

Summary of Christians and Capital Punishment

This paper is the tangible result of an action taken by the Baptist General Convention of Texas in the form of a motion requesting that the Christian Life Commission study and report on the issue of capital punishment. A capital punishment study group met several times over the course of two years including a trip to the Texas Execution Chamber in Huntsville. Capital punishment does not yield to simplistic analysis at any level, biblical, historical, ethical, or practical. The sections which follow attempt to present salient aspects of the most important dimensions

Old Testament

The books of Old Testament law (Exodus, Deuteronomy, Numbers, Leviticus) assign the death penalty for a multitude of offenses:

- murder
- owning an animal that kills people
- prophesying in the name of the other gods or prophesying falsely in the name of Yahweh
- for a stubborn son's disobedience to his mother or father or a child's cursing or striking a parent
- incest, adultery, bestiality, homosexual intercourse, rape, prostitution, and having sex during a woman's menstrual period
- Sabbath-breaking
- falsely testifying at a capital offense trial
- making sacrifice to other gods
- abusing widows and orphans
- child sacrifice
- enticing people to worship other gods
- blasphemy
- a non-Levite who enters the sacred place

Although these many offenses were recorded in law, Israel's community practice was eventually to choose either not to enforce the death penalty for many of these offenses or to make it very difficult to enforce actual executions.

Several important figures in Bible History were forgiven of their capital offense: include **Cain**, for the slaying of his brother Abel (Gen. 4:14-15), **Moses** for killing an Egyptian, **David** for the dual offense of adultery and murder (2 Sam. 11-12), **Tamar** for her adultery.

Traditional Scriptures

Exod. 21:23-26; Deut. 19:21

This scripture **Eye for an eye, and a tooth for a tooth**

The *lex talionis*—the rule of revenge which stipulate a life for a life, and eye for an eye, and a tooth for a tooth (Exod. 21:24-26; Deut. 24:20)—appears at first glance to require vengeance, but instead actually limits it. Without limits, angry family members might

take seven or more lives for a life, as Lamech boasted (Gen. 4:23). The *lex talionis* reflects that clan revenge—the earliest mode of capital punishment—was part of Israel's community practice, that this revenge had a tendency to spiral out of control, and that the community was intent to restrict clan vengeance within the limits of strict proportionality. Contrary to common perception, the *lex talionis* was a legal tradition which embodied the community's determination to limit and not to require revenge.

Gen. 9:1-7

1. God blessed Noah and his sons, and said to them, "Be fruitful and multiply, and fill the earth. 2. The fear and dread of you shall rest on every animal of the earth, and on every bird of the air, on everything that creeps on the ground, and on all the fish of the sea; into your hand they are delivered. 3. Every moving thing that lives shall be food for you; and just as I gave you the green plants, I give you

everything. 4. Only, you shall not eat flesh with its life, that is, its blood. 5. For your own lifeblood I will surely require a reckoning: from every animal I will require it and from human beings, each one for the blood of another, I will require a reckoning for human life. 6. Whoever sheds the blood of a human, by a human shall that person's blood be shed; for in his own image God made humankind. 7. And you, be fruitful and multiply, abound on the earth and multiply in it.

Verse 3 grants to humans a new privilege, the right to kill animals for food. What might appear to be two distinct issues to modern readers—eating blood and shedding blood—are in Hebrew thinking closely related. Restrictions regarding blood remind Israel that all life belongs to God and must be respected as God's own. The underlying conviction is that only God can give life, and every life that is taken requires accountability to God. Verses 5 and 6 follow from this assumption and conviction.

Martin Luther considered 9:6 to be the source of all civil law, granting to humans power over life and death and hence over everything else. (Donald E. Gowan, From Eden to Babel). This verse has sometimes been read as a timeless demand by God for the execution of anyone who kills another person. Does the structure of Genesis 9:6, with a precise correspondence of life for life ("whoever sheds...shall that person's blood be shed") require or limit the shedding of blood? Just as the *lex talionis* functioned to limit blood vengeance with its precise prescription of "life for life," does Genesis 9:6 function the same way?

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In Genesis 9:6 the covenant community of the Old Testament, is authorized to execute capital offenders. A number of scholars emphasize the sacramental character of Genesis 9:4-6, observing that these verses immediately follow the account of Noah's burnt offering to God. This implies that the question of the death penalty can never be regarded as a purely legal, nonreligious matter; it carries the Biblical connotation of a sacrificial act. Israel's own struggle over time with the application of these texts to community practice was not always consistent. Interpretations which find unconditional and timeless justification for the death penalty in this text have been questioned by modern scholars.

The reference to homicide in Genesis 9:6; ("whoever sheds the blood of a human") is completely unqualified. This seems to include all who take human life regardless of motive or circumstance (e.g., unintentional homicide, killing in war). Thus there are questions regarding interpretations of this verse that allow killing to go unpunished under certain socially acceptable scenarios.

In every age human behavior follows the same pattern of violence, followed by counter-violence, followed by counter-counter-violence so that the resulting mass of violence accumulates in multiples which far exceed the original act of violence. The theme of Old Testament scripture regarding capital punishment seems to be certainty of guilt and strict and precise proportionality.

New Testament

The New Testament clearly reflects twin convictions regarding the critical importance of obedience to God and the value of human life. Jesus was certainly serious about obeying God. He also emphasized the value of human life. Jesus not only taught that we should not kill, but that we should quench festering anger with reconciling initiatives. Building on the law of limited revenge, Jesus breaks new ground.

New Testament never directly deals with capital punishment as a social issue, it seems clear that the momentum of scripture moves away from the practice of capital punishment as clan or societal vengeance. Jesus not only opposes limitless revenge, but also moves beyond the rule of limited revenge prescribed by the *lex talionis* to a third way, redemption through transforming initiatives. Shunning the vicious cycles of even limited retaliation, Jesus calls us to creative confrontation and constructive community-building.

Matt. 5:38-42

"You have heard that it was said: An eye for an eye and a tooth for a tooth." But I say to you, do not resist an evildoer. But if any one strikes you on the right cheek, turn the other also; and if any one wants to sue you and take your coat, give your cloak as well; and if any one forces you to go one mile, go also the second mile. Give to anyone who begs from you, and do not refuse anyone who wants to borrow from you."

Johannine scholar Raymond E. Brown concludes, *"The delicate balance between the justice of Jesus is not condoning the sin and his mercy in forgiving the sinner is one of the great gospel lessons."* (Raymond E. Brown, *The Gospel According to John* (Garden City, NY: Doubleday, 1966), vol. 1, pp.336ff.) Reflecting the Old Testament, the gospels teach us that disobedience may not be taken lightly, but mercy and sacredness of human life require us to avoid killing criminals if there is a morally serious alternative.

In the end, every argument regarding capital punishment from scripture must answer the questions raised by scripture: How can we most faithfully reflect both of the twin convictions discussed above (i.e., reverence for human life and seriousness about obedience)?

The Crucifixion of Jesus

The other occasion when Jesus confronted the death penalty was

when he himself was its victim. Crucifixion was a form of state punishment administered to slaves and rebels who were tortured and killed in full public view to convince other slaves and potential rebels not to resist oppression. That God was able to use the cross for the redemption of humankind bears remarkable testimony to God's redemptive faithfulness but in no way lessens the injustice of Jesus' crucifixion.

The Power of Christ

Now when Pilate heard this, he was more afraid than ever. He entered his headquarters again and asked Jesus, "Where are you from?" But Jesus gave him no answer. Pilate therefore said to him, "Do you refuse to speak to me? Do you not know that I have power to release you, and power to crucify you?" Jesus answered him, "You would have no power over me unless it had been given you from above; therefore the one who handed me over to you is guilty of a greater sin." John 19:8-11

The power given to Pilate references Pilate's God-granted role in the drama, not his power to execute criminals. As Raymond Brown says, "No one can take Jesus' life from him; he alone has power to lay it down. However, now Jesus was voluntarily entered 'the hour' therefore, the Father was permitted men to have power over Jesus' life." The crucifixion narratives clearly affirm that the authorities acted unjustly in sentencing Jesus to death and neither directly nor indirectly underwrite capital punishment.

Following Jesus is the defining act of Christian discipleship, it includes moving beyond revenge to transforming and reconciling initiatives (Matt. 5:21-24); practicing neighbor love so expansively as to include love for our enemies (Matt. 5:43-48); valuing and embracing the disenfranchised, the despised, and the forgotten ("the least of these") (Matt. 25:31-46); sharing God's love and hope with everyone, including those whose lives appear to be hopelessly lost and broken (Luke 15:1-34); and proclaiming God's mercy and forgiveness for sinners even as we champion the cause of righteousness (John 8:2-11)

The Early Church

As a marginalized and misunderstood minority within the Roman Empire, the early church was victimized by the death penalty. The unjust executions of Jesus and his followers suggest that the early church would oppose the death penalty, although relevant texts are scarce.

Constantinian Christianity

When Christians were being executed for their faith, Cactantius opposed capital punishment on the basis of a strict interpretation of the Fifth commandment:

Nor is it right for a just man to charge someone with a capital crime. It does not matter whether you kill a man with sword or with a word, since it is killing itself that is prohibited. And there is no exception to this command of God. Killing a human being, whom God willed to be inviolable, is always wrong.

The more the newly established church grew in power and involvement in secular society, the more the church became entangled in capital punishment as the strategy of choice for dealing with heretics and nonconformists. Clement of Alexandria (150-211) was the first Christian writer to articulate theoretical grounds justifying capital punishment. But the early church did not embrace execution across the board. In 386, bishops Ambrose of Milan, Martin of Tours, and Siricus of Rome strongly denounced the executions of Priscillian and his companions for doctrinal differences at the hands of fellow Christians. Ambrose also warned the clergy against participating in violence: "I do not think that a Christian... ought to save his own life by the death of another." Pope Leo's contrary reflection of Priscillian's executions less than two generations after Ambrose: "Both divine and human law would be subverted, if ever it should have been licit for such meant to live with such doctrine." (McGivern, *The Death Penalty*, pp. 30-32, 35) Saying that God did not mean for people to live with unacceptable doctrine.

The Middle Ages

During the Middle Ages violence moved even closer to the center of church life. Pope Leo IX (1049-1054) not only approved of persecuting and executing heretics and pagans, but actually led papal forces into battle. The church believed if

you can clearly identify heretics distinct from the rest of the community, it is appropriate to execute them. At the very center of ecclesial power, diminished regard for human life led to the acceptance of violence and bloodshed as ordinary conduct. Christian leaders were instrumental in assigning the death penalty to multiple thousands of Christian dissenters and other nonconformists, including John Hus and Joan of Arc. (Ibid., pp. 123-29)

The Reformation Era

The Reformation offered little change regarding the nexus of church, state, and violence. Martin Luther perfectly captures the prevailing presupposition:

Let no one imagine that the world can be governed without the shedding of blood. The temporal sword should and must be red bloodstained, for the world is wicked and bound to be so. Therefore the sword is God's rod and vengeance for it. (Ibid., p. 142 quoting Ewald M. Plass, ed., *What Luther Says: An Anthology* (St. Louis, MO: Concordia Publishing House, 1959), (II: 1156.)

The Waldensians, John Wyclif, and others strongly objected to the use of violence and the death penalty as a violation of the Way of Jesus. Especially significant for Baptists is the unified witness of Conrad Grebel, Michael Sattler, Menno Simons, and other Anabaptist leaders.

In Seventeenth-century England, George Fox and the Quakers protested the severity of English jurisprudence and the widespread use of capital punishment.

The Enlightenment

The Eighteenth century opened with capital punishment entrenched across Europe as a flourishing enterprise. Catholicism developed a death penalty liturgy in which pious fraternities systematically encouraged the person under the death sentence to repent and cooperate fully in the religious ceremonies planned around their impending executions. Much of the liturgy had initially been developed to dramatize the fate of heretics, but later was adapted for other capital criminals with the focus of helping all those facing execution to die "with good dispositions." (Ibid., pp. 211-212)

In part because they depicted the wrath of God on sinful humanity, such pub-

lic displays were never easy to control and often took on a carnival-like atmosphere. Turning these somber occasions into festivals triggered not only gallows humor as a coping mechanism but also created a populace desensitized to violence. (Ibid., p. 212) As the Eighteenth century unfolded, Enlightenment thinkers, both secular and religious, challenged the under girding assumptions of the capital punishment establishment. In 1764, Cesare Beccaria's "On Crimes and Punishments" protested capital punishment on utilitarian, philosophical, and humanitarian grounds:

Is it not absurd that the laws, which detest and punish homicide, should, in order to prevent murder, publicly commit murder themselves? (Ibid., pp. 218-219)

The Nineteenth Century

In Spain, Catholic lawyer and theologian Manuel de Molina argued that the death penalty was "immoral, useless, incompatible with the principles of penal science," and not justifiable with reference to Jesus or to belief in the immortality of the soul. (Ibid., p. 243) In Germany, theologian Friederich Sichleirmacher asserted, *The purpose of the penal code is to assure obedience to the law, but this is meaningless when we execute the criminal...Perhaps one might say that some crimes are so terrible that the criminal should never again enjoy life and that the death penalty is an act of mercy for him. But this is totally unchristian, for God's grace is greater than any human act.* (Ibid., p. 244)

The American Context

In a sense, the death penalty in colonial America was the functional equivalent to the modern prison system. Because no prison system in the modern sense of the term existed, capital punishment commanded wide spread support because it was believed to serve three important societal functions: deterrence, retribution, and penitence. In 1787 at Benjamin Franklin's

home in Philadelphia, prominent physician Benjamin Rush called for an end to capital punishment:

Laws, which inflict death for murder, are, in my opinion, as unchristian as those which tolerate or justify revenge; for the obligations of Christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon states. The power over human life is the sole prerogative of Him who gave it. (Ibid., p. 303)

The Twentieth Century

In 1968, the National Council of Churches of Christ, the largest ecumenical

organization in the U.S., adopted a statement calling for the abolition of the death penalty in a unanimous vote representing 103 church bodies.

During the course of the next twenty years, statements opposing the death penalty have been issued by the American Baptist Churches in the U.S.A., the American Friends Service Committee, the American Jewish Committee, The Bruderhof Communities, the Christian Church (Disciples of Christ), the Church of the Brethren, the Episcopal Church, the Evangelical Lutheran Church in America, the General Conference Mennonite Church, the Mennonite Cen-

tral Committee, the Mennonite Church, the Moravian Church in America, the Orthodox Church in America, the Presbyterian Church (U.S.A), the Reformed Church in America, the Reorganized Church of Jesus Christ of Latter Day Saints, the United Church of Christ, the United Methodist Church, and the United States Catholic Conference.

(For the complete statements, see *The Death Penalty: The Religious Community Calls for Abolition*, American Friends Service Committee, 1501 Cherry Street, Philadelphia, PA 19102.)

Capital Punishment in Texas

The United States is the only western democracy which continues to use the death penalty; we stand with countries like China, Iran, Iraq, and Pakistan in its continued use. Trailing only China and the Democratic Republic of the Congo, the U.S. is 3rd in total number of executions since 1998. (Ibid.)

Overview

Since 1976, the state of Texas has executed 289 people, a figure which amounts to just over one third (1/3) of all U.S. executions during the same period. In 2002, Texas performed 33 of the nation's 71 executions—nearly 5 times as many as Oklahoma, the next leading state, and double the Texas total for 2001. The last 6 executions of juvenile offenders in the United States occurred in Texas. Texas leads the nation in both the number of juvenile offenders on death row (29) and the number who have been executed (13). Approximately 3/4 of the juvenile offenders on Texas death row are minorities. (Texas Department of Criminal Justice, www.tdcj.state.tx.us, and *The Death Penalty in 2002: Year End Report*, Death Penalty Information Center, pp.1-2, www.deathpenaltyinfo.org.)

Texas law allows defendants to be charged with capital murder for specific homicides: murder during the course of another violent crime such as rape or robbery; murder of a child less than 6 years of age; murder of 2 or more people; murder for

hire or financial gain; and murder of certain classes of people such as police officers, judges, or district attorneys. ("Balancing the Scales," *Calling for a Moratorium on Executions in Texas: A Study Guide* (Austin: Texas Moratorium Network, 2002), p.9.

Indigent Defense

Because Texas does not have a statewide public defender system, the court normally appoints attorneys to represent indigent defendants.

These attorneys are often inexperienced and usually poorly paid. Even when the courts appoint motivated and conscientious attorneys to represent indigent defendants, court-appointed attorneys usually do not receive adequate funding to conduct thorough investigations and to hire the experts necessary to ensure a good defense. (Ibid., p. 10.)

The Fair Defense Act passed by the Texas Legislature in 2001 attempted to address these inadequacies and abuses by establishing appointment procedures, reasonable pay, and minimum standards for indigent defense counsel. The Act does not require a public defender system and still allows judges to appoint defense attorneys. Only time will tell whether or not the new law significantly improves legal defense for indigent capital defendants. (Ibid.)

Prosecutorial and Police Misconduct

Police officers and prosecutors are under enormous pressure to solve crimes and achieve convictions. As elected officials, prosecutors often feel the need to demonstrate to the electorate that they are tough on crime by seeking and winning death-penalty convictions. A tragic result of this pressured environment is prosecutorial and police misconduct. (Ibid., p.12)

One important study of death penalty cases in Texas concludes:

Racial Discrimination

Racial discrimination can enter the death penalty process in at least 3 ways: ("Balancing the Scales," pp.14-15.)

Racial Discrimination in Charging Defendants. Statistics show the death penalty is sought more often when the victim is white. Studies have concluded that a Texan who commits the capital murder of a white person is 5 times more likely to be sentenced to death than a Texan who commits the capital murder of an African-American.

Racial Discrimination in Jury Selections.

A 1986 study published in the *Dallas Morning News* showed that African-Americans were 3 to 4 times less likely to serve as jurors in death penalty cases than whites or Hispanics. In particular, African-Americans.

are the least likely to serve on capital juries, but the most likely to receive the death penalty. (A State of denial: Texas Justice and the Death Penalty, Executive Summary (Austin, TX: Texas Defender Service, 2000), p.4.

Racial discrimination in deciding “future dangerousness.” Studies have shown that all-white juries are more likely to perceive a black defendant that a white defendant as a future danger to society. While they comprise 12 % of the population of Texas, African-Americans account for 42% of the death row population. Racial discrimination is undoubtedly a contributing factor to this disproportional statistic. (Balancing the Scales,” pp. 14-15)

Appeals Process

Once found guilty and sentenced to death, defendants have two opportunities to appeal their case. (Ibid., p. 19-20)

State direct appeal

This appeal to the Texas Court of Criminal Appeals (TCCA) is automatic and is limited to legal errors which occurred during the trial. If this appeal is denied, defendants may appeal directly to the U.S. Supreme Court.

Petition for writ of habeas corpus

This appeal allows the court to consider factual errors. This appeal is presented first in the state appellate court and then in federal courts. If this appeal is denied, the defendant may appeal directly to the U.S. Supreme. In 42% of the appeals, post-convictions counsel appeared to have conducted no new investigation, and raised no-extra-record claims, even though this is the only type of claim that can be considered for review in such a proceeding.

In many cases, appointed attorneys merely repeated, sometimes word-for-word, claims which had already been rejected by the courts in a previous appeal—practically guaranteeing that there would be nothing for the courts to review in state or federal court.

Clemency Procedure

Once the appeals process has been complete, the fate of the convicted individual moves from the judiciary to the executive branch of the state government. This step, known as the clemency procedure, is meant to serve as a safety net for individuals who are wrongly convicted or sentenced. (“Balancing the Scales,” p.21)

The quality of the Board’s review is compromised by a number of factors:

- Members of the Board are all political pressures as the Governor and elected judges.
- Comprised of 18 people from across the state, the Board does not actually meet to discuss the cases. Member review cases individually and then fax or phone in their vote.
- The Board does not conduct hearings during which arguments of merit or evidentiary challenges could be presented.
- The Board keeps no records except for the final vote tally.

Mistaken Convictions

The U.S. Supreme Court has denied *habeas* review of claims from Texas prisoners on death row with persuasive, newly discovered evidence of their innocence. Leonel Herrera presented

from a variety of witnesses, including an eyewitness to the murder and a former Texas state judge, both of whom stated that someone else had committed the crime.

The U.S. Supreme Court ruled, however, that Herrera was not entitled to a federal hearing on this evidence and his only recourse was the clemency process of Texas. He was executed on May 12, 1993. (Ibid., p.22) One hopeful development in the context was the sentence would protect passage of a DNA testing bill during the 2001 session of the Texas legislature.

Judicial Selections

In order to get elected and re-elected, judges must appear to the voting public as tough on crime and thus express their unqualified support for the death penalty. (“Balancing the Scales,” p. 23.)

Life without Parole

In 2005, the seventy-ninth legislature of Texas passed a policy which altered the sentencing options in capital cases to provide the option of life without the chance of parole (LWOP). There is no longer the option of life with the chance of parole after 40 years.

The Poor and Mentally Retarded

A defendant’s poverty, lack of firm social standing in the community, and inadequate legal representation at trial or on appeal are all common factors among death-row populations. No affluent person has ever been given the death penalty in U.S. history. (Glen Stassen and David Gushee, Kingdom Ethics, p.13) One of the major reasons that capital punishment falls disproportionately on the poor is inadequate representation.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the United States Supreme Court held that the execution of people with mental retardation violates the Eighth Amendment’s ban on cruel and unusual punishment. The Court based the decision both on a determination that a “national consensus” had been reached that people with mental retardation should not be executed, and on its own conclusion that people with retardation who kill are not as culpable or deterrable as the “average murderer,” much less the type of murderer for whom the death penalty may be viewed as justifiable. Many commentators have said that in the wake of *Atkins* and *Roper v. Simmons*, the next major issue regarding capital punishment is to what extent, if any, should people with mental illness be exempt from executions. (American Bar Association, Individual Rights and Responsibilities Section, Task Force on Mental Disability and the Death Penalty, Recommendation August, 2006)

The Death Penalty and Juvenile Offenders

Until March 2005, the execution of juveniles 18 and under was legal in states that imposed capital punishment. In the case of *Roper v. Simmons* (543 U.S. 551), the Supreme Court ruled that executing persons that were under 18 at the time of their offense violates the Eighth and Fourteenth Amendments. The 5-4 decision was reasoned by the majority as being consistent with the national consensus. Speaking for the majority, Justice Kennedy stated, "When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his

own humanity" (Death Penalty Information Center [DPIC], 2008). In the opinion, the Court outlined a number of similarities between the *Atkins* case (mental retardation) and the execution of juveniles. They found execution too severe given a juvenile's diminished capacity and that the purposes of deterrence and retribution are not served in such cases. Justice Kennedy explained, "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity" (DPIC, 2008). There is also concern that the sentence of "life with-

out parole" for juveniles may be too harsh. International law prohibits this sentencing for children, and the United States is the only country in which a 13-year old is known to have been given a sentence of LWOP (Equal Justice Initiative, 2007; Streib & Schrempf, 2007). The United Nations passed a resolution in the General Assembly, which called for all nations to, "abolish by law, as soon as possible, the death penalty and life imprisonment without possibility for release for those (who were) under the age of 18 years at the time of commission of the offense." In the 176-1 vote, the United States was the only dissenter (Equal Justice Initiative; Liptak, 2007).

Traditional Justifications for Capital Punishment

Public Safety

A traditional argument in favor of capital punishment is that society has the right and duty to protect itself from dangerous criminals. The public safety argument is widely held, and it is clear that the execution of inmates who are judged to present a continuing threat to society ends whatever threat they pose. It is also clear that society can be protected from dangerous criminals by other means, such as permanent incarceration.

Deterrence

Common sense might suggest that the death penalty must have a deterrent effect on some potential murderers who presumably calculate the penalty before committing the crime. Yet many controlled studies over decades have not demonstrated that the death penalty acts a deterrent to murder or other crimes.

According to a recent FBI report, the South remains the region of the country with the highest murder rate. Since the reinstatement of the death penalty in 1976, the South has carried out 80 percent of the nation's executions. The region with the lowest murder rate, the Northeast, has carried out 1% of the executions. ("Crime in the US 2000, FBI

Uniform Crime Reports, October 2001; also Bureau of Justice Statistics.) An extensive study by The New York Times showed that states without the death penalty have lower homicide rates than states with the death penalty. (Bonner, Raymond, and Ford Fessenden, "States Without the Death Penalty Have Better Record on Homicide Rates," New York Times, Sept. 22, 2000, p. A1.)

Retribution

Surveys conducted during the decade following Furman and Gregg (1983-91) consistently indicated that a large majority of death penalty supporters would continue in their support even if the death penalty had not deterrent effect on the murder rate. Capital punishment was instead valued as societal retribution. (Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), p. 282.)

The same point has been made repeatedly in a variety of contexts following the Furman decision: capital punishment is a moral imperative, regardless of whether it reduces the murder rate or that it cuts murderers off from the possibility of rehabilitation. Capital punishment thus has become a symbol for many Americans of something larger than the issue of capital punishment per se, i.e., the affirmation that criminals ought be held morally accountable for their crimes. (Ibid., pp. 283-284)

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Americans of something larger than the issue of capital punishment per se, i.e., the affirmation that criminals ought be held morally accountable for their crimes. (Ibid.)

Deliverance for Victims

Another traditional justification for the death penalty is the assertion that executing murderers provides a means of deliverance for the survivors of murder victims.

Jesus did not simply oppose evils such as killing, lying, and hating the enemy, but consistently emphasized transforming initiatives that offer deliverance from the vicious cycle of violence and alienation. In other words, he epitomized the two-fold scriptural emphasis (developed in Section I above) which both (1) values obedience and condemns sin and (2) reveres life. (Ibid., pp. 26-28)

These two concepts of justice can be understood as the poles of a continuum which always contains elements of both poles. There are limits to how far society can move toward the restorative pole in specific cases. Some offenders need to be isolated from the larger society, and there is a place for punishment within a restorative context. (Ibid., p. 32)

Conclusions & Recommendations

Both the practice of capital punishment and protests against capital punishment are deeply woven into the fabric of every era of church (and western) history and protests against capital punishment are deeply woven into the fabric of every era of church (and western) history and centuries-old debates anticipate and inform our own debates over this issue. Several conclusions are suggested by this study.

First, Section I strongly argues that in the final analysis, biblical teaching does not support capital punishment as it is practiced in contemporary society. Well-intentioned people of faith have and will continue to underwrite capital punishment with scriptural authority.

Section One has at least made a thoughtful case that deserves a thoughtful response by those who do not share its conclusions.

Second, the legacy of capital punishment as it has been practiced throughout the history of the western church is both tragic and instructive. It is tragic that the church became intractably enmeshed in a nexus of violence which was foreign to the high calling of Christian discipleship.

Third, the practice of capital punishment in our nation and state is an affront to biblical justice, both in terms of its impact on the marginalized in society and in terms of simple fairness. How can we perpetuate a system which is clearly so unfair and so broken?

This study and its conclusions suggest at least two recommendations for Texas

The first recommendation is to suspend executions until the injustices which attend our present system have been effectively addressed. In the interest of justice, other states have pursued this option. This temporary moratorium will allow Texas leaders to convene a comprehensive and well balanced study committee to explore ways to make the criminal justice system responsible in pursuing guilt and innocence of defendants facing charges for capital crimes.

A second recommendation is to make life in prison without the possibility of parole a sentencing possibility for Texas juries. This recommendation was fulfilled in 2005 when Texas passed LWOP.

LWOP is important in plea-bargaining situations. If the prosecutor chooses to remove the death penalty as an option and seek LWOP, the length, and subsequently the cost, of the case are significantly reduced (Appleton & Grover, 2007).

LWOP cases can be prosecuted more quickly because the punishment phase is not a LWOP has also been shown to be significantly lower in long-term cost than the death penalty. A defendant given a death sentence is provided with a series of appeals, which can cost the state around 2 million dollars. The cost of life with the possibility of parole after forty years was approximately \$750,000 (Hoppe, 1992). Those sentenced to LWOP are given much fewer opportunities to appeal their sentence. LWOP is applicable to a very limited number of crimes, thus, it has not significantly impacted the prison population number.

People are often reluctant to give up the death penalty if there is no alternative that takes injustice seriously and does something about the murderous violence in society. As stated above, studies have shown that capital punishment does not reduce homicide rates and may actually increase them. These same studies show what *does* reduce homicides: e.g., catching and convicting murderers more promptly and efficiently; governmental example in opposing killing; a culture that opposes violence (versus television violence and ready access to guns); working to achieve justice for those who are denied rights and equality; funding drug rehabilitation programs. (Ibid)

It is significant that these actions closely resemble those advocated in scripture:

- engage in transforming initiatives away from violence (Rom. 12:17-21; Isa. 60:17b-20)
- invest in remedial justice and equal rights for the poor and outcasts (Isa. 61:1-4, 8-11; Jer. 22:1-5, 13-17)
- punish criminals justly (Exod. 23:6ff.; Isa. 5:22-23; Jer. 12:1)
- advocate for the welfare of neighborhoods (Jer. 29:4-9)
- persuade the government to work for peace rather than war (Jer. 4:19ff., 6:13ff., 22:3-17; Luke 19:41ff.). (Ibid)

Many nations have remarkably fewer murders than the United States. Some cities and states have lower homicide rates than others. Comparative studies suggest the above actions are in fact effective in decreasing murder rates and constitute the most constructive focus for our emotions and energies. (Ibid.; and especially the carefully analyzed transnational and longitudinal statistical research of Dane Archer and Rosemary Gartner, *Violence and Crime in Cross-National Perspective* (New Haven, Conn.: Yale University Press, 1984), pp. 64ff., 86, 104, 115, 136ff., 159; Ted Gurr, *Why Do Men Rebel?*

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