



Capital Punishment and the Sanctity of Life

Part 2

Manfred E. Kober, Th.D., former professor and chairman of the Theology Department at Faith Baptist Bible College and Theological Seminary in Ankeny, Iowa, is research assistant for Russ Doughten Films and Mustard Seed, International. He has hosted 30 Holy Land tours and numerous European tours.

Editor's Note:

Last month we reviewed the moral and spiritual conditions that breed the disfavor of capital punishment. We also noted the Biblical bases for capital punishment. This month we look at specific arguments against punishment and the Bible's answers to these arguments.

B. Opponents of Capital Punishment

Most objections to the death penalty can be grouped under eight major headings: the social, penal, legal, constitutional, moral, humanist, spiritual, and dispensational arguments.

1. The social argument.

a. The argument: **Capital punishment does not restrain crime.** The death penalty is not a deterrent.

b. The answer: Logic shows that, for one, capital punishment deters the murderer from committing other crimes. Further, studies indicate that the death penalty deters others from committing murder. In the words of columnist Charley Reese, "The recidivism rate for executed murderers is zero."¹

District attorney Paul Shafer writes, "There is no known deterrent other than capital punishment to prevent these persons incarcerated for life from killing their guards in an attempt to escape."²

Even a life sentence without a chance of parole is no guarantee that serious crimes will not be committed. Vernell Crittendon, public information officer at San Quentin State Prison, reports that of the 85 violent death-row

inmates at his institution, 45 attacked various wardens and staff members at San Quentin during the past 18 months.³

While opponents of capital punishment argue that there is little reliable evidence that the death penalty is a deterrent to murder, various studies indicate otherwise. One early study by an Illinois economics professor indicates that every execution would deter 156 murders. He admits the number is an estimate, but after exhaustive statistical research, he concludes that "a single execution would be likely to deter somewhere between 50 and 200 murders."⁴

Other studies point to capital punishment as a deterrent.

In 1971, when we had no executions, there were an estimated total of 17,630 murders in our country as compared with approximately 9,000 in 1960—a 96 percent increase. [But with only a 15 percent increase in population.]⁵

The most thorough study done to date in the United States, covering the years 1977–1996, has just been released by three economics professors at Emory University in Atlanta, Georgia. This is their conclusion:

Results suggest that capital punishment has a strong deterrent effect. An increase in any of the three probabilities—arrest, sentencing, or execution—tends to reduce the crime rate. In particular, each execution results, on average, in 18 fewer murders—with a margin of error of plus and minus 10.⁶

Opponents of capital punishment may argue its deterrent factor, but they dare not ignore the above study, which concludes that each execution deters anywhere between 10 and 28 murders. It should be pointed out, however, that the execution of the criminal is primarily a

divinely sanctioned punishment for some heinous crime. On the other hand, God said that capital punishment will indeed deter crime: "[The people] shall hear and fear, and hereafter they shall not again commit such evil among you. Your eye shall not pity; but life shall be for life . . ." (Deuteronomy 19:20, 21; cf. 13:11; 17:13).

2. *The penal argument.*

a. The argument: **Capital punishment does not rehabilitate the criminal.**

b. The answer: Capital punishment is not rehabilitative or remedial but retributive. There is a difference between chastisement, the source of which is love (Hebrews 12:6), and punishment, the source of which is justice. The Biblical connection is not punishment and rehabilitation but punishment and justice. As Norman Geisler well notes, "The prime reason for capital punishment . . . is that justice demands it. A just order is disturbed by murder and only the death of the murderer can restore that justice."⁷

Modern man no longer believes in God or in unchangeable moral law. Thus the idea of justice is foreign to much of our society. With no existing law that the criminal has broken, the abolitionist therefore argues for rehabilitation and reformation of the murderer. Furthermore, there is a real danger that a community that is too ready to forgive the criminal may end up condoning the crime.

The concept of retributive justice is rooted in the very character of God and in the nature of the gospel. God's Son took our rightful punishment upon Himself. The cross demonstrates the divine justice in punishing sin and divine mercy in pardoning those who place their faith in Jesus Christ (Romans 3:25, 26).

3. *The legal argument.*

a. The argument: **Capital punishment does not render justice.** The poor suffer while the rich go free. African-Americans are more likely to be executed than Caucasians.

b. The answer: Injustice in the application of capital punishment reflects on the administration of the law rather than on the institution of capital punishment. Renowned penologist Ernest van den Haag puts the issue in focus. What if the selection of criminals slated for execution is capricious? Could that be an argument against the death penalty?

Guilt is personal. The guilt of a convict who has been sentenced to death is not diminished because another, as guilty, was sentenced to a lesser punishment or was not punished at all. Equality is desirable. But justice is more desirable. Equal justice is most desirable, but it is *justice* that we want to be equal, and equality cannot replace justice.⁸

Gordon H. Clark discounts the argument that only the poor (or African-Americans) are convicted and the wealthy (or Caucasians) escape:

Actually the courts are so lenient and the public so permissive that nearly everybody escapes. If the objection were true, however, the answer would not be to abolish capital punishment and let the number of murderers keep on soaring, but it would be to put honest judges on the bench and in the box jurors who are more compassionate toward the victim than toward the criminal.⁹

To quote Professor van den Haag again,

Out of the approximately 20,000 homicides committed annually in the United States, fewer than 300 lead to a death sentence. . . . Still, if there really were discrimination in sentencing, opposing it would not logically lead one to oppose the execution of the murderers discriminated against, let alone the death penalty as such. . . . Suppose the police racially discriminated in handing out parking tickets. . . . Would distributive discrimination argue for abolishing parking tickets? . . . To be sure, the death penalty is a more serious matter. But why should discrimination in distribution ever lead us to abolish what is being distributed?¹⁰

Abolitionists charge that the death penalty is overused, especially in Texas, where one-third of the executions have taken place in the United States in recent years. Van den Haag shows,

We are not ready to do without it, yet hesitate to use it: There are many convicts on death row, but only a few are actually executed. Between 1973 and 1995, 5,760 death sentences were imposed; as of 1995, only 313 had been executed, and only some 400 have been executed since.¹¹

"The leniency of the American judicial system is further seen by the fact that the average prison time served by a convicted murderer is 5 years and 11 months."¹²

The Bible demands fair and equal treatment: "You shall do no injustice in judgment. You shall not be partial to the poor, nor honor the person of the mighty. But in righteousness you shall judge your neighbor" (Leviticus 19:15). If capital punishment is applied unequally, then effort should be made to apply it equally, not abolish it. Geisler's comments are to the point:

A disproportionate number of capital punishments is not in itself a proof of inequity, any more than a disproportionately high number of minorities

in professional basketball is proof of discrimination against majority ethnic groups. This is not to say that one group of people is more sinful than another, but simply that conditions may occasion different social behavior. However understandable and regrettable this may be, a society cannot tolerate violent social behavior, and it must protect its citizens.¹³

As Walter Berns has succinctly summarized, "To execute black murderers or poor murderers because they are murderers is not unjust; to execute them because they are black or poor is unconscionable and unconstitutional."¹⁴

Related to the argument that capital punishment is capriciously applied is the protestation that human error leads to the execution of innocent individuals. By way of response it may be said that no person should be executed without the due process of the law. Furthermore, there were slightly more than 700 people who were executed in this country since the Supreme Court authorized the death sentence in 1977. Among the experts, there is no consensus that any of them were innocent.

Supreme Court Justice Sandra Day O'Connor told the Minnesota Women Lawyers in July 2001 that she is leaning toward eliminating the death penalty because of the possibility that innocent people have been executed. She noted that six death row inmates were freed in 2000 and that 90 have been exonerated by new evidence since 1973.

Cal Thomas astutely assesses the situation: "The exoneration of some death row inmates is not an argument in favor of eliminating capital punishment but a testimony to the fairness of a system skewed toward protecting the accused, sometimes to the detriment of justice."¹⁵ He proceeds to chide Justice O'Connor for projecting on condemned killers an inalienable right to live yet refusing to project a similar view on innocent pre-born babies in the process of exiting the birth canal.

What of the likelihood of human error in executions? Gordon Clark puts this controversial subject into perspective:

Yet if just one innocent man is executed, . . . then consider: Do you prefer 10,000 murders to save one innocent man rather than one tragedy to save 5,000 lives? But of course this type of argument is superficial and irrelevant. God gave the right of capital punishment to human governments. He intended it to be used wisely and justly, but he intended it to be used.¹⁶

The fact that mistakes will be made by fallible human beings in the application of the

death penalty does not argue for the doing away with it. Geisler's analogy is very much to the point: "Doctors make fatal mistakes, and so do politicians, but these mistakes are not good reasons for doing away with the practice of medicine or government."¹⁷

4. *The constitutional argument.*

a. The argument: **Capital punishment does not respect the Constitution.** The death penalty, it is asserted, is a violation of the Eighth Amendment, which prohibits "cruel and unusual punishments." This worn argument, gaining momentum once again in recent months, looks upon capital punishment as a vestige of primitive people and a violation of our enlightened Constitution. As Michael Meltsner, an abolitionist of capital punishment, explains it, "Progressive abandonment of the death penalty marked the advancement of civilization. Capital punishment had always been associated with barbarism; its abolition with such democratic values as the sanctity of life, the dignity of man, and a humane criminal law."¹⁸

Justice William J. Brennan, Jr., opines in *Furman vs. Georgia* that all capital punishment is cruel and unusual because it degrades the human dignity both of the "victim" and the executioner of the death penalty. Brennan insists that the authors of the "cruel and unusual" clause of the Eighth Amendment intended to forbid all punishments that do not comport with human dignity, and that the death penalty does not comport with human dignity because it is too severe, and that it is too severe because it causes death.¹⁹

b. The answer: The Eighth Amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." By "cruel punishments" the writers meant those that were especially of medieval barbarities, such as disembowelment, the rack, the thumb-screw, pressing with weights, boiling in oil, drawing and quartering, and burning alive.

By "unusual punishment" the founding fathers seemed to have meant "capricious," that is, "not guided by known rules which permit prediction."²⁰

As capital punishment is presently administered, it is not cruel, that is, it is neither a particularly painful death nor an undeserved

death. Neither is capital punishment unusual, insofar as legislators and governors have collaborated in the undermining of the administration of capital punishment. The answer is to expedite, not to eliminate, executions.

It is interesting to note that in the United States of America, arguably the most enlightened nation on this planet, a large percentage of citizens favor capital punishment—an impressive 85 percent in the summer of 2001—despite the fact that capital punishment has almost no articulate supporters in the public among the intelligentsia.

Could it be that this American position on the death penalty reflects not a spirit of barbarism but a sense of Biblical orientation, something passed on to us, like the Constitution, from our founding fathers?

5. *The moral argument.*

a. The argument: **Capital punishment does not reflect love.** Love and capital punishment are mutually exclusive.

b. The answer: If love and capital punishment are contradictory, then the sacrifice of the Savior was a contradiction. The principle for the substitutionary atonement is that only life can atone for life (Leviticus 17:11). God's love was manifest in the death of His Son as a substitute for the sinner (John 3:16; Romans 5:8; John 15:13).

God is not only a God of love (1 John 4:8) but of light (1 John 1:5), spirit (John 4:24), truth, and life (John 14:6). In whatever God does, His love and justice are in perfect harmony (Romans 9:20; Genesis 18:25). God always does and demands that which is right.

As a God of light, or righteousness, He cannot countenance sin, but as a God of love He provided forgiveness for the sin of humankind. Forgiveness, however, does not automatically remove any temporal penalties for sin. A Christian who jumps off a bridge will not escape death at the bottom though his or her sins have been forgiven. Similarly, inmates on death row who trust in Christ as Savior must still subject themselves to the divine requirement that in taking another's life, one forfeits his or her own life.

Even from a purely secular perspective, capital punishment is not in conflict with a loving attitude. Compassion is not decisive, as van den Haag demonstrates:

Felt with a man to be executed [compassion] may also be felt with his victim: If the execution spares future victims of murder, supporters of the death penalty may claim compassion as their argument.²¹

6. *The humanist argument.*

a. The argument: **Capital punishment does not rectify evil.** Two wrongs don't make a right. Capital punishment is legalized murder and brutalizes the community. Opponents of capital punishment imply that no murder is so heinous that it should be punished with the death penalty.

b. The answer: The Bible prohibits the taking of life but permits the execution of the murderer. Thus, the avenger of blood who apprehends and brings the criminal to justice is not guilty of blood (Numbers 35:27). Then, too, there is a world of difference between a murder and an execution. Governing authorities are appointed to be God's instruments of justice (Romans 13:1-7; 1 Peter 2:13-17). Their activity is a legal one rather than a personal one. As van den Haag incisively observes,

When an offender is legally arrested and imprisoned, we do not speak of "legalized kidnapping." Arrest and kidnapping may be physically indistinguishable. . . . Punishment differs because it has social sanction. . . . Not the physical act but the social meaning of it distinguishes robbery from taxation, murder from execution.²²

The Bible believer would add that in the case of murder, the act is an outrage against God. The death penalty is carried out in obedience to God. In reality the humanistic opponents to capital punishment are opposed to the taking of any human life for whatever reason, but their attitude is paradoxical, as Charley Reese demonstrates:

As for those who profess sympathy for the killers, I think they are sick. They show no sympathy for innocent life. . . . Most of them have zero sympathy for the 100-percent innocent children who are slaughtered in abortion clinics.²³

7. *The spiritual argument.*

a. The argument: **Capital punishment does not rescue the sinner from Hell.** Our efforts should be on the sinner's salvation rather than on his or her execution.

b. The answer: There is ample time between the apprehension and execution of the criminal. On the average, eight years and ten months elapse between sentencing

and execution. Besides, there is no proof that a man or woman serving a life sentence is more likely to turn to Christ for salvation than one with a death sentence. The observations of John Jefferson Davis go to the heart of the matter:

Rather than foreclosing the possibility of salvation, the reality of the death penalty forces the one convicted to think about his eternal destiny and consequently can even be seen as beneficial. . . . The death penalty reminds the murderer, in a way that life imprisonment cannot, of the grim but inescapable truth that "it is appointed for men to die once, and after that comes judgment" (Hebrews 9:27).²⁴

One writer spells out the Biblical hope that exists for death row convicts:

The repentant thief was facing the death sentence when he met Christ. He acknowledged his sin, recognized Jesus Christ for Who He is—the sinless Son of God—and trusted in Him and His once-and-for-all, vicarious atoning sacrifice. At that very moment, Jesus Christ forgave him and promised him, "Today thou shalt be with me in paradise" (Luke 23:43). Although the convict still faced the consequences of violating the law here on earth, God forgave him of his sin when he genuinely repented and trusted in Christ for salvation.²⁵

8. *The dispensational argument.*

a. The argument: **Capital punishment does not realize the New Testament ethic.** It is based on a sub-Christian or pre-Christian concept of justice, which is superceded by a New Testament morality of forgiving grace.

b. The answer: Neither the Lord nor the apostles abrogated capital punishment. To the contrary, as has already been seen, they asserted the governmental right to execute criminals. While it is true that the Mosaic law has ended, capital punishment—introduced thousands of years before the giving of the law—continues as a governmental function. Charles Ryrie notes that the New Testament does not contain a replacement ethic for capital punishment.

Dispensational distinctions do recognize that the law of capital punishment for certain crimes was done away with in Christ, but this does not include capital punishment for murder. If the New Testament gave replacement for the standard of Genesis 9:6, then the Genesis command would no longer be valid. But since it does not, the dispensational teaching concerning the end of the law is irrelevant to Genesis 9:6, and the principle of that verse apparently still applies today.²⁶

C. The Antagonism toward Capital Punishment

Opponents of capital punishment may be well intentioned but are misinformed and mistaken. Their abolitionist attitude is based on a number of erroneous perspectives in conflict with Biblical revelation.

1. *Insensitivity toward the image of God.*

A murderer destroys someone in God's image. In God's estimate, the worth of an individual is so great that anyone who tampers with the individual's sacred right to live forfeits his or her own life. Not the humanist who would save the life of the murderer, but the Biblicist who would opt for capital punishment, has the highest regard for human life.

2. *Ignorance of the Word of God.*

Biblical revelation clearly calls for the execution of criminals guilty of capital crimes. We dare not change God's Word to fit our human sensitivity. For example, David Hoekema argues strongly for the abolition of capital punishment, concluding that "there are compelling reasons not to entrust the power to decide who shall die to the persons and procedures that constitute our judicial system."²⁷

How can Hoekema, a professor at a Christian institution, dismiss Romans 13:4, which declares precisely what he denies, that government has the right and duty to take the life of the criminal?

3. *Indifference to the glory of God.*

Whatever God does, allows, or commands will ultimately bring glory to Him. Whether we understand God's rationale or not, we bow to His omnipotent will and thus uphold His glory and honor.

As a holy God, He is outraged by sin. As a just God, He has decreed punishment for sin. As a gracious and merciful God, He can forgive sin through Jesus Christ, but humankind, nonetheless, will suffer the temporal consequences of sin. Murder is an attack on the holiness of God. God desires fair punishment of the murderer by human government, which He ordained. He desires vindication and not vindictiveness. When legal authorities acquiesce to God's command, they bring glory to God.

* * *

I am currently corresponding with an individual incarcerated in a penitentiary.

His crimes are many, including manslaughter. Through a prison ministry he trusted in Christ as Savior. With his spiritual eyes opened, he knows he deserves death. He is aware of the enormity of his sin but is deeply grateful for the forgiveness in Jesus Christ. Because of legal leniency, he looks forward to parole after eight years. He desires to serve the Lord the rest of his life, but he would have been prepared to meet Him sooner, had the state demanded the extreme penalty. My friend has learned something that many fail to understand: God can forgive sin, but He cannot justify sin. God demands capital punishment for capital crimes.

Notes

¹ Charley Reese, "Bring Back Public Hangings," *Conservative Chronicle*, Vol. 16, No. 21 (May 21, 2001): 20.

² Paul Shafer, "Death Penalty," *The National Observer* (December 17, 1974): 12.

³ "The O'Reilly Factor," *Fox News* (May 31, 2001). Confirmed in a phone conversation by Mr. Crittendon on June 13, 2001.

⁴ "Study: Executions a Deterrent," *The Des Moines Tribune* (November 30, 1976): 1.

⁵ Daniel F. McMahon, "Capital Punishment," *NCOA Journal* (April 1973): 10, 11.

⁶ Paul H. Rubin, Hashem Dezhbakhsh, and Joanna Melhop Shepherd, "Does Capital Punishment Have a Deterrent Effect?" *New Evidence from Post-monetary Panel Data*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=259538 [posted March 12, 2001].

⁷ Norman Geisler, *Ethics: Alternatives and Issues* (Grand Rapids: Zondervan Publishing House, 1971), 247.

⁸ Ernest van den Haag, "New Arguments against Capital Punishment?" *National Review*, Vol. 37, No. 2 (February 8, 1985): 35. (Italics in the original.)

⁹ Carl F. H. Henry, ed., *Baker's Dictionary of Christian Ethics* (Grand Rapids: Baker Book House, 1973), 84.

¹⁰ van den Haag, "New Arguments against Capital Punishment?" 33, 34. (Italics in the original.)

¹¹ Ernest van den Haag, "The Ultimate Penalty . . . And a Just One: The Basics of Capital Punishment," *National Review*, Vol. 53, No. 11 (June 11, 2001): 32.

¹² Reese, "Bring Back Public Hangings," 20.

¹³ Geisler, *Christian Ethics* (Grand Rapids: Baker Book House, 1989), 198.

¹⁴ Walter Berns, *For Capital Punishment* (New York: Basic Books, Inc., 1979), 187.

¹⁵ Cal Thomas, "Justice O'Connor and the Death Penalty," *Conservative Chronicle*, Vol. 15, No. 29 (July 18, 2001): 29.

¹⁶ Henry, ed., *Baker's Dictionary of Christian Ethics*, 84.

¹⁷ Geisler, *Ethics: Alternatives and Issues*, 249.

¹⁸ Michael Meltsner, *Cruel and Unusual: The Supreme Court and Capital Punishment* (New York: Random House, 1973), 171.

¹⁹ Berns, *For Capital Punishment*, 162, 163.

²⁰ Ernest van den Haag, *Punishing Criminals concerning a Very Old and Painful Question* (New York: Basic Books, Inc., 1975), 227.

²¹ *Ibid.*, 209.

²² *Ibid.*, 223, 224.

²³ Reese, "Bring Back Public Hangings," 20.

²⁴ John Jefferson Davis, *Evangelical Ethics Issues in the Church Today* (Phillipsburg, N.J.: Presbyterian and Reformed Publishing Co., 1985), 207.

²⁵ Roberto-Jose M. Livio, "Capital Punishment: A Crime, a Cure or a Consequence?" *Foundation*, Vol. 20, No. 2 (March/April 1999): 34, 35.

²⁶ Charles Ryrie, *Biblical Answers to Contemporary Issues* (Chicago: Moody Press, 1973), 30.

²⁷ David Hoekema, "Capital Punishment: The Question of Justification," *The Christian Century*, Vol. 96, No. 10 (March 21, 1979): 342. ■