

Capital Punishment

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ACCORDING to the Fifth Commandment of the Decalog, the taking or destroying of human life is strictly forbidden, whether this be by premeditated murder, suicide, euthanasia, or sheer recklessness and carelessness. Life is God's precious gift to man. As we are to guard this gift through rules of health, hygiene, and medical science, so God guards it by His providential care and by the rules laid down in the Fifth Commandment. Our earthly life is precious, and once gone, it cannot be replaced. Capital punishment, the penalty of death pronounced by a competent and authoritative tribunal, is one of the ways in which God would have life protected. "Thou shalt not kill," is a warning to man to keep hands off and if he doesn't, then the proper authorities of the state have the right to take his life.

The main purpose of capital punishment is to protect life. This method of protecting life finds its origin in the rigid system of theocratic laws in the Old Testament and still exists by divine sanction in the New Testament where God placed this power into the hands of constituted authority.

There is no denying that we have become hardened to murder. We read and hear of it so often that we have become calloused to its real seriousness. There are enough murders committed each year to depopulate a city of several thousand. If a tornado, earthquake, or a flood would destroy so many people, the nation would be shocked; but murder that many people in a given year and the populace pays little attention! Many citizens, deeply concerned about this, feel that we ought to use the death penalty more frequently in order to check this trend toward more murders. Others feel that capital punishment is not the answer. Other methods of punishment and intensified programs of prevention and rehabilitation need to be devised. It is the scope of this paper to examine the arguments pro and con and to see whether we can arrive at some tenable conclusions.

I. HISTORICAL DEVELOPMENT AND PRESENT STATUS

Hebrew laws, theocratic in nature, contained very rigid regulations as far as the death penalty was concerned. We do note, however, that in their laws we find introduced the idea of degrees in crime and degrees in punishment, for not every case of destroying life was punishable with death. Circumstances determined the degree or severity of the punishment. We would emphasize the fact that the Hebrew laws were absolute and permitted no legal loopholes and masterful maneuverings so frequently found in the courts of a democratic society.

It is interesting to note that there were a number of crimes and sins, in addition to murder, punishable with death. We list these with Bible references.^{1,2}

The sin of adultery. "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death." Lev. 20:10.

The sin of bestiality. "Whosoever lieth with a beast shall surely be put to death." Ex. 22:19.

The sin of blasphemy. "And he that blasphemeth the name of the Lord, he shall surely be put to death, and all the congregation shall certainly stone him: as well as the stranger, as he that is born in the land, when he blasphemeth the name of the Lord, shall be put to death." Lev. 24:16.

The sin of cursing one's parents. "And he that curseth his father, or his mother, shall surely be put to death." Ex. 21:17.

The sin of idolatry. "If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods, which thou has not known, thou, nor thy fathers; Namely of the gods of the people which are round about you, nigh unto thee, or far off from thee, from the one end of the earth even unto the other end of the earth; Thou shall not consent unto him, nor hearken unto him; neither shall thine eye pity him, neither shalt thou spare, neither shalt thou conceal him; But thou shalt surely kill him; thine hand shall be first upon him to put him to death, and afterwards the hand of all the people. And thou

shalt stone him with stones, that he die; because he hath sought to thrust thee away from the Lord thy God, which brought thee out of the land of Egypt, from the house of bondage." Deut. 13:6-10.

The sin of incest. "And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness, and she see his nakedness; it is a wicked thing; and they shall be cut off in the sight of their people; he hath uncovered his sister's nakedness; he shall bear his iniquity." Lev. 20:17.

The sin of rape. "If a man find a betrothed damsel in the field, and the man force her, and lie with her: then the man only that lay with her shall die." Deut. 27:25.

The sin of breaking the Sabbath laws. "And while the children of Israel were in the wilderness, they found a man that gathered sticks upon the sabbath day. And they that found him gathering sticks brought him unto Moses and Aaron, and unto all the congregation. And they put him in ward, because it was not declared what should be done to him. And the Lord said unto Moses, The man shall be surely put to death: all the congregation shall stone him with stones without the camp." Num. 15:32-35.

The sin of unchastity. "Then they shall bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die; because she hath wrought folly in Israel, to play the whore in her father's house; so shalt thou put evil away from among you." Deut. 22:21.

The sin of witchcraft. "Thou shalt not suffer a witch to live." Ex. 22:18.

It seems that these rigid requirements of the law set the tone also for other nations for years to come. The laws of Hammurabi were extremely severe in meting out punishments. The death penalty was used as a punishment for many crimes. Soon, however, men began to see the injustices and inequalities, and more care was exercised in the use of the death penalty. In the thirteenth century, death was, by the common law of England, the punishment for all felonies (except mayhem and petty larceny), but under the influence of the church this extreme severity of the law was lessened. From the beginning of the 17th century to the middle of the 19th century, the condemned felons were given the option of deportation

for the purpose of colonization. At the beginning of the 19th century, due to certain writers and molders of public opinion, the two hundred capital crimes were reduced to four, namely; high treason, murder, piracy with violence, and destruction of dockyards. Since the middle of the 19th century the death penalty under English law has been exacted only for murder. It seems that treason, from attacking the divinity of kingship to the modern crime of attacking the security of the state, has always been punishable by death.^{3,4,5}

In the study of the historical development of the laws covering capital crimes, it is also interesting to note the different forms of punishment that have been used. We list the following methods as among the severest and most gruesome; burning at the stake, boiling in oil, buried alive in an iron casket, breaking the body on the wheel, flaying, throwing the criminal to ferocious animals, stoning, drowning, crucifixion, and decapitation.^{6,7}

From old world history we turn briefly to our country. The early colonists listed twelve offenses as being capital in nature. This number was gradually reduced. In 1892, a federal law was passed which reduced the number of crimes to three, namely; treason, murder, and rape. Since that time the matter of punishing capital crimes exclusive of treason has been left pretty well to the constituent states.⁸

The number of prisoners executed in the United States under civil authority from 1921 to 1950 shows a steady decrease. The average annual number of executions in this thirty-year period was 135. In 1950, it totaled 82, the lowest number in the three decades. The November, 1953, issue of the *Annals of the American Academy of Political and Social Sciences*, says: "The trends in the use of the death penalty are solidly established in history. A study of them during the past 250 years can be summarized briefly: the overall international trend is toward the progressive abolition of capital punishment." This trend in our country is demonstrated by the decreasing number of executions. In 1958, there were only 48 executions and in 1959, there were 49. J. Edgar Hoover makes this comment: "The average sentence served by persons after conviction for murder is only 43½ months and the prison doors in our country swing open every 2½ hours day after day to release a murderer."⁹

Today there are 35 countries throughout the world where capital punishment has been completely abandoned, and sentiment against the death penalty is rapidly gaining ground in our country.¹⁰

II. ARGUMENTS PRO

Already prior to the famous Chessman case of California, there have been many voices against capital punishment. But we hasten to add that the voices in favor of capital punishment have not been silenced. It is our intention in this portion of the paper to present the main arguments for and against the death penalty. We begin with the arguments favoring the retention of this form of punishing the murderer.

The basic argument in favor of capital punishment is that it serves as a deterrent to crime. This, as we shall show later, also seemed to be God's objective in introducing capital punishment. If it is argued that the death penalty does not serve as a crime deterrent, then the fault lies not in capital punishment itself, but in the infrequency with which it is administered, with legal loopholes and technicalities, subterfuges, delays, legal maneuverings, and often, a deliberate attempt to arouse public opinion in favor of saving the condemned criminal's life. It is claimed by some that this is one of the basic reasons for the occasional existence of lynching mobs. Enraged citizens fear that the law will be too lenient with the criminal, consequently they take the law into their own hands. There have been countries and states where the death penalty was once abolished, but then restored when it became apparent that crime was beginning to take a Roman holiday. Rumania, after 74 years, restored the death sentence; Austria, in 1938, restored it after 22 years of abolition; Italy, in the year 1939; and South Dakota restored it in 1939, giving the jury the right to grant mercy.¹¹

Eight states during 1959 and 1960 refused to abolish capital punishment. The most noteworthy case was that of California, which refused the governor's request to pass a law to abolish the death penalty. This received public attention because of the Chessman case.¹²

Justice must be upheld and the basic American law that the accused is assumed innocent until proven guilty, must be honored

and respected, but the present-day trend to coddle the criminal, it is argued, is certainly no crime deterrent. Let me quote a few pertinent examples from Courtney Ryley Cooper's book, *Here's to Crime*: "The Bremer kidnaping could not have been accomplished without the aid of two members of the Police Department." "Verne Miller, the multiple murderer was ushered from city to city bearing letters of introduction which, in one case, put him on a golf course with city officials."¹³ "Affiliated crimesters regard the electric chair as having been built for suckers. Fellows with brains and influence may be put into the death house, where they can watch the casuals of crime travel to the last waltz, but it is only a visit until 'somebody can get to the governor'."¹⁴

It is argued by the abolitionists that a life sentence can be more of a deterrent than capital punishment. There are, however, a number of cases on record where imprisonment did not stop a man's continued murdering. One of the states that restored capital punishment did so because a murderer killed his keeper. He had been sentenced for life; now in the new crime what other sentence was there to be imposed except the death penalty? There might be a point to a life sentence being a crime deterrent if we had more *life* sentences. As pointed out above, the average "life term" runs only about 43½ months. At the age of 23 a man knows that with good behavior he can soon get out and still have a long life ahead of him. A life term, terminating after 43½ months, simply does not scare many hardened criminals. Advocates of abolition say that life imprisonment is worse than death. This apparently does not hold true so far as the thinking of the criminal is concerned, for no criminal has ever been known to reject a commutation of a death sentence to life imprisonment. If a condemned criminal can or must make a choice, he will take a life sentence in preference to the death penalty.

III. ARGUMENTS CON

Death penalty opponents make a strong case in their arguments. Herbert Wechsler, Professor of Law at Columbia University, lists five basic reasons why people oppose capital punishment.¹⁵

1. *The argument against deterrence.* Sociologist Thorsten Sellin compared the number of homicides per 100,000 population

in areas where the death penalty is used with those in areas where it has been abolished. His studies reveal that the frequency of homicide does not seem to be influenced by the retention of the death penalty. Another writer reaches the same conclusion and states:

"Our growing psychological understanding of the motivation of murderers makes it clear that the death penalty has no deterrent effect on potential murderers."¹⁶ Men like Warden Lewis E. Lawes of Sing Sing, Clarence Darrow, renowned criminal lawyer, and leaders in the American League to Abolish Capital Punishment have argued that the death penalty does not stop crime and that the condemned usually are too poor to afford good legal counsel. They point to the fact that the educated and well-to-do generally are able to escape capital punishment.

Hearst publications at the time of the murders committed by Ruth Judd editorialized thus: "Does the State set a Christian example by committing murder for murder when Christ taught His followers to abandon the ancient, brutal, and brutalizing policy of an eye for an eye and a tooth for a tooth? Does the State set a civilized example in committing murder for murder? The State murders in cold blood, and it murders with deliberation, premeditation, and intent to kill,—and it murders as cruelly and brutally as any murderer can,—and finally it insists upon killing with savage methods rather than allowing a woman to put herself out of the way. In all history horrible punishments have not prevented crime. They have merely brutalized the community or given evidence of an already brutalized community."

David Dressler in an article on capital punishment appearing in the January, 1960, issue of *Coronet* says: "The death penalty would be morally acceptable to some if it could be shown that executing one individual deters others from committing like offenses. In the 18th century in England, pickpockets were hanged before great gatherings as a warning. The practice was abandoned because too many pickpockets picked the pockets of people watching the hangings." He also refers to an incident in 1877 when ten men were hanged on one day in Pennsylvania for murderous conspiracy. At that time the New York Herald editorialized: "We may be certain that the pitiless severity of the law will deter the most wicked from anything like the imitation of these crimes." Mr. Dressler

says: "The conclusion was wrong. The next day two prosecution witnesses were murdered. Within two weeks, five of the prosecutors met the same fate."¹⁷ And thus the abolitionists go on, seeking to produce strong evidence against the argument of deterrence. We may sum up their arguments somewhat along these lines. "It is the certainty and not the severity of punishment that deters criminals. When a murder is committed the murderer is usually in a state of intense anger, jealousy, and excitement; at the moment he isn't thinking of the consequences in terms of capital punishment."

2. *Effect on the Administration of Justice.* The second argument used by the opponents of capital punishment is this that it has a negative effect on the administration of justice. It is argued that a trial in which life is at stake becomes inevitably a morbid and sensational affair, fraught with emotionalism for or against the defendant. This often affects the outcome of the trial, leading to errors in procedure which in turn lead to appeal after appeal. The emphasis of the argument here is that too many innocent people have been executed. Edwin M. Borchard, Professor of Law in Yale University, reviewing 65 cases of criminal prosecutions and convictions of completely innocent people came to the conclusion that these cases fall into clearly defined categories. His studies reveal that the following factors were largely responsible for condemning and convicting the innocent in the miscarriage of justice: mistaken identity, actually no crime committed, convictions based solely on circumstantial evidence, perjury, frame-ups, overzealousness of police, gross negligence of the police, overzealousness of the prosecution, prejudice because of prior convictions, the bad reputation of the accused, and community sentiment demanding a conviction.¹⁸ As more cases of such a nature come to the attention of the public eye, the more intense becomes the feeling against capital punishment.

Sir Fitzroy Kelly called attention to 22 cases of capital convictions between 1802 and 1840 in which innocence was afterwards fully established. Seven of these 22 actually suffered death. It is estimated that 5 percent of those put to death are in reality innocent of the crimes of which they were accused.¹⁹

It is also argued that the death penalty makes for a far more expensive administration of justice, since it involves unending

chains of appeals on behalf even of the most obviously guilty who hope to be released on a technicality. It makes for greater inequality in the administration of justice, since anyone with enough friends and money can "beat the rap" one way or another.²⁰ Though we may not agree with all of the arguments of the abolitionists, we must admit that they are sincere and honest in their plans and motives. It is not the desire on the part of the abolitionists to lower the standards of justice, to excuse crime, or to gloss over the seriousness of murder. Rather, it seems to be their desire to find a more efficient way of dealing with the criminal.

3. *The argument of inequality.* Though this is already implied in the above section dealing with the administration of justice, the third main argument emphasized quite extensively by the opponents of capital punishment is this that not all cases are treated alike. Since judges and juries must make the decisions, no two cases, though identical in nature and equally guilty, will be handled in exactly the same way. As a case in point we refer to the South where it is usually the Negro who is executed for rape. In some states it is claimed that since the abolition of capital punishment, more convictions for life terms have been gotten because of the feelings of jury members against the death penalty. Thus the accused are more apt to be treated alike, is the argument.

4. *The argument of irreparability.* With capital punishment as the penalty, a mistake by which an innocent man is convicted cannot be corrected. The unfortunate but innocent man has been executed and he can not be restored to life by any process of law; while one with a life term, if and when found innocent, can be released and rehabilitated. His loss of time and personal humiliation can be partially offset by certain compensatory measures on the part of the court.

5. *The argument of salvaging and rehabilitating the prisoner.* Abolitionists feel that we ought to be more concerned about salvaging prisoners and reconditioning them for a useful life in society than killing them off in the electric chair. All sorts of statistics can be found, however, to prove either side of the case. California statistics show that of 342 prisoners convicted of first degree murder and paroled between 1945 and 1954, only nine had been returned to prison on a new felony conviction by June 30, 1956.

IV. STATEMENTS BY LUTHERAN THEOLOGIANS

Luther, commenting on the Fifth Commandment, says: "Here now we go forth from our house among our neighbors to learn how we should live with one another, every one himself toward his neighbor. Therefore, God and government are not included in this commandment, nor is the power to kill, which they have, taken away. For God has delegated His authority to punish evil-doers to the government instead of parents, who aforetime were required to bring their own children to judgment and sentence them to death. Therefore, what is here forbidden is forbidden to the individual in his relation to anyone else, and not to the government."²¹ W. H. T. Dau says: "not to inflict capital punishment is a flagrant disregard of the divine Law. The dignity of human life is shown by the words: 'In the image of God made He man.' Man differs from fish, fowl, and beasts which are killed for food." Theodore Graebner: "Capital punishment has back of it both the natural law and the principles of government which we find in the New Testament." P. E. Kretzmann: "The punishment of murder is laid into the hands of the government, which shall punish the murderer by requiring his life in exchange for that which he took. This is the first command regarding the authority of the government in the wielding of the sword."²² Paul M. Bretscher: "Yet over against all such reasoning stands the clear and unequivocal will of God that crime should be punished by the powers that be. A state which refuses to exercise this right to perform this duty which God Himself has imposed on it defies the will of our just and righteous God. But this God will not be mocked, neither by the citizens nor by the authorities of the State. 'Whatsoever a man soweth that shall he also reap'."²³

Probably the most noteworthy attempt to have an entire church body speak on the subject of capital punishment was made at the 1960 convention of the United Lutheran Church. The ULC Board of Social Missions recommended "that the Church declare itself for the abolition of capital punishment, and urge governments to seek more equitable and effective forms of punishment."²⁴

The Board reported: "We believe that the state remains free under God to decide whether it will practice capital punishment or relinquish the exercise of this right." Among the Board's arguments in support of the recommendation, the following two points seem

to receive the greatest emphasis: 1. "It (capital punishment) tends to fall disproportionately upon those least able to defend themselves." 2. It makes a miscarriage of justice irrevocable."²⁵

The recommendation was not adopted by the convention. There were 238 votes for it and 248 against it.²⁶

V. PERTINENT TEXTS IN SCRIPTURE

Our discussion cannot possibly be complete unless we also look at the texts in Scripture that deal with this important matter. The first murderer was Cain. What about His punishment and the motive for the same? There were, no doubt, a number of reasons why God placed the mark on Cain. It was to be his punishment for the crime committed. It was to draw him to repentance. But in addition to this, it was also to serve as a warning to others and through this warning God wanted to keep similar crimes in check. As time went on, however, we note that violence increased. When the sons of God married with the daughters of men, God decided to check this wickedness by sending the deluge after 120 years of grace. It was immediately after the flood when God introduced capital punishment as a check against repetition. In Genesis 9:6 we read: "Whoso sheddeth man's blood, by man shall his blood be shed, for in the image of God made he man." In the case of Cain, He personally dealt with the situation. In the post-deluvian age He arranged for constituted authority to administer capital punishment. This is the first commandment of God to the government in the matter of wielding the sword. If a man should become guilty of shedding his fellow man's blood, he should suffer death for that crime. It is quite apparent that this was not only to be a punishment, but also a deterrent.²⁷ In addition to the punishment and deterrence, God had another motive. He wanted for Himself a nation and a land that would be free of such wickedness. In Numbers 35:33 we read: "So ye shall not pollute the land wherein ye are; for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it. Defile therefore not the land which ye shall inherit." When a murdered man was lying in a field and no one knew the identity of the murderer, then the elders of the city nearest the place where the body was found were to sacrifice a heifer in a rough valley and say these words: "Our hands have not shed this blood, neither

have our eyes seen it. Be merciful, O Lord, unto Thy people Israel, whom Thou hast redeemed, and lay not innocent blood unto the people of Israel's charge." That is how earnest God was in keeping Israel free from murder. God furthermore stresses the dignity He places on man. He was created in His image. This image, to be sure, was lost by sin, but restored in part by the redeeming powers of Christ. But here the unregenerate are also included, for in a wider sense, they bear the image of God in this that they are rational beings and have an immortal soul.

The whole crux of capital punishment seems to lie in the question whether or not it is part and parcel of the moral law of God. It does not belong to the moral law of God in the sense that the state is morally obligated to take the life of every murderer; however, neither did Jesus in the New Testament abolish capital punishment as belonging to the political and ceremonial laws of the Old Testament. It is more correct to say that capital punishment in the New Testament exists by divine permission and sanction and is to be used by the powers that be as they see fit. It is to be used by the state, not in the spirit of vengeance or harsh retaliation, but rather in the spirit of protecting its citizens.

Exodus 21:12-14 is another important reference to capital punishment. "He that smiteth a man, so that he die, shall be surely put to death. And if a man lie not in wait, but God deliver him into his hand; then I will appoint thee a place whither he shall flee. But if a man come presumptuously upon his neighbor, to slay him with guile; thou shalt take him from mine altar, that he may die." The first reference in this text is to a deliberate murder. Such a man, without question, was to be put to death. But, "if a man lie not in wait," if the killing was not deliberate and intentional, then God would later designate cities of refuge to which the man could flee for safety. But if it was deliberate and premeditated and carried out in cold blood, then the murderer could not seek refuge. Fleeing to the sanctuary of the Lord and clinging to its altar would avail him nought. The murderer in such a case should simply be torn from the altar of the Lord and be put to death for the life he had taken. He was to be put to death as quickly as possible.

Leviticus 24:17 is simply a restatement on what had already been said. "And he that killeth any man shall surely be put to

death." A few verses later, however, we have this addition, namely that the laws covering capital punishment should also apply to the strangers who happened to be in the land. "Ye shall have one manner of law, as well for the stranger, as for one of your own country; for I am the Lord, Thy God."

Another reference is Numbers 35:30-32. "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses; but one witness shall not testify against any person to cause him to die. Moreover ye shall take no satisfaction for the life of a murderer, which is guilty of death; but he shall be surely put to death. And ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land, until the death of the priest." In addition to a restatement of the law of capital punishment, this text offers some specific instructions. The additions in this text take care of the injustices that can easily occur in carrying out the death sentence. One of the main objections raised by the abolitionists is that men are often condemned and even executed in spite of insufficient testimony. The principle of two or more witnesses is established here. The testimony of one person, no matter how reliable and trustworthy he might otherwise be, should not be deemed sufficient to put a man to death. This principle is clearly re-emphasized in Deuteronomy 17:6. "At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death." Furthermore, the Israelites were instructed not "to take satisfaction for the life of a murderer." He could not save his life through the payment of a ransom or secure his freedom through bribery. Perjury, insufficient evidence, and bribery have condemned innocent men and have set guilty men free.

We turn to the New Testament. The first text under consideration is Matthew 26:52. "Put up again thy sword into his place; for all they that take the sword shall perish with the sword." This statement by Jesus in connection with the scene in Gethsemane created by Peter's impetuous act is used in support of capital punishment. It is argued that Jesus, through this statement, by implication, abolished capital punishment for blasphemy, idolatry, incest and the other sins mentioned in the Old Testament, but upheld capital punishment for murder as divinely required. The other side of the argument is: "Can we really uphold capital punishment for

murder when in the New Testament we no longer exact the death penalty for the other sins and crimes mentioned?" To say that Jesus in this text upheld capital punishment as an absolute requirement and that thereby He automatically eliminated the death penalty for other sins mentioned in the Old Testament is entirely without foundation and certainly does not fit into the context nor into the spirit of the occasion. It is, however, correct to say that in the second part of the statement, "all they that take the sword shall perish with the sword," Jesus is upholding the principle that God has given the state the permission and the authority to wield the sword at its own discretion in punishing crime, and particularly murder.

There are really two parts to the statement of Jesus. 1. Peter was not to interfere with God's plan of salvation. 2. Peter was to be aware of the authority of the state in wielding the sword rather than the individual citizen taking the law into his own hands.

We might paraphrase the text in the following manner: "Peter, put your sword away, for my purposes are not achieved nor my kingdom built by force and violence. And do you not realize that you can get yourself into serious trouble with the government if you take the law into your own hands; for if you should kill someone, the government has the divine right to take your life in exchange?"

What Jesus wants to emphasize in His statement as prompted by the occasion is that He wants no physical force to be used in promoting His cause. Under no circumstances are His followers ever to reach for the sword in matters of faith and salvation. If God wanted His Son to be rescued, He could do it by His own almighty powers or send legions of angels for that purpose, but there was to be no place for violence and force on the part of the disciples. In the church, the sword must never be used for the repression of what some think to be error nor for the propagation of what others believe to be the truth. "The followers of Christ shall not carry on their work with force of arms, but by the Word, in the power of the Holy Ghost." (P. E. Kretzmann, *Popular Commentary*.) Christ wants His Kingdom extended with the Sword of Truth and not with the sword of steel and violence. Adam Fahling in his *Life of Christ* says, "In offering resistance to those who were on

the point of arresting Jesus, he (Peter) was blocking salvation for himself."

The point of the first part of this statement then is that Jesus wants no interference in carrying out His redemptive work and that He does not want His Kingdom built by force.

The point of the second portion of the text might be summarized something like this: Peter had taken the sword which had not been given to him by authority. Christ admonishes him, but does not turn him over to the secular government for punishment. Here we have a warning against any unauthorized use of the sword and a sanction for constituted government to use it at its discretion.

What Jesus would have said or done if Malchus actually had been killed by Peter, we will have to consign to the realm of idle speculation.

The clearest and probably the most important text we have in the New Testament is Romans 13, especially verse 4. Here the origin, the authority, and the power of the government are clearly given. "For he is the minister of God to thee for good. But if thou do that which is evil, be afraid: for he is the minister of God, a revenger to execute wrath upon him that doeth evil." In every community where people live together there will also be wicked people who will disturb the peace, steal from others, and do harm to life and limb of their fellowmen. It is here that civil government must exercise its power according to God's will by punishing the evil doer, by imposing a fine, by sentencing to a prison term, by taking the life of a guilty murderer, "for he beareth not the sword in vain."

If the rulers according to God's own Word, are to be a terror to the evil and the evil are warned to be afraid,—“for he beareth not the sword in vain”—then it is clear that the real purpose of the death penalty is not only to punish, but also to restrain evil. As the moral law in general serves as a curb in checking the coarse outbursts of sin, so capital punishment is to repress violence and murder. God in His Word designates His agent who in His name and by His authority is to wield the sword in the punishment and restraint of evil. In the work of the Church Christians are the representatives of God in carrying on His Kingdom work; in the home the parents are the representatives of God in training the children in the fear and nurture of the Lord; and so in civil affairs

constituted government is the representative of God to praise and uphold the good and to be a terror to those who do evil—and this includes capital punishment. Government exists by divine right. It was ordained by God also for the purpose of protecting life and was endowed by God for backing up its authority with the power and the severity of the sword. I Peter 2:14 brings out the same thought: "Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme: or unto governors, as unto them that are sent by him for the punishment of evil-doers, and for the praise of them that do well."

Rev. 13:10 is another reference to the governmental sword. "He that leadeth into captivity shall go into captivity; he that killeth with the sword must be killed with sword. Here is the patience and the faith of the saints." The real emphasis here, however, is a comfort to the saints in the days of persecution. Christians must expect martyrdom. That is inevitable where the enemies of Christ have come into power. Pagan governmental powers, enemies of Christ, will use the sword against the true believers. Those who must suffer such persecutions are to be patient, for God in time and in His own way will punish those evil doers who interfere with His Kingdom work and plans. The state which abuses the privilege of the sword and misuses it in persecuting God's people will itself suffer at the hand of the Lord. "He that killeth with the sword must be killed with the sword." God in time will punish the state which is guilty of such abuse.

VI. CONCLUSIONS

On the basis of what has been presented, we now offer a number of conclusions.

1. Capital punishment is not murder, provided the accused person has been given a fair trial and his guilt incontrovertibly established.

2. Government has the authority and the duty to defend its country and to protect its citizens by waging war. By the same token it has the authority and the duty to protect its citizens by wielding the sword in capital punishment. If capital punishment is to be abolished on moral grounds, then by the same line of reasoning we must also abolish all wars.

3. Capital punishment today exists by the express permission and personal sanction of God.

4. It is clear that God instituted the death penalty as a restraint on crime and violence and if He in His omniscience and wisdom instituted it with that in view, then it will still have the same effects today if consistently carried out. If capital punishment does not deter crime, it is not the fault of capital punishment itself, but it is the fault of the courts which do not exercise their authority to the fullest measure.

5. Public sentiment is swinging toward the abolition of capital punishment. Nine states, namely: Maine, Rhode Island, Delaware, Michigan, North Dakota, Wisconsin, Minnesota, Alaska, and Hawaii have already abolished it. Convincing arguments and substantiating statistics can be found on both sides of the question and these will naturally be emphasized according to the beliefs and feelings of the person presenting them.^{28,29}

6. The state may wield the sword in the manner and method it chooses. A Christian can with good conscience uphold capital punishment, but he need not sanction the cruel methods that have often been used. Nowhere does the Bible prescribe for our day the method to be used in capital punishment, whether by sword, firing squad, lethal gas chamber, the hangman's noose, the electric chair, or by a less gruesome method, as for instance death by injection.

7. A Christian may stand on either side of the question without denying Scripture, provided he does not claim that the state is committing murder when it carries out the death sentence. A Christian who is a member of a legislative body can vote to abolish capital punishment provided he does not violate his conscience.

8. The death penalty should be used only in cases where the guilt has been firmly established with incontrovertible proof. (Num. 35-30-32) (Deut. 17:6). To exact the death penalty on circumstantial evidence alone can easily take the lives of innocent people.

9. If capital punishment is to be continued, then society needs to strive for a greater uniformity in exacting the death penalty. The inequalities of justice are notorious in our country. Christian people can uphold capital punishment in theory, but the way it is carried out in practice is certainly an offense to the sensitive soul.

NOTES

1. *Encyclopedia Britanica* (1946), IV, 811.
2. Lamar Beman, *Capital Punishment* (Wilson Company, New York, 1925), 117ff., 357.
3. *Encyclopedia Britanica*, *loc. cit.*, 810.
4. Lamar Beman, *op. cit.*, 158ff.
5. Grant S. McClellan, *Capital Punishment* (H. W. Wilson Co., New York, 1961), 12.
6. *Encyclopedia Britanica*, *loc. cit.*, 811.
7. Lamar Beman, *op. cit.*, 163.
8. *Encyclopedia Britanica*, *loc. cit.*, 810.
9. David Dressler, "Capital Punishment is Murder." *Coronet*, January, 1960, 136.
10. Grant S. McClellan, *op. cit.*, 24ff.
11. *Encyclopedia Britanica*, *loc. cit.*, 810.
12. Grant S. McClellan, *op. cit.*, 10.
13. Courtney Ryley Cooper, "Here's to Crime," *Reader's Digest Book Supplement*, June, 1933, 112.
14. *Ibid.*, 122.
15. Herbert Wechsler, "Death Sentence: Its Pros, Cons," *Life*, May 9, 1960.
16. Lamar Beman, *op. cit.*, 4.
17. David Dressler, *loc. cit.*
18. Edwin M. Borchard, *Convicting the Innocent* (Garden City Publishing Company, N. Y., 1932), 379.
19. Lamar Beman, *op. cit.*, 354.
20. *Ibid.*, 3.
21. *Concordia Triglotta* (Concordia Publishing House, St. Louis, 1921), 631.
22. Paul E. Kretzmann, *Popular Commentary* (Concordia Publishing House, St. Louis, 1923) I, 21.
23. *Concordia Theological Monthly* (Concordia Publishing House, St. Louis) Vol. 24, No. 3, 215.
24. *The Lutheran* (Philadelphia) Vol. 43, No. 2, 23.
25. United Lutheran Church *News Bureau*, October 17, 1960, 2.
26. *The Lutheran*, Vol. 43, No. 5, 8.
27. George O. Lillegard, *From Eden to Egypt* (Northwestern Publishing House, Milwaukee, 1956), 82.
28. Grant S. McClellan, *op. cit.*, 10ff.
29. David Dressler, *loc. cit.*, 136.

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