

Christian Ethics: Lesson 7

Capital Punishment

I. Introduction:

The electric chair at the state prison in Grady, Arkansas, with its thick leather straps and cables that can crank out 2,500 volts, is bolted to the floor on a black rubber mat and sits silently under the glare of fluorescent lights. Warden Willis H. Sargent, in charge of the prison for many years, says, “I don’t want to take a life or be involved in taking a life, but I have to look at the other side of the fence – at the victims and the victim’s families.”¹

A. Why do so many Americans feel ambivalent about capital punishment?

B. Why do many people support it?

C. Why are many opposed to it?

II. Definition:

Capital punishment is the killing of a person by judicial process as punishment. Crimes that are eligible for capital punishment are called capital offences.

III. Modern History:

During the thirty six year reign of Henry VIII approximately 72,000 people were executed. Elizabeth I ordered 800 executions a year. And in 1769 the number of crimes punishable by death increased to 160.

In 1814, three English boys, ranging from eight to eleven were executed for stealing a pair of shoes. Nineteen years later a nine year old boy was hanged for stealing children’s paints from a shop in London.²

Such rampant executions began to fuel sympathy for the capital punishment abolitionist movement. During the eighteenth and nineteenth century Voltaire, Karl Marx, David Hume, and even Benjamin Franklin protested capital punishment as it was then practiced.

¹ John Jefferson Davis *Evangelical Ethics* (3rd Ed.) (Grand Rapids, Zondervan: 2004) p. 203.

² Davis p. 205.

In the United States some 5,707 people were legally executed for capital crimes in the U.S. prior to 1972. Then, in 1972 came a landmark decision in *Furman v. Georgia*. By a 5–4 margin the Supreme Court ruled that the death laws of Georgia and Texas violated the Eighth Amendment by involving cruel and unusual punishment. The decisive issue for some of the Justices was that among all “eligible” for the most extreme punishment, the few chosen were selected by no clear standard.

Between 1972 and 1976 thirty-five states rewrote their laws to conform to the Supreme Court’s decision. On July 2, 1976, by a 7–2 margin the Court declared most of the new statutes acceptable. The death penalty was legal again, and in 1977 executions resumed. Many predicted a flood of executions, but that has not happened. In fact, seldom is anyone executed in the U.S., and only after a lengthy battle in the courts. As a result, the numbers on death row continue to grow. As of 1992, thirty-six states plus the U.S. government and military had the death penalty, but the total number of prisoners on death row in the U.S. swelled to 2,616.³

- A. How has capital punishment been abused in the past?

- B. Does the fact that capital punishment was a flawed practice necessarily mean that it is inherently wrong? Why or why not?

IV. The Biblical Argument Against Capital Punishment:

Strangely, in all of Christendom only one denomination—the conservative Missouri Synod⁴ 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, as does the National Council of Churches and all major Jewish groups.⁵

- Upon what basis could Christians oppose capital punishment?

³Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 127

⁴ It should be noted that the Southern Baptist Convention officially endorses capital punishment.

⁵J. Daryl Charles, “Crime, The Christian and Capital Justice,”: *Journal of the Evangelical Theological Society* Volume 38. The Evangelical Theological Society, 1995; 2002, S. 38:432. It should be noted that the Southern Baptist Convention officially endorses capital punishment.

A. The sixth commands says in the King James Version:

Exodus 20:13 Thou shalt not kill.

Since capital punishment kills the subject, it is morally wrong.

B. While capital punishment may have been taught in the Old Testament the Mosaic Law has been supplanted by the Law of Christ. Therefore it would be erroneous to appeal to ***Genesis chapter 9***, or the other examples in ***Exodus, Number, Leviticus***, and ***Deuteronomy***.

C. Christ seems to be teaching a higher law. For instance in Jesus' teaching regarding turning the other cheek and loving your neighbor (***Matt. 5:38-45***) seem to overturn Lex Talionis (eye for an eye tooth for a tooth). In addition, Jesus stays the execution of the woman caught in adultery (***John 8:1-11***).

D. The Bible seems to emphasize mercy. Cain, David, and Moses committed intentional murder (David in the first degree no less), but God extended them mercy. Regarding the woman caught in adultery, Jesus let her live so that she could repent. God is all about giving people another chance.

E. The stringent regulation of the Old Testament would effectively outlaw the American means of capital punishment as it is now practiced. One author outlines:

The five procedural items are:

- 1) Absolute certainty of guilt was required for conviction (***Deut 17:4***). This is stronger than the American rule of proof beyond reasonable doubt.
- 2) Conviction required the testimony of more than one witness (***Deut 19:15; Num 35:30***). Given the need for certain proof, most likely those witnesses were to be eyewitnesses. Moreover, since stoning to death was to be done by the witnesses (***Deut 17:7***), one might suspect reticence to cast the first stone unless one was an eyewitness.
- 3) To discourage attempts to "frame" someone for a crime, witnesses who committed perjury in capital cases were themselves to be executed (***Deut 19:16, 19***).
- 4) In difficult cases the verdict was deferred to judicial experts (***Deut 17:8, 9***). This differs from the American system in which jurors who often do not understand law must decide anyway.
- 5) If the verdict was "guilty," the death penalty was mandatory (***Lev 27:29; Num 35:31***). Lighter sentences could not be adopted. This made discriminatory

application of the death penalty impossible; i.e., all people, regardless of social standing, etc., were treated equal if deemed guilty.⁴⁰

With these regulations, undoubtedly fewer people were convicted under the Mosaic system than under others like the American system. Opponents of the death penalty maintain that if God really wants the death penalty enforced, it ought to be administered as God required. Until then, it should be outlawed.

- Which arguments make the strongest point and why?

V. The Biblical Argument In Favor of Capital Punishment:

As we consider the arguments in favor of capital punishment, we will address each of the issues raised by the Anti-Capital Punishment Position.

- A. A better translation of the sixth commandment is “*You shall not murder*” (NASB, ESV, NET, NIV, NKJV).

The verb used in this verse occurs 49 times in the Old Testament and in every relevant use means “to murder,” especially with premeditation. It is never used of animals, God, angels, or enemies in battle.⁶

- What is the difference between murder and killing in war or capital punishment?

God’s commanding Israel to kill their enemies during the conquest of Canaan could not have been a violation of this commandment either by God or by the individual soldiers who killed in battle. They were the instruments of the execution of divine judgment and not violators of the sixth commandment.⁷

- B. Regarding how we regard Old Testament Law. We admit that the Old Testament Law was replaced by the Law of Christ. However, consider the timing of the following verses.

⁴⁰David Llewellyn, “Restoring the Death Penalty: Proceed with Caution,” *ChrT* 19 (1974-1975): 10-11.

⁶Ryrie: S. 129:216

⁷Ryrie S. 129:216

Genesis 9:6 “Whoever sheds man’s blood, By man his blood shall be shed, For in the image of God He made man.

Exodus 21:12 “He who strikes a man so that he dies shall surely be put to death.

Romans 13:1-4 Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. ² Therefore whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. ³ For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; ⁴ for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil.

1. What does the fact that these laws were given before the Mosaic Law, in the Mosaic Law, and after the Mosaic Law suggest about the enduring nature of capital punishment?

As you may recall from our introductory lesson to Christian ethics, the Ten Commandments and the Mosaic Law were not written to us, but for us. The Law was a unit, part of a covenant for a different people, in a different time, at a different place. Therefore, some of the laws could not possibly apply to us. With that said, we should realize that we still worship the same Law Giver, who gives us insights upon how to love Him through that sacred corpus. Now, we are obligated to a new law code, the Law of Christ as revealed in the New Testament.

2. How does *Romans 13:1-4* answer the objection that capital punishment is not compatible with the Law of Christ?
- C. A closer look at *Matthew 5:38* and following will give us insight regarding whether or not Jesus wants us to turn the other cheek rather than enforce the death penalty:

Matthew 5:38-45 “You have heard that it was said, ‘AN EYE FOR AN EYE, AND A TOOTH FOR A TOOTH.’ ³⁹ “But I say to you, do not resist an evil person; but whoever slaps you on your right cheek, turn the other to him also. ⁴⁰ “If anyone wants to sue you and take your shirt, let him have your coat also. ⁴¹ “Whoever forces you to go one mile, go with him two. ⁴² “Give to him who asks of you, and do not turn away from him who wants to

borrow from you. ⁴³ *“You have heard that it was said, ‘YOU SHALL LOVE YOUR NEIGHBOR and hate your enemy.’* ⁴⁴ *“But I say to you, love your enemies and pray for those who persecute you,* ⁴⁵ *so that you may be sons of your Father who is in heaven; for He causes His sun to rise on the evil and the good, and sends rain on the righteous and the unrighteous.*

1. What kind of relationships does Jesus seem to be addressing? Does the government seem to be in view? Why or why not?
2. What would be the danger of applying the standard of the Sermon on the Mount to how the government should respond to all who break the laws of the state?
3. In light of the above discussion is it safe to say that **Matthew 5:38** and following rule out the death penalty?

D. Regarding capital punishment and mercy, God did extend grace to Cain, Moses, and David.

1. In each of those cases, who made the decision to refrain from capital punishment?
2. Did God do so in all cases? Consider the following example.

Numbers 15:32-36 Now while the sons of Israel were in the wilderness, they found a man gathering wood on the sabbath day. ³³ *Those who found him gathering wood brought him to Moses and Aaron and to all the congregation;* ³⁴ *and they put him in custody because it had not been declared what should be done to him.* ³⁵ *Then the LORD said to Moses, “The man shall surely be put to death; all the congregation shall stone him with stones outside the camp.”* ³⁶ *So all the congregation brought him outside the camp and stoned him to death with stones, just as the LORD had commanded Moses.*

3. What would have been the consequence of Israel refusing to execute the Sabbath breaker? In light of this, what was the standing policy of the Old Testament Law?

While the Bible emphasizes mercy, it also emphasizes justice and holiness. One attribute of God should never eclipse another.

- E. Regarding the challenge to strictly obey the Old Testament Law today. We should note that the Old Testament highly valued fairness and justice. Old Testament protocols would likely result in fewer convictions, but they would not rule out the death penalty altogether. The real issue in this discussion is whether or not capital punishment is morally right, wrong, permissible or even mandatory.

VI. Key Passages on Capital Punishment:

A. Genesis 9:5-6:

“Surely I will require your lifeblood; from every beast I will require it. And from every man, from every man’s brother I will require the life of man.”⁶ “Whoever sheds man’s blood, By man his blood shall be shed, For in the image of God He made man.

At issue in this verse is whether or not *verse 6* is prescriptive or predictive. In other words, does this verse command that murderers must be punished by death. Or does it predict that murderers will be executed.

1. How does the phrase *“And from every man, from every man’s brother I will require the life of man”* help us decide whether or not the command is prescriptive or predictive?
2. How does the end of *verse 6 “For in the image of God He made man”* inform our discussion?
3. What is the rationale behind capital punishment according to this passage?

‘When violence in the form of murder is done to a man, it is in effect an outrage against God.’ Just as an act of desecration to a nation’s flag represents an attack on the nation itself, so an attack on man represents an attack on the divine majesty.⁸

B. John 8:1-11:

⁸ Davis 207.

But Jesus went to the Mount of Olives. ² Early in the morning He came again into the temple, and all the people were coming to Him; and He sat down and began to teach them. ³ The scribes and the Pharisees brought a woman caught in adultery, and having set her in the center of the court, ⁴ they said to Him, “Teacher, this woman has been caught in adultery, in the very act. ⁵ “Now in the Law Moses commanded us to stone such women; what then do You say?” ⁶ They were saying this, testing Him, so that they might have grounds for accusing Him. But Jesus stooped down and with His finger wrote on the ground. ⁷ But when they persisted in asking Him, He straightened up, and said to them, “He who is without sin among you, let him be the first to throw a stone at her.” ⁸ Again He stooped down and wrote on the ground. ⁹ When they heard it, they began to go out one by one, beginning with the older ones, and He was left alone, and the woman, where she was, in the center of the court. ¹⁰ Straightening up, Jesus said to her, “Woman, where are they? Did no one condemn you?” ¹¹ She said, “No one, Lord.” And Jesus said, “I do not condemn you, either. Go. From now on sin no more.”]

In the words of one scholar:

It should be noted that the evidence of the best Greek manuscripts indicates that this passage was not originally part of the text of John’s Gospel. Professor Bruce Metzger and his associates conclude that the evidence ‘for the non-Johannine origin of the pericope of the adulteress is overwhelming.’ Nevertheless, the text may well represent a bit of authentic oral tradition that preserves the actual incident in the ministry of Jesus.”⁹

A key point in this passage is what does Jesus mean when he says in *verse 7* “**He who is without sin among you, let him be the first to throw a stone at her.**”

1. According to the following passage, how carefully did the accusers follow the law?

Deuteronomy 22:22 “If a man is found lying with a married woman, then both of them shall die, the man who lay with the woman, and the woman; thus you shall purge the evil from Israel.”

2. If Jesus required absolute sinlessness to prosecute a criminal, what would that do to the justice system at the time?
3. In light of this, what did Jesus mean when he said “**He who is without sin**”? Had Jesus allowed for the execution, what would that have done to his credibility?

⁹ Davis, p. 210.

4. Did Jesus give the adulteress a free pass to sin (v. *II*)?

The Scribes and Pharisees had no right to condemn (the adulteress) because of their impure motives, so in the eyes of the law, she was not condemned. Jesus could not condemn her, for to do so would have grossly violated Mosaic regulation. He was not an eyewitness, and the law required more than one eyewitness, anyway. Thus, even though as the divine Son of God he knew whether she was guilty, given Mosaic regulation, he had no right to condemn or execute her.¹⁰

Therefore, it is dubious to use this passage to prove that Jesus overturned the death penalty.

C. Romans 13:1-4:

Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. ² Therefore whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. ³ For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; ⁴ for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil.

1. According to *verse 1* who has established governing authorities?
2. According to *verse 3*, what is the role and function of the state?¹¹
3. Why should workers of wickedness fear the state (v. *4*)?
4. What does it mean for the state to bear the sword? What is the sword used for (v. *4*)?

¹⁰Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 143

¹¹ Please note that in general the laws of the state are meant to establish order and peace among the population. On occasion, the state laws grate against the laws of God. When this happens we must obey God rather than men (*Acts 4:19-20*).

5. According to *verse 4* is a government obligated to practice capital punishment? Why or why not?

Why the sword? Commentators uniformly agree that the symbolism of the sword points to death. If the sword merely points to governmental authority, other symbols could convey that notion just as well. Moreover, Paul states that government is divinely empowered to dispense retribution. If it is to be retributive *justice*, the punishment must equal the crime. Given Paul's background, what was he likely to think would be just retribution for murder? Raised as a Hebrew of the Hebrews and a Pharisee of the Pharisees, would he not think of Mosaic teaching and *Genesis 9*? If that is so, it seems fairly obvious what Paul meant by the symbolism of the sword, at least as it would apply to capital cases. Finally, the Roman Empire in which Paul lived practiced capital punishment.¹²

VII. What Crimes Merit Capital Punishment:

The death penalty was also incorporated into the Mosaic code with a very significant difference. Whereas *Genesis 9:6* only sanctions it in cases of murder, the Mosaic code required it for other offenses. The list was as follows: murder (*Exod 21:12; Num 35:16–31*), working on the Sabbath (*Exod 35:2*), cursing father or mother (*Lev 20:9*), adultery (*Lev 20:10*), incest (*Lev 20:11–13*), sodomy (*Lev 20:15–16*), false prophesying (*Deut 13:1–10; Deut 18:20*), idolatry (*Deut 17:2–7*), incorrigible juvenile delinquency (*Deut 21:18–23*), rape (*Deut 22:25*), keeping an ox known to be dangerous if the ox had killed a human being (*Exod 21:29*), kidnapping (*Exod 21:16*), and intrusion of an alien into a sacred place or office (*Num 1:51; Num 3:10, 38; Num 18:7*). The manner of execution is sometimes mentioned (such as stoning or burning); where it is not indicated, one is left entirely to conjecture as to what was used.¹³

- In this day and age should we seek the death penalty for all of the above cases? Why or why not?

God's sense of justice and righteousness pervades the New Testament as well as the Old. In *Acts 5* God snuffs out the life of Ananias and Saphira, and in *Acts 12:20-23* Herod dies a divine death. In *Romans 12:19* Paul warns us that "**VENGEANCE IS MINE, I WILL REPAY,**" *says the Lord*. Finally, all those who reject Him will suffer eternal damnation enduring the

¹²Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 145

¹³Charles Ryrie, *The Doctrine of Capital Punishment: Bibliotheca Sacra Volume 129*. Dallas Theological Seminary, 1972; 2002, S. 129:213-214

retribution of God's wrath forever. God always has been and always will be a God of justice and righteousness. While God freely forgives our sins, our forgiveness was not free. God's wrath was appeased in pouring it out on His Son. Subsequently, God's grace does not snuff out His sense of justice.

With this said, I will make the following case for capital punishment. In **Romans 13:1-4** Paul teaches that God uses the government to execute His justice. And capital punishment is the featured means by which God avenges. With the legitimacy of capital punishment established in the New Testament we now turn our attention to what crimes merit such punishment.

As mentioned above we do not live under the Mosaic Covenant. It was written for a different people at a different time and for a different reason. Thus, we are not obligated to carry out the prescriptions found therein.

Yet before the Mosaic Law was written **Genesis 9:5-6** clearly taught that murder is wrong, and the punishment for taking a life should be life itself. The punishment must fit the crime. Therefore, it is my opinion that the Scripture teaches that capital punishment should be limited to cases of first degree murder.¹⁴ God's law of justice and retribution mandates that when one intentionally and thoughtfully takes a life, the state should intentionally terminate the life of the criminal.

VIII. How does Capital Punishment Harmonize with a Pro-Life Ethic:

- A. How is it possible to harmonize being in favor of capital punishment while at the same time reject euthanasia and abortion?

Can one consistently argue against abortion and euthanasia and espouse capital punishment? We think so on at least three grounds: a sanctity of life ethic, a demand to treat all persons justly, and a commitment to non-consequentialist¹⁵ ethics. Given a sanctity of life ethic, human life is sacred and must be protected. Hence, abortion and euthanasia are ruled out. Execution of murderers underscores the sanctity of life and the seriousness of taking the life of others. As to justice, the unborn, the aged, and the infirm

¹⁴ Treason could also be considered an occasion for capital punishment. The justification would be that high treason puts the culprit on the wrong side of the war. As an enemy combatant they suffer the same fate as the other enemies. But I must admit that I am still developing these thoughts.

¹⁵ By non-consequentialist ethic, the author means that morality should not be built around the idea that the ends justifies the means. Rather, morality is measured by adherence to a higher law regardless of its consequence whether good or bad. Thus, it would be wrong to kill one innocent person to save two because killing innocent people is always wrong.

have done nothing deserving of death. The convicted murderer has. Justice demands rejecting abortion and euthanasia and executing murderers. Finally, on a non-consequentialist theory of ethics such as ours, God prescribes the protection of the innocent and the punishment of those who take life. If one follows those divine commands, he will have to reject abortion and euthanasia and favor capital punishment.¹⁶

B. Can one consistently harmonize being against capital punishment, abortion, and euthanasia? If so how?

C. How can one harmonize being against capital punishment while at the same time favoring abortion and euthanasia?

Such a position could be held consistently on at least two grounds: a quality of life ethic and a commitment to utilitarianism. With a quality of life ethic, the unborn, aged and infirm can be considered non-persons and thus expendable, whereas the convicted murderer qualifies as a person and has a right to life. Likewise, as noted in previous chapters, on utilitarian¹⁷ grounds one can also justify abortion and euthanasia while ruling out capital punishment.¹⁸

IX. Thought Questions:

A. What does God's advocacy for capital punishment teach us about His character?

B. Let's say that a mass murderer is found guilty of first degree murder. He is sentenced to death, but shortly before he is to be executed he undergoes a genuine conversion. Should that have any bearing on his execution? Why or why not?

¹⁶Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 146

¹⁷ A utilitarian ethic can be described as "an ends justifies the means" approach to ethics. Thus, it would be right to kill one innocent person to preserve the life of two innocent people.

¹⁸Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 146

- C. How would you respond to the accusation that advocating capital punishment puts you in the same league as the judgmental Pharisees without capacity for love and compassion?
- D. Why do you suppose our culture is moving away from the practice of capital punishment? What assumptions about human nature erode support for this practice?

One commentator notes:

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.”¹⁹

X. Conclusion:

The best evidence supports capital punishment as not only permissible but mandatory in cases of premeditated murder. Mercy can always be extended by God when He wants, but man cannot presume to know when that is. Moreover, abuses associated with capital punishment as practiced today suggest a need for revision of its application, not elimination of it altogether. For example, errors in conviction underscore a need for more stringent regulations governing convictions in capital cases. Discrimination against the poor and minorities argues for revamping our judicial systems so as to remove those abuses as well. None of this, however, nullifies the need or the warrant to practice the death penalty.²⁰

¹⁹J. Daryl Charles, *Journal of the Evangelical Theological Society Volume 38*. The Evangelical Theological Society, 1995; 2002, S. 38:437

²⁰Feinberg, John S. ; Feinberg, Paul D. ; Huxley, Aldous: *Ethics for a Brave New World*. Wheaton, Ill. : Crossway Books, 1996, c1993, S. 146