

Faith and Thought

A Journal devoted to the study of the inter-relation
of the Christian revelation and modern research

Vol. 93

Number 1

Summer 1963

GORDON H. CLARK, Ph.D.

Capital Punishment

THE contemporary proponents of the abolition of capital punishment rely mainly on so-called 'practical' considerations: capital punishment does not deter; sometimes an innocent man is executed; the wealthy can buy their freedom, and only the poverty-stricken are put to death. To these practical considerations a religious flavour is given by applying "Thou shalt not kill" to governments, and by appealing to Christian sentiments of mercy and brotherhood. It has even been said that everybody is guilty of something, and that therefore nobody should punish anybody—at least for murder.

The theological principles are in fact of determinative importance. One is tempted to centre discussion on these and ignore the so-called practical considerations. Indeed this would be justifiable; but since some people might infer, incorrectly, that such a procedure betrays a timid avoidance of the real issues and hard facts in the case, the present argument will offer a token response to these more superficial contentions.

First, it is claimed that the wealthy always, or usually, escape the death penalty because they can afford to employ extremely clever criminal lawyers. Unfortunately there is a good deal of truth in this claim. In the United States a generation ago that evil genius, Clarence Darrow, obtained, not an acquittal, but a life sentence for two wealthy college students who killed a little boy merely to show that they could commit a perfect crime. One of the guilty students was himself murdered in prison, but the other one was set free.

Now, however true and deplorable it is that the wealthy, including the lords of vice and their mobsters, can often escape while the poor criminal suffers, the inference that capital punishment should therefore be abolished is invalidly drawn. Wealthy criminals also escape the punishment for other crimes: embezzlement, narcotic crimes, tax evasion, bribery, and what not; but the opponents of capital punishment do not usually contend that therefore the penalties for these crimes should be abolished or reduced. Lax and uneven justice, so prevalent in the United States where extreme solicitude is shown the

criminal and scant sympathy for the victim, ought to be remedied, not by the abolition of penalties, but by the strengthening of justice.

A second objection to capital punishment is the occasional execution of an innocent man. Here too it cannot be denied that this has occurred. But so few are the executions in proportion to the murders and so obviously guilty are those executed, that the tragic exception is extremely rare.

It is less rare that innocent persons are punished for other crimes. For example, in my own state of Indiana a man was convicted in 1897 of the petty theft of fifteen dollars. Later, by executive order, i.e. without a hearing, he was sent from prison to a mental institution. In 1959 at the age of eighty-three he escaped and walked to the local courthouse to plead for his freedom. His sanity was affirmed and he was discharged after more than fifty years of wrongful imprisonment.

Granted, if he had been executed in 1897, he could not have been freed in 1959. The opponents of capital punishment have a point, but in view of a half-century of wrongful imprisonment the point has little length, breadth, or thickness.

Justice indeed needs to be improved. It is an outrage that in Massachusetts a person can be incarcerated because he is deemed 'likely' to violate 'the conventions or morals of the community'. He need not have done anything reprehensible; the mere 'likelihood' is sufficient to have him put away for life. Again, the remedy is not the abolition of penalties for crimes, but a stricter justice.

The third practical objection mentioned in the introductory paragraph was the claim that capital punishment does not deter. Now, it may be that the law of capital punishment does not altogether deter murderers. The laws against theft do not altogether deter thieves. The frequency of crime in the United States is appalling, and it is all too evident that the laws do not deter. Perhaps, however, enforcement of the laws might deter.

In the United States for every four murders only one suspect is tried; of the suspects brought to trial only one in ten is sentenced; and only one in eighty is executed. New York City had 390 murders in one year; 10 per cent were convicted. In the same year London had twenty-six murders; thirteen of the murderers committed suicide and the other thirteen were executed. If therefore the American judiciary would support the police and have a care for the safety of the community, capital punishment would deter.

But even with our present laxity, capital punishment in one respect does indeed deter. The claim that it does not is palpably false. Once a murderer is executed, he is effectively deterred from murdering again. Unfortunately there are too many cases of murderers, given life sentences and then paroled or pardoned, who go out to commit several additional murders.

Caryl Chessman was recently a celebrated case. He had committed murder, rape, and assorted crimes. Pleas for his release came from all over the world; there were demonstrations in London and Paris; the Pope as well as Khrushchev interceded. These misguided sympathisers paid no attention to Chessman's defiant declaration in court that if he should be released, he would commit the same crimes again, only he would be more clever and not get caught. Most fortunately for us all he was executed. There was no doubt of his guilt; there was no reasonable doubt that he would continue in crime if released; and yet the opponents of capital punishment, without the support of their 'practical' arguments, demanded that he be not executed.

There is another practical consideration with reference to the matter of deterrence. If the penalty for murder were life imprisonment instead of execution, then a criminal would run no further risk in murdering the witnesses of his other major crimes. He would run no further risk in murdering the arresting officer. These additional murders would give him a chance of escape without increasing his danger. No wonder the police are not pressing for the abolition of the death penalty.

This must suffice for the practical considerations; let us turn to the deeper theological issues. Questions of political philosophy are also involved. If the sixth commandment forbids the infliction of capital punishment by civil authorities, one must frame a theory of government by which limitations on the state's activities are determined. More generally, by what right does the state exist? How does it acquire, not merely power, but right? The opponents of capital punishment, and particularly their friends, the pacifists, often neglect this general problem of civil government. Now, if these political questions cannot be answered by a purely secular philosophy, as I believe they cannot,¹ the problem becomes theological, and from this point on the matter will be discussed within a Christian context.

That the Old Testament authorises capital punishment cannot be denied. The principle was laid down in the time of Noah that 'whoso sheddeth man's blood, by man shall his blood be shed: for in the image

¹ Cf. *A Christian View of Men and Things*, chap. iii.

of God made he man'. This divine declaration not only authorises capital punishment, but also gives its justification: man was created in God's image, and murder is a direct affront against God.

Also implicit is the authorisation of civil government, for unless God gave the right of capital punishment to individuals in the first place (compare the theory of civil arrest), one would be at a loss to explain governmental authority.

The Old Testament is clearly unfavourable toward pacificism and the abolition of the death penalty. Yet with some frequency we are told, 'Thou shalt not kill'. This appeal to the sixth commandment is nothing else than silly. The context from which it is wrenched, the Mosaic Law, specifies the death penalty for the infraction of this law and other laws also. The establishment of cities of refuge, to which a suspect might flee and where he might remain while his guilt or innocence is being determined, is itself evidence that capital punishment is embedded in the law. Hence one cannot escape the conclusion that the Old Testament authorises this penalty.

Furthermore, the nature of civil government receives considerably more attention in the Old Testament than in the New. Either then one must discard the Old and rely on the lesser amount of information in the New, or one must consider the Old as the foundation on which the New builds. This latter alternative is the view of the New Testament itself. The Pharisees had mistaken notions as to what the Old Testament taught, and the New Testament purports to give the correct explanation. Thus Jesus appeals to Moses (John v. 46-47), and Paul quotes Habakkuk and Genesis (Rom. i. 17; Gal. iii. 8 and iv. 24).

Therefore I must insist that when the Old Testament lays down basic principles, such as the sovereignty of God, the creation of the world, the divine control of history, the inclusion of infants in the Covenant, and other matters not explicitly abrogated or modified in the New Testament, the silence or near silence of the latter is not an excuse for abandoning the principles of the former.

Now, does the New Testament abrogate or modify the Old with respect to civil government, war, and capital punishment? All theologians acknowledge that the New modifies, and even abrogates the Old in some way or other. The most obvious of these is the abrogation or fulfilment of the ritual by the death of Christ. We no longer sacrifice lambs or turtle doves. But it would take a foolhardy logician to argue for the abolition of the death penalty on the sole ground that the Mosaic sacrifices have ceased.

However, it is also true that the New Testament abrogates the civil laws of the ancient state of Israel. God abolished the theocracy. Such is the teaching of Jesus in Matt. xxi. 33-45. The Pharisees thought that any men who would kill the Messiah would be miserably destroyed, but that then God would let out the vineyard to other High Priests and the theocracy would continue as before. Jesus said, 'No'. The Kingdom would be altogether taken from the Jews and a new order would be instituted in which the rejected stone would become the head of the corner. So it happened; and therefore the detailed civil and criminal code of Israel is no longer binding.

For this reason we no longer have cities of refuge: police and judicial protection is enough. Nor are we required to marry our brother's widow, because the purpose of preserving his name and tribe is no longer in effect.

But although all this is admitted, it does not justify the abolition of capital punishment. In the first place, the purpose of the death penalty still remains, even though the purpose of marrying a brother's widow does not. In the second place, the abrogation of the Mosaic code does not affect the moral and political principles given to Noah: such abrogation in and of itself merely leaves the situation as it was before the Mosaic legislation. And capital punishment dates not merely from Noah, but apparently from the time of Cain and Abel. God commanded the death penalty because murder was a direct affront to the divine Majesty. To agitate for the elimination of this penalty is disobedience to the will of God, motivated by a low opinion of human life.

The only answer to this argument would be an explicit statement in the New Testament that governments no longer have authority to execute a criminal. There is of course no such explicit statement, but the opposition tries to show that the equivalent is implied.

For example, sometimes an extreme antithesis is drawn to the effect that the Old Testament God is a God of wrath, while the New Testament God is a God of love. Or, more modestly it is claimed that law in the New Testament rests upon an entirely different basis. Some of the opponents have used the account of the woman taken in adultery as evidence.

Now, the case of the woman taken in adultery is a particularly poor piece of evidence. In fact, one wonders what the opponents' argument really is. Do they mean that the principle of capital punishment requires every guilty person to be executed regardless of circumstances? This must be their unacknowledged assumption, for otherwise a single

case would support no conclusion. But obviously, the Old Testament, which establishes the death penalty, opens with an exception. Cain was not executed. In the case of the woman the account itself discloses certain peculiar circumstances. The woman, it will be remembered, was taken in the very act; but the Pharisees had not arrested the man, whom they must also have found in the very act. Jesus therefore may have thought it wise to free the woman in order to convict the Pharisees of their own partiality. Furthermore, if the case of the woman implies the abolition of capital punishment, it equally well implies the abolition of all punishment. The woman went scot-free. This embarrassing implication points up what was said earlier: pacifists and opponents of the death penalty have not sufficiently considered the general problem of civil government. By what right is any penalty inflicted?

Sometimes other verses are grasped at in desperation. One author argued that in the synagogue at Nazareth Jesus stopped his reading just before the clause on the day of vengeance. From this the author inferred that vengeance is antichristian and that therefore the New Testament opposes the death penalty.

Such an inference, if valid, would put every preacher in jeopardy at the last verse of his Scripture reading before the sermon. Think what wild conclusions would be allowed! At any rate the argument from Jesus' closing the book rests on the assumption that the Old Testament and the New present antithetical views of God.

This contention, however, is demonstrably false. To begin with the verse in question, Jesus stopped reading at a given point because he wanted to read only so much as he was to fulfil during his earthly ministry. Therefore he began his preaching with the assertion, This day is this scripture fulfilled in your ears. But there is not the slightest hint that the remainder of Isaiah's prophecy will not be fulfilled at a later date. It is well to note that, in substance, Isaiah's prophecy is repeated in the New Testament, where Paul predicts that Jesus shall return in flaming fire to take vengeance on them that obey not the Gospel.

Besides this God's wrath is mentioned in Romans i. 18, Ephesians v. 6, and Revelation xvi. 1; and Jesus more than anyone else in the whole Bible had a great deal to say about hell.

On the other hand, the Old Testament frequently mentions the loving kindness and tender mercies of the Lord. Therefore the liberal contention that the Bible presents two different concepts of God is demonstrably false.

Finally, to brush aside all these minor arguments, what does the New Testament itself teach concerning civil government? Although, as has been granted, it does not say as much as the Old Testament, its principle is no less explicit. The *locus classicus* is Romans xiii. After stating that civil government operates on divine authority, Paul assigns it two specific functions. The first is the function of the sword, viz. war and capital punishment. What else could the sword mean? The second is taxation. There is nothing, whatever, anywhere, in the New Testament that contradicts this basic principle of politics.

In fact, there are other passages which more particularly support the principle of civil penalties:

Luke xix. 27: But those mine enemies, which would not that I should reign over them, bring them hither and slay them before me.

Romans i. 32: They which commit such things are worthy of death.

Acts xxv. 11: For if I be an offender, or have committed anything worthy of death, I refuse not to die.

In conclusion therefore the pacifists and the opponents of capital punishment, so at least it seems to me, have a defective theory of politics or no theory at all. They fail to justify civil government. Next, their liberal theology is a serious misunderstanding and misrepresentation of the text of the Bible and the nature of Christianity. Lastly their moral principles are perverse. The abolition of capital punishment is an instance of the ethical irresponsibility of the modern secular community where a misplaced sympathy for the criminal has widely replaced a lost sense of justice.