions of “moral outrage” with the approach of the day of reckoning for the criminal. In secularized western culture, the criminal himself has become the object of more sympathy than the true victims of violent crime. Rarely do family members of murder victims receive the expression of sentiment that many death-row inmates receive. This is a travesty of monumental proportions.

⁴⁰ Kaiser, *Ethics* 166–167.

verifiable deterrence, the insufficiency of revenge/retribution, the fallibility of the criminal justice system, rehabilitation, abrogation of the Mosaic code, a "higher Christian ethic"—fail to withstand the scrutiny of the full range of Biblical data. On the whole, Scripture favors the retention of capital punishment for premeditated murder.

The Christian community takes no pleasure in clarifying this difficult issue. Nevertheless it plays a critical role in defining the ethical contours of the moral debate, a debate that more often than not proceeds along misguided emotional and sentimental lines. In keeping with its earthly mandate the Church is to instruct the state in matters of social justice. Social justice requires uniform standards of sentencing. The notions of "due process of law," "equal protection under the law" and "equal justice for all" are meant to avoid the utilitarian effects of unequal justice that are morally repugnant. The degree to which the Church actually contributes toward furthering authentic justice depends on the degree to which she is faithful to divine revelation.