

Capital punishment is a topic that evokes passionate debate. Recent well-publicized tragedies, such as the July 2012 shootings and loss of life at an Aurora, Colorado, movie theatre, powerfully bring the tensions to the fore. At issue is whether it is morally justifiable for the state to take the life of someone, who has been convicted of a capital offense against another human being. The death penalty is such a controversial and divisive matter, because it raises a plethora of critical questions that are viewed differently by the participants in the debate.

During the 2014-15 academic year the Vernon Grounds Institute of Public Ethics embarked on an exploration of some of these questions. The aim was to probe the bases on which contending positions on the issue of the death penalty rest. Christian thinkers from diverse fields of learning and religious traditions brought their expertise to bear in fruitful and respectful debate about this complex topic. Our hope is that these essays might help inform their deliberations.

Introduction:

Dieumeme E. Noelliste and M. Daniel Carroll R.

Foreword:

Shane Claiborne

Chapter One: The Value of Human Life and Capital Punishment

Richard S. Hess

Chapter Two: In Defense of Capital Punishment

Douglas Groothuis

Chapter Three: Modern Society, Human Dignity, & the Death Penalty:

A Catholic Perspective on the Death Penalty

Jennifer Kraska

Chapter Four: The Sound of a Cock Crowing

Jim Ryan

Chapter Five: Is the Death Penalty Facing the Death Penalty?

Raymond Dean Jones

Dr. Dieumeme Noelliste is Professor of Theological Ethics at Denver Seminary. He also serves as the Director of the Vernon Grounds Institute for Public Ethics.

Dr. M. Daniel Carroll R. (Rodas) is Distinguished Professor of Old Testament at Denver Seminary and is adjunct professor at El Seminario Teológico Centroamericano in Guatemala City, Guatemala.


DENVER SEMINARY
Vernon Grounds Institute of Public Ethics

*Dieumeme Noelliste and
M. Daniel Carroll R., editors*

EXPLORING THE BASES AND ETHICAL IMPLICATIONS OF CAPITAL PUNISHMENT

Noelliste & Carroll

8



Exploring the Bases and Ethical Implications of Capital Punishment

Exploring the Bases
and Ethical
Implications of the
Death Penalty

Dieumème E. Noelliste and M. Daniel Carroll R., editors



Monograph Series

General Editors:
Dieumème E. Noelliste
M. Daniel Carroll R.

1. *Evangelism and Social Responsibility*
2. *Christians and Political Engagement*
3. *Justice and Healthcare*
4. *Thinking Christianly About Immigration*
5. *Caring For Our Father's World*
6. *Children and Poverty*
7. *Human Flourishing through Economic Discipleship*
8. *Exploring the Bases and Ethical Implications of the Death Penalty*

Table of Contents

List of Contributors.....	i
Foreword.....	iii
<i>Shane Claiborne</i>	
Introduction.....	vi
<i>Dieumème E. Noelliste and M. Daniel Carroll R.</i>	
Chapter One	
The Value of Human Life and Capital Punishment.....	1
<i>Richard S. Hess</i>	
Chapter Two	
In Defense of Capital Punishment	22
<i>Douglas Groothuis</i>	
Chapter Three	
Modern Society, Human Dignity, and the Death Penalty: A Catholic Perspective on the Death Penalty	41
<i>Jennifer Kraska</i>	
Chapter Four	
The Sound of a Cock Crowing.....	51
<i>Jim Ryan</i>	
Chapter Five	
Is the Death Penalty Facing the Death Penalty?	63
<i>Raymond Dean Jones</i>	
The Vernon Grounds Institute of Public Ethics.....	72

LIST OF CONTRIBUTORS

Shane Claiborne graduated from Eastern University, did graduate work at Princeton Seminary, and has received an Honorary Doctorate from Eastern. He is a founder and board member of The Simple Way, a faith community in inner city Philadelphia. Together with his friend Tony Campolo, Shane directs Red Letter Christians, a national movement of Christians seeking to live more like Christ. He is an internationally known speaker and author of many books, the most recent is on the death penalty, entitled *Executing Grace*.

Dr. Richard S. Hess, Earl S. Kalland Professor of Old Testament and Semitic languages at Denver Seminary. Author of eight books, Hess is the editor of the *Denver Journal*, Denver Seminary's online theological review journal, and the *Bulletin for Biblical Research*. He is also the founder and editor of the Bulletin's Supplement Series and a member of the Committee on Bible Translation for the New International Version.

Dr. Douglas Groothuis is professor of philosophy at Denver Seminary, a member of the Evangelical Theological Society, Evangelical Philosophical Society, and Society of Christian Philosophers. Beside writing for numerous scholarly journals, Groothuis has penned several books including his opus magnum *Christian Apologetics: A Comprehensive Case for Christian Faith*.

Miss Jennifer Kraska, an attorney at law, is Executive Director of the Colorado Catholic Conference, President of the National Association of State Catholic Conference Directors, a Consulter to the United States Conference of Catholic Bishops' Committee on Catholic Education, member of the Federal Assistance Advisory Commission, and a board member of Catholic Rural Life.

Rev. Dr. Jim Ryan, a career minister with the Disciples of Christ, is the retired Executive Director of the Colorado Council of Churches, founder of Doing Justice LLC, first president of the board of directors of Eco-Justice Ministries, and a member of the boards of several organizations that seek to promote justice. Among his many publications is *Doing Justice in a Purple Congregation*.

Hon. Raymond Dean Jones, a career judge, served as Chief Counsel and Deputy District Attorney to the Metropolitan District Attorneys' Consumer Office V Law Clerk, Deputy District Attorney to the Metropolitan District Attorneys' Consumer Office, Trial Judge on the Denver County Court, Chief Judge of the Aurora Municipal Court, an Associate Judge of the Colorado Court of Appeals. Beside his long career on the bench, Jones has served as an Assistant Professor in the Business School of Metropolitan State College.

FOREWORD

The conversation around the death penalty raises a fundamental question that goes to the very heart of the Christian faith: Is anyone beyond redemption? We can debate statistics, exegete Scripture, and analyze data... but at the end of the day what is at stake is the Gospel.

Let me tell you a story: Billy Neal Moore came home from the Vietnam War deeply troubled, and desperate for money. He had no criminal history, but Billy and an army buddy decided to rob a house to get some quick money... a decision that proved to be catastrophic. During the course of the robbery, the homeowner was killed. Billy was sentenced to death. But Billy couldn't wait to die. He could not live with the shame of what he had done. He tried to kill himself in prison. He said that if he could press the button on his own execution and end his miserable life he would have done it. He had nothing to live for.

But then something miraculous happened. The family of the victim reached out to Billy. They were Christians, and they wanted him to know about grace. They shared with Billy their faith, and told him how they believed in forgiveness, and second chances... and how they didn't believe the worst decision of your life has to be the end of the story. Billy became a Christian... and that family—the family of the man he killed—became his surrogate family, by the grace of God. Eventually, Billy Neal Moore was not only saved from the death sentence; he was released from prison. Today he is a pastor.

Billy's story is one of the dozens of stories that changed my mind on capital punishment. I have just finished a book, *Executing Grace*, that is filled with stories like Billy Neal Moore's.¹ They are Gospel stories, stories of grace, and redemption. We cannot forget that much of the Bible was

written by murderers who were given a second chance: Moses, David, Saul.

There is much more to be said. And it is why I wrote a book on this important topic – the death penalty is one of the most urgent ethical issues of our day. We need to look at the Old Testament. We need to look at Romans 13. We need to take a closer look at the breadth of Scripture, but especially at Jesus.

There is an incident in the Gospels where Jesus is asked about the death penalty (John 8). A woman has been humiliated and dragged before the town, ready to be killed. Her execution would be legal; her crime was a capital one. But just because it's legal, did not make it right in Jesus' eyes. So, he interrupts the scene... with grace.

He challenges the men who are ready to kill the woman, "Let the one who is without sin cast the first stone." You can hear the stones start to drop, as the men walk away. The only one who is left with any right to throw a stone is Jesus, and he has absolutely no inclination to do so.

It is my deep conviction that no one is above reproach and that no one is beyond redemption that lies at the heart of our faith. Undoubtedly it's why the early Christians were characterized by non-violence, even in the face of brutal evil, torture and execution. Grace shines bright in the face of evil. But grace can be a scandalous thing, as we can see Jesus forgiving those who kill him, and as we see the stunning stories of murder victim's families who stand against execution, many of whom are fueled by their faith.

We live in a world where often the determining factor when it comes to execution is the quality of the counsel, the location of the crime, or the race of the victim. I am hopeful today. We live in a world where increasing numbers of people are convinced that there are better forms of justice than execution. The death penalty has succeeded in America, not in

spite of Christians, but because of Christians. 85% of executions in the past 40 years have taken place in the Bible belt. As death penalty scholar and death row chaplain, Dale Recinella says: “The Bible belt has become the death belt.” But times they are a changin’.

My passionate opposition to the death penalty is clear. I hope that you can feel it in my words! But, not all Christians agree with me. Devout believers take the opposite view and would defend the principle of the death penalty. One of the contributions of the book that you have in your hands is that you can read how and why Christians take different stances. Christians need to dialogue on this important issue and make a decision. I have made mine. Will you?

Shane Claiborne

¹ Shane Claiborne, *Executing Grace: Why It Is Time to Put the Death Penalty to Death* (New York, NY: HarperOne, 2016).

INTRODUCTION

Capital punishment is a topic that evokes contentious and passionate debate. Recent well-publicized tragedies, such as the July 2012 shootings and loss of life at an Aurora, Colorado, movie theatre, powerfully bring the tensions to the fore. At issue is whether it is morally justifiable for the state to take the life of someone, who has been convicted of a capital offense against another human being. The death penalty is such a controversial and divisive matter, because it raises a plethora of critical and weighty questions that are viewed differently by the participants in the debate.

Is the prerogative to end the life of a human person the exclusive province of God alone? If it is granted that human destiny rests with God alone, does he, on occasions, delegate the exercise of that right to a human entity, the state? By committing a capital offense, does the offender automatically forfeit his or her right to life? What is appropriate punishment? Is its purpose to exact payment for the destruction of something of inestimable value, a human life? Is the objective of punishment the protection of society against further potential harm through the execution of the perpetrators of such violence? Is the death penalty a deterrent to those who contemplate these crimes? If the death penalty, on the other hand, is rejected as suitable punishment, what might be the alternative? Importantly, to what sections of the Scripture or parts of their faith traditions do Christians appeal to establish their view?

During the 2014-15 academic year the Vernon Grounds Institute of Public Ethics embarked on an exploration of some of these questions. The aim was to probe the bases on which contending positions on the issue of the death penalty rest.

As in previous years, the deliberations took place in the three events that the institute hosts throughout the year, namely, the Kent Mathews Lectures, the Rally for the Common Good, and the Salt and Light Seminar. The Institute brought together thinkers

from diverse fields of learning and religious traditions. Rabbi Joseph Black presented a Jewish understanding of the issue. Ethicist and lawyer Jennifer Kraska offered us a Roman Catholic view on the theme. Professor Wilma Bailey and Rev. Jim Ryan put forward a mainline Protestant perspective on the matter. Professors Richard Hess and Douglas Groothuis, Old Testament scholar and philosopher, respectively, articulated an evangelical understanding of the issue, while Judge Raymond Jones provided a glimpse into legal and political dimensions.

The papers that comprise this volume are part of the wide-ranging and yearlong conversation that took place at the seminary around the death penalty. It should be quickly noted that some of the papers reflect the more informal style of an oral delivery. A quick perusal of their content reveals that these papers do not reflect a consensus position on the issue. Indeed, they are statements in support of two rival, diametrically opposed positions on capital punishment.

Two of our contributors—Drs. Hess and Groothuis—argue for a pro-capital punishment position. Hess finds the justification for the death penalty in the biblical concept of the image of God. For him, this notion that is unique to the Genesis account of the creation imparts transcendent value to every human life. When a life is extinguished by another life, he maintains, the only adequate compensation for vanquished life is something equally transcendent, namely, the life of the offender. Hess's idea of compensation is picked up by Groothuis, who expounds the same concept in terms of retributive punishment. Drawing on the thought of the German philosopher Immanuel Kant, which he believes coheres with the biblical perspective on punishment, Groothuis is adamant that, when a life is wrongfully taken, "only retribution fits the enormity of the crime." The purpose of punishment is not rehabilitation, but the reception of just dessert for an act freely and intentionally committed.

On the other side of the spectrum, another pair of our contributing authors—Jennifer Kraska and Jim Ryan—are firm in the belief that the death penalty is not morally defensible. Kraska grounds this belief in the Catholic understanding of the dignity of the human person. Following recent papal teaching, particularly that of Pope John Paul II, Kraska contends that, because human dignity is a divine gift, it is inviolable. A human life cannot, therefore, be forfeited, even if that life is guilty of the most heinous crime. While Ryan would concur with Kraska’s analysis, he anchors his objection to the death penalty in the inadmissibility of the notion of just dessert as a bedrock criterion for moral decisions that purport to be Christian. For him, in Christ, the principle of retributive punishment is replaced by the concept of grace and mercy—grace and mercy that not only call for the preservation of the physical life of the offender, but which also hope for the possibility of his/ her salvation. From this perspective, the goal of punishment is not only to fulfill a metaphysical purpose, but also a social one: the prevention of more crime. For this, incarceration for life without the possibility of parole is all that is necessary.

Between those two opposing positions stands Raymond Jones. A career judge, his contribution to the conversation does not consist in the presentation of an argument in favor or against the death penalty. What he does is offer insights into what goes on legally, legislatively and existentially in the application of the death penalty. Without revealing his own position, he offers the view that when one considers current trends and the procedural issues surrounding the implementation of the death penalty, it is not farfetched to hazard the guess that it may well face its own ‘death,’ or eradication, sometime in the future.

There is much food for thought here. Clearly, Christians do not all agree on what they believe their faith demands on this vexing issue. Our hope is that these essays might help inform their deliberations.

Dieumème E. Noelliste and M. Daniel Carroll Rodas

Chapter 1

THE VALUE OF HUMAN LIFE AND CAPITAL PUNISHMENT

Richard S. Hess

I have been asked to address the issue of capital punishment. While it is important to have a common understanding of the subject one addresses, this is sometimes not a simple task. However, neither is it helpful to spend a large part of a relatively brief essay defining the topic. For heuristic purposes I will appeal to that definition available in the current online edition of the Merriam-Webster dictionary: “Capital punishment is the death penalty for a crime.”¹ At oxforddictionaries.com, capital punishment is “the legally authorized killing of someone as punishment for a crime.”²

My particular concern remains a biblical-theological treatment of the subject. Again, there could be much discussion as to what that might include. If I were a philosopher or a theologian, I would emphasize certain perspectives. In my case, the focus will be on the Bible and its teaching relevant to this subject.

To anticipate my conclusion, I will argue that the Bible endorses the practice of capital punishment. As I present my evidence for this point, please note that I will not address the following matters except as they touch directly upon my subject: personal ethics of love, warfare in the Bible, various forms of killing, the morality of the death penalty for a variety of infractions, the right of any modern state to decide for itself regarding the use of capital punishment, and state vs. personal ethics. I will not attempt to review the history of capital punishment in Christian or Western states, however interesting

this subject might be. Nor will I reflect on the definitions of words for killing and murder as they may be used in different sections of the Bible or on various forms of capital punishment. Larger questions such as abortion, euthanasia, and the ethical treatment of animals and creation will not be considered. Further, my topic does not include the contentious issue of who should engage in the act of capital punishment, whether Christians should actually kill someone so judged by a state, or even whether the fact that I live in a democracy establishes my compliance with and responsibility for acts of capital punishment by that state. Again, I will refer to some of these in light of my topic, but not develop them despite their individual importance.

Instead, my concern will be to briefly construct an ethical and theological understanding of this topic by examining its distinctive biblical presentation with a special focus in the legislative texts of the Bible. I will ground this understanding in the unique value of human life as discussed by the theme of the image of God in the Bible and as developed and refined by those Old Testament texts that explicitly address the matter of murder and its punishment. I will compare and contrast this presentation with that of other contemporary legal material in order to argue the special significance of human life in the Bible and its role in relation to the state-sanctioned taking of that life in the form of capital punishment. Because I want to establish a basis that examines the value of human life, I believe that this will provide a foundation for broader applications.

At the beginning I should state my approach to the Bible. While objectivity is not lost by admitting one's own predispositions, it is important to identify them so that the reader may evaluate the legitimacy of the argument by having a larger picture of the presenter. As a conservative Evangelical, I do confess acceptance of the authority of Scripture. Important for this presentation, I do not believe that the texts of Scripture

should be seen as random collections of laws and other materials that may at times contradict one another and thus allow the reader to pick and choose what they prefer, while ignoring or rejecting what does not fit their ethical system. I remain far from claiming that I have solved all the problems that a complex and large book such as the Bible may include. However, I would affirm that a perspicacity of the texts of Scripture allows one to draw the most important outlines to this issue while reserving judgment on some details.

Introduction

Values concerning human life are rooted in the distinctive contribution of the Bible of Jews and Christians. They lay behind Western Civilization. Thus Joshua Berman, in his volume, *Created Equal*, argues that the foundations of equality in humanity first occur in the laws of Deuteronomy.³ We will not consider every aspect of Western civilization. Instead, we will examine the dominant human values as expressed in Western legal and ethical traditions and note how these found their origins in the sacred texts of Judaism and Christianity. We will then contrast this biblical witness with other ancient Near Eastern legal texts to argue the distinctive contribution that the Bible makes to the development of human civilization and, in particular, to the appearance of a philosophy in which every human life possesses a transcendent value and in which there is a fundamental equality to all human life.

We will consider first the human person as created in the image of God. This will discern the unique value of human life and the special role of capital punishment in the preservation of that value. Then we will examine laws regarding homicide. Here we will place special emphasis on the manner in which all human life possesses transcendent value in the biblical economy of

God's creation. No human life has a greater or lesser value in this regard. I will argue that this assignation of value is unique in the ancient world and that even the closest legislation outside the Bible remains distant from such emphasis. While I would prefer to see this as evidence of divine revelation in the influence of ancient Israel's society, the point emphasized here remains the unique contribution of this value to civilized human development.

The Human Person as Created in the Image of God

In this section we will examine the biblical witness that lies behind the value of human life in order to understand the significance of that testimony in its original cultural and literary context. This will involve a focus on the Hebrew Bible or Old Testament. Despite some assertions to the contrary, this document remains unique in the ancient world. It also exercised a special influence on Western culture and legal traditions. The Greco-Roman authors of the Classical and later worlds influence modern thinking with their legacy of philosophical categories and related perspectives on how we think. However, the biblical world left us a legacy of ethical and moral insights and teachings that have provided a foundation that has extended through the latter part of the twentieth century.

For Christians, the New Testament and especially the life and teachings of Jesus Christ have given us a focus on personal ethics. The exercise of charity, integrity, justice, and self-sacrifice in our relations with one another in our church communities and beyond becomes the hallmark and the litmus test for the vitality of the faith we claim. In the view of both Judaism and Christianity, the civil legislation of the Old Testament has provided the ethical foundations of the state. While this ethic should not contradict the concerns of personal

morality, it operates on the level of the society as a whole and thus promotes a context in which personal ethics may be lived out.

The ideals of this society have existed despite the medieval lapses of a Machiavelli or the horrors of Hitler's human furnaces. There are many other examples of such failures; but that is the point, they are recognized as failures. Ancient and Medieval monarchs, as well as Enlightenment states, drew upon the foundations of Old Testament laws for their own legal formulations. This occurs in the laws of the Roman emperor Justinian as well as the later traditions connected with the codification by Alfred the Great. The Genevan Reformer John Calvin, the early American Puritans, and others have used the legal traditions of ancient Israelite in their formulations.

Foundational to all of this is the witness to God's value of humanity at the point of creation. I offer the following translation of the rhetorical and poetic lines of Genesis 1:26-28 as evidence of human value:

Then God said:
Let us make humanity⁴ in our image,
According to our likeness.
Let them rule over the fish in the sea,
Over the birds in the sky,
Over the land animals,
Over the whole earth,
And over everything that moves on the earth.
So God created the human race in his image;
In the image of God he created it;
Male and female he created them.
God blessed them and said to them:
Be fruitful,
Increase in number,

Fill the earth,
Have power over it,
Rule over the fish in the sea,
Over the birds in the sky,
And over every living thing that moves on the earth.⁵

This text lies in the midst of the creation account of Genesis 1:1–2:4.⁶ Among many things that may be observed about this creation account, we emphasize two here. First, the creation story emphasizes the creation of life. The “things” that are created, whether time (day 1), or sky, seas, and dry land (days 2-3), form the background for the emergence of abundant life in its diversity (days 4-6). This life culminates in the creation of humanity. The human race forms the final act of divine creation and the only one created in the divine image. Second, the creation is set in a context of seven days. However this may be interpreted, it is clear that this creation week progresses until it achieves a climax on the seventh day.⁷ The seventh day is one of rest. Thus the entirety of creation has as its goal rest with God.

This canonical biblical account of creation would have been known in Judaism and in pre-Exilic Israel.⁸ This powerful rhetoric, with its magnificent poetic expression, asserts that life, and especially human life, is the highest achievement of God’s creative work. The image of God identifies this achievement. What then is this image? The word for image is *šelem*. Parallel to it is the word for likeness, *dēmūt*. In Daniel 3:1, King Nebuchadnezzar of Babylon erects a statue of himself and demands worship from all of his subjects. The same word, *šelem*, appears there to identify the image.⁹ A statue or some other likeness (such as a carving in the side of a hill or a two dimensional picture) became known in ancient times as a symbol of a leader’s authority. The leader could not be present everywhere and so this image represented the leader’s ongoing presence and power.

In modern times the iconic picture of the bringing down of the statue of Saddam Hussein in the middle of Baghdad remains embedded in the minds of many as a symbol of his loss of authority. In ancient times in the North Syrian state of Gozan, the statue of the governor of that province in the latter eighth century B.C. was erected.¹⁰ This statue was found in excavations of Tell Fekheriyeh, the modern name of the central city of this region. On it scribes had chiseled an Aramaic inscription and a translation of that text into the script of the Assyrian empire of which Gozan was a part. The words, *šelem* and *demût*, both occur in the text of the Aramaic inscription (in their Aramaic forms) as synonyms used to identify the statue of the governor. Both are translated by the same sign in the Assyrian script, indicating their synonymous nature. Here and in Genesis 1 the two words form a synonymous pair of the sort often found in parallel lines in Hebrew poetry. They reinforce each other.¹¹

So what then is the image of God? People are not statues. What are they? In Genesis 1:26-28 God commands the human race to multiply and fill the earth. Is this the image of God? It seems unlikely, because other living creatures receive the same command in Genesis 1:22. What is unique about humanity that it is described as created in God's image? Some have suggested that the first common plural self-reference of God, i.e., his use of "we" and of "us," implies a social nature in God's image. Perhaps, but this is not explicit in the text. The one phrase that God's words directly connect with the image of God and that occurs twice in these verses is that of the command to rule over the earth. God gives this only to humanity; not to the rest of the created order.

To what does this rulership refer? Much has been made of the Hebrew verbs, *kibšû* and *r^edû*, in verse 28. However, the best way to understand how the early readers of Genesis would have perceived these terms is to see what God leads the first

possessors of this image to do. That occurs in Genesis 2:15, 19-20. There God places the man in the Garden of Eden to take care of it, and he brings the animals before the man to see what names he would give. The man thus maximizes the life-giving potential of the Garden by taking care of it. As he searches for a helper, the man names and classifies the animals, demonstrating insight into their purpose and function. He names and thereby classifies the animals, furthering the process of distinction that God began when he separated the light and darkness and the waters and sky in the opening days of creation.

After the creation of humanity and the period of rest that follows, God finishes his creative work. Genesis teaches that he leaves humanity to continue this work. Humanity's responsibility of dominion is to act as stewards of the world. We should maximize the life that God created in the world, and we should continue to order and shape the world, transforming it for the good of its inhabitants and thereby for God's greater glory. Humanity functions in the image of God, as it reflects the divine will in the world so as to move history forward and bring all creation into God's plan. The ultimate goal of this is rest but, as it is built into creation from the beginning, that rest must be present throughout the created order at regular, weekly intervals to remain in harmony with how creation was intended to be.

The story continues. Despite the rebellion and violence and murder, the image is reaffirmed with the same language in Genesis 5:1-3. Sin does not destroy the image but does mar it. It can hide and distort that image. This is true even though the first sin has occurred (Gen. 3:1-19). When Cain murders his brother, God curses Cain and places a mark on him to protect him (Gen. 4:8-16). However, God's undoing of human violence here invites Cain and his descendants to choose against violence and murder, as God also sought to dissuade Cain in Genesis 4:7.¹² However, this is not the choice of humanity as violence grows (Gen. 6:5-

13) and Cain's descendant, Lamech, promises murder and vengeance more than ten times greater than Cain (Gen. 4:24).

Nevertheless, even great violence and the judgment of the Flood (Gen. 6-9) does not destroy the image of God. Instead, in Genesis 9:6 God forbids murder because people are created in God's image.

Further, Genesis 10 affirms the unique value of humanity as it describes all known peoples as coming from common parents. Thus all share in the common family of the human race. So God has created all in his image and made all equal before him. Yet the image also implies that all people have a transcendent value. Genesis 10 remains a special text, because it attempts to include the known peoples of the world without naming any mythical peoples and without exalting one race or tribe as inherently better than another. In this regard it differs from every other text of the ancient world.¹³ All of these tend to privilege the race or group represented by the author. A text such as this argues for a biblical view of a distinctive value and equality to humanity not found among ancient Israel's contemporaries.

In the ancient Near East some kings did regard themselves as created in the image of their god. But no one thought that a whole nation, much less all the peoples of the world, was created in God's image. Only the biblical text applies the idea of the image of God to all people.

To see how this view of the value of the human person relates to the question of capital punishment, let us return to Genesis 9:6. There the image is tied to murder:

Whoever spills human blood,
Shall have their own blood spilled by a human.
This is because God made the human race in his
image.

Note the exchange here. If the human person has absolute value above all of creation, and if one human destroys another in an unjustified manner—that is, a murder is committed—then no amount of gold or of any physical goods can compensate for the taking of another person’s life.¹⁴ Because the value of a person is transcendent and comes from God, and because the image of God is possessed by every human being, then compensation for taking any life must be with something transcendent, something from God and not from creation itself. Only the taking of another life, that of the murderer, forms adequate compensation for the taking of the human life in the first instance.

In this manner the nature and justice of capital punishment are established in God’s first covenant in the Bible. By its nature as given to Noah and all his descendants, this covenant applies to the entirety of the subsequent human race throughout history and up to the present age. The fact that a person forfeits life as due payment for the murder he or she committed is here asserted. And it is based on the principle of the creation of humanity in God’s image.

The Human Person and Homicide¹⁵

The absolute value of human life is guaranteed by creation in God’s image. It occurs in every person in whom the DNA of human life can be found. There are no exclusions in the biblical text. Therefore, each person is more valuable than all the material goods of the created world. This absolute value to every human person is not found elsewhere in the ancient Near East. A convenient manner to see the distinctive biblical view of human life exists with the study of the legal collections. While these by no means exhaust the subject, they do provide the essential distinctive with the surrounding non-biblical cultures. They also

establish civil laws for the regulation of the Israelite state. As such, they incorporate a continuum that moves us from the value of human life to homicide and the laws governing capital punishment that emerge from such a perspective.

In searching for comparative sources in the ancient world, we come to consider the major collections of slave laws that date between the twenty-first century B.C. and the eleventh century B.C. Some of the earliest legal collections, such as those of Ur-Nammu, Lipit-Ishtar, and Eshnunna, are fragmentary. The legal collection of Hammurabi is complete. Although appearing in the eighteenth century B.C., copies of it continued to be used into the first millennium B.C. in cuneiform scribal education. Fifty-seven extant copies are known.¹⁶ Although there are various theories as to the origins of the laws, there is little evidence that it was ever used in the judicial courts of Babylonia. For this reason, Hammurabi's laws do not preserve as a close a parallel to the biblical laws in terms of their purpose. The same is true in general of the Mesopotamian legal collections.¹⁷ A law collection such as that of Hammurabi served the purposes of that king by demonstrating to the Babylonians that their monarch was fair and that they lived in a land of justice and equality.¹⁸

While the Hammurabi laws were copied later for the purposes of scribal education, the Hittite laws from the region of modern Turkey were also copied, but for different purposes. These laws were changed in later copies, and this suggests that that they served more of a realistic purpose in terms of their use in society. Dating from c. 1650-1180 B.C., these laws underwent revisions where, for example, corporal punishments were replaced by fines.¹⁹ The Hittite laws also omit any single designation of a king by name or other authority as the leader. This also supports the view that these laws, unlike those of Hammurabi, are not propaganda for a particular leader. They will be used here for purposes of comparison.

The collections of biblical law occur in Exodus, Leviticus, Numbers, and Deuteronomy. The penalties in some of those laws presented as earlier are reduced in later laws.²⁰ Not only does this resemble the Hittite laws and their legal evolution, the fact also suggests some realism to the biblical laws. Although Moses remains associated as the human author and authority of these laws, they do not promote the image of this lawgiver. In fact, his faults and failures are not hidden.²¹ Further, the narrative does not support the view that Moses received any special power in writing these laws. Instead, these laws address Israelite society for both religious and civil purposes. The witness of the text itself suggests that the Book of the Covenant, in Exodus 20:22-23:33, preserves the earliest laws in the Bible.²²

Regarding homicide, every ancient and modern society with written laws includes civil legislation that prohibits murder.²³ Prohibition of murder remains necessary to maintain civil order.

From those ancient Near Eastern law collections, the Hittite laws and the culture they represent come closest to that of Israel. About thirteen laws require the death penalty.²⁴ These include laws concerned with cursing someone, with theft, with incest, with bestiality, and with adultery. However, there is no capital punishment for homicide. Unlike other ancient Near Eastern legal collections, the Hittite laws do begin their laws (and their social legislation) with seven laws that describe forms of murder.²⁵ In all cases compensation is required. For a free person the fine is twice that of a slave. Only in the Hittite and biblical law collections do laws on homicide take first position.

In the Bible, the ban on murder occurs in Genesis 9:6, as we have seen. There the expectation is that the person who commits murder will suffer death as the price for that act of taking a human life. We find something similar in the Ten Commandments. The role of these commands is especially

important among the legislation of the Pentateuch, as seen in their frequency and in their position. The Decalogue appears twice in the Old Testament, at the beginning of the laws from Mt. Sinai in Exodus 20 and at the beginning of the laws from Moab across the Jordan River in Deuteronomy 5. These are the only sets of commands so ordered and the only ones where such a significant portion of the text is repeated verbatim.

Both Exodus 20 and Deuteronomy 5 divide their laws into two parts. The first half address laws on the proper worship of God—i.e., how to love God. The second half focus on the civil laws for the ordering of society—i.e., how to love one's neighbor. The law on honoring one's parents places the parents in the position of the mediators of God's covenant to their children who should follow it and reap the blessing of a long life in the land God has given.²⁶

Thus, the civil laws begin with the prohibition on killing. It is true that the root of the verb for killing, *rāṣaḥ*, used here does not mean the act of murder in other cases. However, it is not correct in terms of interpretive principles to demand that the word carry the weight of every other usage of the term throughout the Bible.²⁷ Thus the murder of orphans in Psalm 94:6 is not perceived in the same manner as a redeemer putting to death someone who has killed one of his family in Numbers 35:27. The act of killing makes the former perpetrator guilty but is justified in the case of the latter.

The same is true of other laws in the Decalogue. Terms in the Ten Commandments should not be assumed to carry the weight of every other usage in the Bible. For example, the preceding command to honor one's parents is not observed by King Asa of Judah, who deposes his grandmother Maakah, who was the queen mother, because of the image of Asherah she had constructed (1 Kgs. 15:11-13). Second Chronicles 30:7 cautions faithful Israelites not to follow their parents who acted unfaith-

fully to the LORD. Again the prohibition against false witness (Exod. 20:16; Deut. 5:20) seems to be violated in the Bible in a case such as the one, where Rahab lies to the agents of Jericho's king (Josh. 2:2-9). Yet she is honored for protecting the spies (Heb. 11:31; Js. 2:25).

So, what determines the meaning of a word or, in this case, a command? As with the examination of all words, their use in context becomes critical for understanding their meaning.²⁸ Our purpose here will be to examine the implications of this law and the corresponding penalty of death that accompanies it in the larger legal context of where this prohibition appears in the two Decalogues. The first position of this law in the social part of the Decalogue dictates its primary importance. It is also found in first position in the Book of the Covenant, that follows the Decalogue in Exodus 20. There it appears immediately after the prologue to the social legislation (the *mišpāṭîm* of Exod. 21:1) in Exodus 21:2-11. These laws concern Hebrew slaves and give them specific rights that no one can violate. Among these rights is a limitation to their length of service. Such laws do not exist in any other ancient Near Eastern legislation. The guarantee of rights to this group of people who reside on the lowest and most vulnerable rung of the social ladder, provides a model to the command regarding Israel's treatment of its neighbors, that "you shall love your neighbor as yourself" (Lev. 19:18). This love for one's neighbor is commanded here where Israel was most likely to be misled, in the abuse of those most vulnerable. Such rights establish a unique value to the human person in the biblical world, distinct from all other contemporary cultures.²⁹

Beyond this prologue, the civil laws begin in earnest in Exodus 21:12-15. There the first priority, as with the laws in the Decalogue, is murder and the necessity of capital punishment to recognize the absolute value of the human life when it is intentionally taken:

Whoever hits someone so that they die, shall be put to death. But if someone did not plan this, and God allowed it to happen, then I will provide a place for them to flee. If, however, someone plots against their neighbor, planning to kill them intentionally, then you shall take them from the altar to kill them. Whoever strikes their father or mother, so that they die, shall be put to death.

Note that the mandates for the death penalty appear in a body of legislation explicitly designed for the people of Israel as an organized community or state (Exod. 20:22; 21:1). The general law of Exodus 21:12 concludes with a formula that identifies capital punishment, *môt yûmât*, “he shall indeed be put to death.” This formula recurs in v. 15 as well. It occurs 24 times in the Bible, always in legal contexts defining a pronouncement from God or a king regarding consequences for anyone in that society who disobeys a law. It is not limited to Israelite society, as Abimelek uses it in Genesis 26:11. Thus this forms a legal pronouncement that a state enacts in bringing about the death of a perpetrator who commits a capital offense in the society. This may be compared to the Akkadian, *id-da-ak*, “let him be put to death,” that appears repeatedly for the death penalty in the laws of Hammurabi. Its passive form (N-stem) resembles the hophal passive of the Hebrew, although the latter adds the infinitive absolute for emphasis. This pronouncement in both legal collections identifies laws that carry a capital punishment.

The same is true in the one other major collection of social laws in the Bible, that of Deuteronomy 19-26. As with the Book of the Covenant, the general concerns of the social laws follow the order of that legislation in the Decalogue. In fact, the entire legal collection of Deuteronomy 12-26 coincides with the

general order of all the Ten Commandments.³⁰ These laws are addressed to all Israelites (Deut. 1:1; 5:1; 6:4). The most important appear first, in chapter 19. Verses 1-10 address unintentional homicide, for which towns of refuge are set aside where the guilty one may flee for safety. Verses 11-13 consider homicide that is premeditated and intentional. There is no escape from capital punishment:

If someone hates their neighbor and sets an ambush for them so that they rise up against them and strike them down with the result that they die – if they then run to one of these towns of refuge – then the killer’s local elders will send for the killer. They will take that one from this place of refuge and give them over to the blood avenger so that the avenger may kill that person. Don’t pity them. Remove the guilt of innocent blood from Israel so that it may go well with you.

Here in Deuteronomy, the one who inflicts the death is the blood avenger, the redeemer or *gô’ēl*. However, this figure is authorized to inflict the sentence by the decision of the elders of the town where he or she resides. Deuteronomy recognizes this capital punishment as legal. It goes further and indicates that the shedding of innocent blood must receive such compensation. Otherwise, the nation remains guilty. Such guilt will compromise the well being of the people of God.

In all major biblical legislation concerned with society, murder tops the list. The value of the individual human remains the most important aspect of society. Of all the other legal collections in the ancient Near East, only the Hittite laws begin with this concern. However, they equate the value of human life with money and rank it according to social status. The Bible does

not do this.³¹ Human life has value beyond anything material. The laws that are most important appear first in the legal collections. The laws against murder in the Biblical collections appear in first position in the social law. The laws against murder do not appear first in other ancient Near Eastern law collections. Thus laws against murder in Israel are most important and concern the value of everyone's life equally. For this reason capital punishment is to be applied to all the people of God in terms of murder, without regard for who commits the murder or who is murdered.

Summary

The rest of the Bible, both Old and New Testaments, affirms the value of human life as the same for everyone and as without qualification. No amount of material goods can pay for a human life. There is a unique value to each life. This is based upon the transcendent nature of every human life as created in the image of the God of the Bible. Capital punishment recognizes this transcendent nature of the human person and requires the only just payment possible; one in kind.

If the Old Testament law establishes capital punishment as an ethic for the state, the remainder of the Bible does not challenge this. Here we build upon general instructions about giving to Caesar what is his (Matt. 22:21; Mk. 12:17; Lk. 20:25) and the right of the government as appointed by God to take up the sword (Rom. 13:1-7), and the command to obey government, sent by God to punish the evildoer (1 Pet. 2:13-14). Jesus teaches that even in unjust states the exercise of capital punishment will take place, sometimes to persecute and kill Christians (Matt. 10:16-28; Mk. 13:9-13; Lk. 21:12-19).

The Judeo-Christian tradition of the value of human life is alien to any view that promotes the killing of innocent people.

Although this tradition has been misunderstood and abused at times in history, it has survived for millennia because it resonates with inherent and self-evident truths that characterize the aspirations of humanity. I am aware that in advocating the legitimacy of capital punishment I may inadvertently promote the persecution and death of Christians by the unjust use of this terrible measure. As much as I may personally dislike any taking of human life, especially in light of the life-promoting ethic found throughout the Bible, I am also aware that Jesus himself, as well as many of his disciples, suffered execution without teaching or demanding an end to the principle of state-sanctioned capital punishment in this age. I can do no less.

¹ Accessed 25 September 2014 at <http://www.merriam-webster.com/dictionary/capital%20punishment>.

² Accessed 6 September 2014 at <http://www.oxforddictionaries.com/definition/english/capital-punishment?q=capital+punishment>.

³ Joshua A. Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (New York, NY: Oxford University, 2008).

⁴ For the meaning and usage of 'ādām, here and in the opening chapters of Genesis, see R. Hess, "Splitting the Adam: The Usage of 'ADAM in Genesis i-v," in *Studies in the Pentateuch*, ed. J. A. Emerton (Supplements to Vetus Testamentum 41; Leiden: Brill, 1990), 1-15.

⁵ All translations of the biblical text are the author's.

⁶ For personal reflections on the theological implications of creation as found here especially, but also elsewhere in the Bible, see R. Hess, "Creator of Heaven and Earth," *Touchstone: A Journal of Ecumenical Orthodoxy* 3, no. 3 (1989): 9-10, 43. Access at <http://touchstonemag.com/archives/article.php?id=03-03-009-f>.

⁷ For the nature of these days as a literary device to correspond to the genealogies that structure the remainder of the book of Genesis, see R. Hess, "Genesis 1-2 in Its Literary Context," *Tyndale Bulletin* 41, no. 1 (1990): 143-53.

⁸ Source critical attempts to date this account, as part of the P or Priestly document, to the post-exilic period are not settled. Further, the recent tendencies of those who use this method as a dating scheme for texts of the

Pentateuch have included significant arguments for a pre-Exilic date. See the evidence for this as well as a general analysis of this dating scheme in Richard S. Hess, *Israelite Religions: An Archaeological and Biblical Survey* (Grand Rapids, MI: Baker, 2007), 46-59.

⁹ It is actually the Aramaic *šēlēm*, the cognate and equivalent of the Hebrew, *šēlem*.

¹⁰ See biblical references to this site in 2 Kgs. 17:6; 18:11; 19:12; 1 Chron. 5:26; Isa. 37:12.

¹¹ See R. Hess, “Eden - A Well-Watered Place,” *Bible Review* 7, no. 6 (1991): 28-33.

¹² Cf. a developed perspective in the context of broader discussion on violence by Elmer Martens, “Towards Shalom: Absorbing the Violence,” in *War in the Bible and Terrorism in the Twenty-First Century*, ed. R. S. Hess and E. A. Martens (BBR Supplement 2; Winona Lake, IN: Eisenbrauns, 2008), 43 (33-57).

¹³ Not that there have not been some attempts to identify similar texts and suggest its derivative nature. For this discussion regarding the Greek Hesiodic Catalogue of Women and a critique of this parallel, see Richard S. Hess, “The Genealogies of Genesis 1-11 and Comparative Literature,” in *I Studied Inscriptions from before the Flood”: Ancient Near Eastern, Literary, and Linguistic Approaches to Genesis 1-11*, ed. R. S. Hess and D. T. Tsumura (Sources for Biblical and Theological Study 4; Winona Lake, IN: Eisenbrauns, 1994), esp. 69-71 (58-72). Reprint of “The Genealogies of Genesis 1-11 and Comparative Literature,” *Biblica* 70, no. 2 (1989): 241-54, especially 251-53.

¹⁴ For the expression “to spill human blood” in reference to murder, see Gen. 37:22; Num. 35:33; 1 Kgs. 2:31; Ezek. 22:4. For the view that this text is proverbial (e.g., Glen Stassen and David Gushee, *Kingdom Ethics* [Downers Grove, IL: InterVarsity Press, 2003], 202), see the objections that v. 5 where God makes this demand and the causal clause of v. 6 that cannot suggest the image of God justifies wrongdoing (Wayne Grudem, *Politics According to the Bible: A Comprehensive Resource for Understanding Modern Political Issues in Light of Scripture* [Grand Rapids, MI: Zondervan, 2010], 188).

¹⁵ See Richard S. Hess, “The Distinctive Value of Human Life in Israel’s Earliest Legal Traditions,” in *The Ancient Near East in the 12th-10th Centuries BCE: Culture and History: Proceedings of the International Conference Held at the University of Haifa, 2-5 May, 2010*, ed., Gershon Galil et al (Alter Orient und Altes Testament 392; Münster: Ugarit-Verlag, 2012), 221-28.

¹⁶ Victor Avigdor Hurowitz, “What Was Codex Hammurabi, and What Did It Become?” *Maarav* 18, nos. 1-2 (2011): 89-100, especially 92.

¹⁷ Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (SBL Writings from the Ancient World Series 6; Atlanta, GA: Scholars Press, 1995), 4-7.

¹⁸ Cf. Hurowitz, “What Was Codex Hamurabi,” 99, who cites a “hymnic interlude” in the epilogue of the Code: “My words are choice, my deeds have no rival—Only to the unintelligent they are empty, While of the wise they are sources of praise.”

¹⁹ Harry A. Hoffner, Jr., “Hittite Laws,” in *Law Collections from Mesopotamia and Asia Minor* 213-17.

²⁰ Cf. Exod. 22:7-9 and Lev. 6:1-7.

²¹ Cf. e.g., Deut. 34:48-52. More generally, cf. Bernard M. Levinson, “The Case for Revision and Interpolation with the Biblical Legal Corpora,” *Maarav* 18, nos. 1-2 (2011): 131-54.

²² Modern research has argued that the Book of the Covenant is based on the laws of Hammurabi in terms of structure and some content. See David P. Wright, “The Laws of Hammurabi as a Source for the Covenant Collection (Exodus 20:23–23:19),” *Maarav* 10 (2003): 11-87. This was challenged by Bruce Wells, “The Covenant Code and Near Eastern Legal Traditions: A Response to David Wright,” *Maarav* 13, no. 1 (2006): 85-118. See the important responses of David P. Wright, “The Laws of Hammurabi and the Covenant Code: A Response to Bruce Wells,” *Maarav* 13, no. 2 (2006): 211-60; idem, *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford: Oxford University, 2009). Nevertheless, Wright has argued that the Book of the Covenant is a late document of the first millennium B.C. period. This is because scholars have seen the influence of the Hammurabi laws as coming from late copies that Israelite scribes encountered and used to create the Book of the Covenant as a response to Assyrian hegemony (Wright, “Response to Wells,” 258). This argument assumes the absence of any evidence for a written legal tradition in the West Semitic world outside the Bible. This can no longer be sustained, because fragments of Hammurabi-type laws have been found in the land of Israel, at Hazor and dating from a thousand year before the Exile. There was a Hammurabi style of legal tradition in the land, when Israel first occupied it in the Late Bronze Age. See Wayne Horowitz, Takayoshi Oshima, and Filip Vukosavovic, “Hazor 18: Fragments of a Cuneiform Law Collection from Hazor,” *Israel Exploration Journal* 62 (2012): 158-76. This evidence requires

a re-evaluation of this style of law in terms of its influence in West Semitic legal traditions (such as the Bible) well before the Neo-Assyrian period.

²³ For the ancient world, cf. Pamela Barmash, *Homicide in the Biblical World* (Cambridge: Cambridge University, 2005); Raymond Westbrook, "Reflections on the Law of Homicide in the Ancient World," *Maarav* 13, no. 2 (2006): 145-74.

²⁴ Harry A. Hoffner, Jr., *The Laws of the Hittites: A Critical Edition* (Leiden: Brill, 1997), 110-11, 114-16, 133, 136-38, 148-51, 153-57, 203-4, 215, 217-20, 224-27; for laws nos. 121, 126, 166, 170, 173, 187-91, 195, 197, and 199.

²⁵ The first law in the Laws of Hammurabi concerns someone who falsely charges another person with murder. However, the second law addresses false accusations of witchcraft; the laws then move on to court procedure and laws regarding theft of temple property. It is not until laws 202 and following that the text addresses assault and death that may result. For these laws, cf. Roth, *Law Collections from Mesopotamia and Asia Minor*; M. E. J. Richardson, *Hammurabi's Laws: Text, Translation and Glossary* (Sheffield: Sheffield Academic Press, 2000); M. Malul, *Law Collections and Other Legal Compilations from the Ancient Near East* (Haifa: Pardes, 2010), 101-75. Note that the legal collection of Ur-Nammu begins with a brief prohibition of murder and identifies it as a capital crime (Sumerian i-gaz-e-dam). However, the collection is fragmentary and the propagandistic nature of the prologue, like that of Hammurabi, raises questions about the use of these laws. Further, and importantly, there is no development of intentional versus unintentional homicide, as in the biblical copora. See Roth, *Law Collections from Mesopotamia and Asia Minor*, 15-22.

²⁶ Cf. the blessings for keeping the covenant in Deut. 28:1-14.

²⁷ Wilma Ann Bailey, "You Shall Not Kill" or "You Shall Not Murder"? *The Assault on a Biblical Text* (Collegeville, MN: Liturgical Press, 2005).

²⁸ See, e.g., David J. A. Clines, "Introduction," in *The Dictionary of Classical Hebrew Volume I a*, ed. D. J. A. Clines (Sheffield: Sheffield Academic Press, 1993), especially 14-15, 24-26.

²⁹ See the summary in Hess, "The Distinctive Value of Human Life," 221-24.

³⁰ Stephen A. Kaufman, "The Structure of the Deuteronomic Law," *Maarav* 1 (1978-1979): 105-58.

³¹ Stephen A. Kaufman, "The Second Table of the Decalogue and the Implicit Categories of Ancient Near Eastern Law," in *Love and Death in the Ancient Near East: Essays in Honor of Marvin H. Pope*, ed., J. H. Marks and R. M. Good (Guilford, CT: Four Quarters, 1987), 111-16.

Chapter 2

IN DEFENSE OF CAPITAL PUNISHMENT

Douglas Groothuis

Moral judgments should be rooted in moral facts. Without this grounding, moral evaluation sinks into subjective preference or social consensus, neither of which are sufficient to know right and wrong in an objective sense. Since much of morality addresses the treatment of beings like us, moral judgments have weight. The virtuous treatment of human beings, therefore, demands deep thought—not slogans, sound bites, factoids, or talking points. The morality of capital punishment is a matter of life and death.

This essay will not address whether capital punishment is fairly administered in America, either with respect to who is executed or if the methods used are cruel.¹ Of course, if capital punishment for murder is just, it should be administered properly. This essay argues for a moral principle, which, if true, should be implemented according to legal standards of evidence which presumes innocence until proven guilty beyond a reasonable doubt. This high standard is common neither in history nor in the world today. Its deepest roots trace to the Old Testament principles of legal evidence.²

Moral facts are determined by the proper moral authority. The basis for all morality is the triune God of the Bible, who reveals moral truth through human nature (conscience), through the inspired and inerrant Holy Scriptures (2 Timothy 3:15-16; 2 Peter 3:16), and through Jesus Christ, God Incarnate (John 1:1-18). I cannot argue this point here, but will write on that basis.³ More specifically, the orthodox Protestant perspective is that the

Bible alone is the final word and completely reliable on all that it addresses.⁴ This is captured by the Reformation's formal principle, *sola Scriptura*, and is spelled out cogently in The Chicago Statement on Biblical Inerrancy (1978).⁵ What follows is a 'short statement' of its position.

1. God, who is Himself Truth and speaks truth only, has inspired Holy Scripture in order thereby to reveal Himself to lost mankind through Jesus Christ as Creator and Lord, Redeemer and Judge. Holy Scripture is God's witness to Himself.
2. Holy Scripture, being God's own Word, written by men prepared and superintended by His Spirit, is of infallible divine authority in all matters upon which it touches: it is to be believed, as God's instruction, in all that it affirms: obeyed, as God's command, in all that it requires; embraced, as God's pledge, in all that it promises.
3. The Holy Spirit, Scripture's divine Author, both authenticates it to us by His inward witness and opens our minds to understand its meaning.
4. Being wholly and verbally God-given, Scripture is without error or fault in all its teaching, no less in what it states about God's acts in creation, about the events of world history, and about its own literary origins under God, than in its witness to God's saving grace in individual lives.
5. The authority of Scripture is inescapably impaired if this total divine inerrancy is in any way limited or disregarded, or made relative to a view of truth contrary to the Bible's own; and such lapses bring serious loss to both the individual and the Church.

Every worldview locates its authority in something or someone. It is paramount for Christians to appeal to the divine source of truth for their moral reasoning. Even more, human laws binding on individuals and organizations rely on some philosophy or vision for life. None are morally neutral. The source of law functions as the god of any society.⁶

For Muslim monotheists, Shari 'a law is based on the Qur'an and *hadith* (traditions about the life of Mohammad). Muslims take it as absolute and applicable globally. This law requires the death penalty for a variety of offenses, including adultery (men are unlikely to be convicted of it), homosexual behavior, blasphemy against Allah or Mohammad, and apostasy from Islam.⁷ But this is not the God of the Bible and the law of Islam is not the law we find in the Bible. That law "is holy, and the commandment is holy, righteous and good" (Romans 7:12)

Secularists, and even some Christians, claim that religious ideas should not influence public politic, given *the separation of church and state*. This phrase does not appear in any of the founding documents. We must go deeper than a phrase that has become a thought-stopper.

Christians, as citizens of these United States, have just as much right and opportunity to shape law as any other citizen. This follows from the free exercise clause of the First Amendment. Richard John Neuhaus expounds this convincingly and thoroughly in his modern classic, *The Naked Public Square*.⁸ The First Amendment insures far more than "freedom of worship"—that is, activities done at home and in a place of religious assembly. That is protected, but so is political activism and legal influence. The First Amendment makes this crystal clear:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of

speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The free exercise of religion is one of the five ringing freedoms upon which America is based. It is no lesser than freedom of speech, press, peaceable assembly, or petition.

Civil law will not make anyone good. Moral character cannot be legislated. But laws that are just make people less likely to do what is bad for society. As Martin Luther King said, laws will not make a racist like me, but they could stop them from lynching me. That is the negative or restraining power of the law.

American civil law ought to be rooted in and consistent with the Constitution, which itself is based on a philosophy of natural law or natural rights. That is, there is a law above the law to which the law should conform as much as possible in a fallen world. This powerful idea is found in the Declaration of Independence.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.⁹

Governments are instituted to secure rights given by the Creator. Governments do not create rights by their dicta. The American vision for law is based on the Judeo-Christian worldview—however imperfectly applied.

Having broached the discussion of Christian in politics, we now come to the question of who will live and who will die under the sword of the civil government? Murderers are detained against their will and may be executed if convicted in a court of law. But no one detains the judge or jury for their part in the sentencing. This shows the authority structure of the civil government in contradistinction to free associations, such as clubs, churches, and private schools.

The state, unlike other authorities, has a monopoly on legitimized violence. One may be drafted into military service, summoned as a juror, be taxed, be arrested, be jailed, and be put to death if convicted of a capital crime. Education up to a certain age is compulsory, not elective.¹⁰ One cannot politely refuse these imperatives. Despite what President William Clinton said, taxes are not *contributions*; they are *extractions*, heavy with the weight of the law. One sentenced to death may appeal the case, but he cannot decline the offer.

Christianity is not anarchistic. Paul sanctions the authority of the state in the thirteenth chapter of Romans. However, the government exercised here is not unlimited; nor is it the only form of government operative in a healthy society. Families, churches, and schools govern according to standards as well, and have their rightful place besides civil government. But the state's government is different.

Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, whoever rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those

who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and you will be commended. For the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also as a matter of conscience. This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. Give to everyone what you owe them: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor (Rom. 13:1-7).¹¹

The Apostle Peter counsels much of the same thing:

Submit yourselves for the Lord's sake to every human authority: whether to the emperor, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right. For it is God's will that by doing good you should silence the ignorant talk of foolish people. Live as free people, but do not use your freedom as a cover-up for evil; live as God's slaves. Show proper respect to everyone, love the family of believers, fear God, honor the emperor (1 Pet. 1:13-17).

While this civil authority is God-given, it is not divine. Federal, state, and local governments may go radically wrong. The Bible

speaks to this repeatedly. Psalm 94 condemns ungodly government and calls out for God's justice.

Can a corrupt throne be allied with you—
a throne that brings on misery by its decrees?
The wicked band together against the righteous
and condemn the innocent to death.
But the Lord has become my fortress,
and my God the rock in whom I take refuge.
He will repay them for their sins
and destroy them for their wickedness;
the Lord our God will destroy them (Ps. 94:20-23).

We find that the authority of the civil government is not unlimited and is not beyond challenge.¹²

In light of this, should the civil government execute the death penalty? *Prima facie* it seems not since humans have a unique standing among the living.

Then God said, "Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals,[a] and over all the creatures that move along the ground." So God created mankind in his own image, in the image of God he created them; male and female he created them (Gen. 1:26-27; see also Ps. 8; Col. 3:10).

The original glory of the *imago dei* consists in creativity, intelligence, relationality, and moral agency to be exercised to develop culture. Or, as *The Westminster Shorter Catechism* affirms.

Q. 10. How did God create man?

A. God created man male and female, after his own image,[26] in knowledge,[27] righteousness, and holiness,[28] with dominion over the creatures.

Human beings are nothing to play with, since they are “finite replicas” of God himself, as Cornelius Van Til put it. Human nature was a fitting vehicle for the Incarnation of Christ,

Who, being in very nature God,
did not consider equality with God
something to be used to his own advantage;
rather, he made himself nothing
by taking the very nature of a servant,
being made in human likeness.
And being found in appearance as a man,
he humbled himself
by becoming obedient to death –
even death on a cross! (Phil. 2:6-8).

Given the high standing of humans in God’s world, some argue that capital punishment is morally wrong, since it kills an image-bearer of God himself. An appeal is often made to the fifth commandment: “You shall not murder” (Exod. 20: 13).

However, the command forbids *murder*, not all killing. In the Hebrew theocracy, and according to the Mosaic Law, the killing of human beings was allowed in a morally-sanctioned war, in self-defense, and as the punishment for sixteen crimes.¹³

However, Walter Kaiser notes that:

The key text in this discussion is Num 35:31: “Do not accept a ransom [or substitute] for the life of a murderer, who deserves to die. He must surely be

put to death.” There were some sixteen crimes that called for the death penalty in the OT: premeditated murder, kidnapping, adultery, homosexuality, incest, bestiality, incorrigible delinquency in a child, striking or cursing parents, offering a human sacrifice, false prophecy, blasphemy, profaning the Sabbath, sacrificing to false gods, magic and divination, unchastity, rape of a betrothed virgin. Only in the case of premeditated murder did the text say that the officials in Israel were forbidden to take a “ransom” or a “substitute.” This has been widely interpreted to imply that in all the other fifteen cases the judges could commute the crimes deserving of capital punishment by designating a “ransom” or “substitute.” In that case the death penalty served to mark the seriousness of the crime. Note that only God could say which crimes might have their sanctions ransomed.¹⁴

The Hebrew theocracy was a unique chapter in the Kingdom of God; its legal sanctions and sacrificial aspects ought not to be applied in the New Covenant. However, God’s moral law endures and should be the model for the state. *The Westminster Confession of Faith* puts this well:

Besides this law, commonly called moral, God was pleased to give to the people of Israel, as a church under age, ceremonial laws, containing several typical ordinances, partly of worship, prefiguring Christ, His graces, actions, sufferings, and benefits;[4] and partly, holding forth divers instructions of moral duties.[5] All which

ceremonial laws are now abrogated, under the New Testament.[6]

IV. To them also, as a body politic, He gave sundry judicial laws, which expired together with the State of that people; not obliging under any now, further than the general equity thereof may require.[7]

V. The moral law does forever bind all, as well justified persons as others, to the obedience thereof;[8] and that, not only in regard of the matter contained in it, but also in respect of the authority of God the Creator, who gave it.[9] Neither does Christ, in the Gospel, any way dissolve, but much strengthen this obligation.[10]

Despite changes in God's dealings with humanity, God's moral backbone does not break. Before the Mosaic Law and covenant, God made a covenant with Noah which, unlike the law of Moses, reaches to and binds all people in perpetuity. Hear God's words after the flood.

Then God blessed Noah and his sons, saying to them, "Be fruitful and increase in number and fill the earth. The fear and dread of you will fall on all the beasts of the earth, and on all the birds in the sky, on every creature that moves along the ground, and on all the fish in the sea; they are given into your hands. Everything that lives and moves about will be food for you. Just as I gave you the green plants, I now give you everything.

But you must not eat meat that has its lifeblood still in it. And for your lifeblood I will surely demand an accounting. I will demand an accounting from every animal. And from each human being,

too, I will demand an accounting for the life of another human being.

Whoever sheds human blood, by humans shall their blood be shed; for in the image of God has God made mankind (Gen. 9:1-6).

This passage tells us much about life and death. First, God shows Noah and his sons the way of life after the flood. They should be fruitful stewards, having dominion over the animals and plants (Gen. 1:26-28). God will show them how to live after the water apocalypse. Second, God's forbidding of eating the lifeblood of animals directly ties into the shedding of human blood. While humans may spill the blood of animals without penalty, they cannot shed the blood of their fellow man without God holding them accountable for it. Third, since human beings are uniquely valuable in God's world, those who "shed human blood" must be put to death. This is the only punishment that fits the crime. One forfeits one's *prima facie* right to life through murder. The biblical reasoning position affirms *retributive justice*. As Rascher writes:

Retributivist theory holds not only that criminal guilt is required for punishment, but that the appropriate type and amount of punishment is also determined by the crime itself. Traditionally this is the heart of the ancient injunction "an eye for an eye."¹⁵

In this Genesis passage, restoring the murderer is not in view; neither can money or service or non-lethal punishment accomplish what is required. The only just penalty is *retribution* based on the heinous nature of the sin and crime. Fourth, this covenant is not restricted to the Jews or to Israel. All generations

and all peoples are under this principle because it is based on the changeless nature of God and the changeless nature of human beings, whatever their culture or place in history.

Immanuel Kant (1724-1804) defends much the same idea, but without the biblical grounding. Kant was not a theologian or biblical scholar. For that matter, he was not an Orthodox Christian, although he was raised in a German Lutheran family. Kant's support for capital punishment for murder flows from his high regard of human beings as rational beings. Humans can discern the moral law, which is necessary and universal. One of the formulations of his categorical imperative from *The Groundwork for a Metaphysics of Morals* demonstrates this.

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

Kant took this to be an absolute moral principle. As a deontologist, Kant claimed that we have a *duty* not to kill the innocent. This rule cannot be suspended. Since humans have incomparable worth, life is not a matter of price, but of value. No *recompense* is adequate for the wrongful taking of a human life. *Retribution* only fits the enormity of the crime. Kant argued that no amount of punishment in a life (say, life in prison) could be offered in exchange for the taking of a life. Therefore, the murderer must be executed. Kant's reasoning works in tandem with the perspective of the Bible, although he does not grant it any intrinsic authority.

Whether supported by Scripture or by philosophers such as Kant, the *retributive* view of punishment (either capital or otherwise), is distinguished from the *humanitarian* view of

punishment. The latter does not, strictly speaking, implement *punishment* at all, but rather incarcerated rehabilitation. When a criminal is deemed cured of criminality, he or she may be released. This judgment would be made by experts. The goal is not dessert, but cure—or at least amelioration.

Critics deem the idea of *retribution* as identical to *revenge*. The humanitarian view is deemed the opposite of, and alternative to, *revenge or vengeance*. If punishment is merely revenge, then cruelty, not justice, is the result. Since cruelty is wrong, then so is revenge and so then is the retributivist view. But this idea is misguided, since retribution and revenge are two distinct concepts. Revenge means getting even through personal animus—untethered to legal proceedings—which may be disproportionate to the severity of the offence avenged. Retribution, on the other hand, trades on the idea of fairness and of impartial punishment. No vendetta is inflicted. Only God can fairly and perfectly bring about vengeance.

Do not take revenge, my dear friends, but leave room for God's wrath, for it is written: "It is mine to avenge; I will repay," says the Lord (Rom. 12:9).

Shortly after this passage, Paul declares that the civil government, however, may punish criminals.

For the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer (Rom. 13:4).

As. C. S. Lewis noted, the humanitarian view is more dangerous than the retributionist approach, since it psychologizes crime and

places political agents of the state in the place of psychologists. Criminals are considered sick, not evil.¹⁶ Of course, some crimes are committed because of mental illness, but most of them are not. (Mark Twain wrote that, “we have an insanity plea that would have saved Cain.”¹⁷) Just as suspects should be considered innocent until proven guilty, they should be considered sane until proven insane.

Objections

Having made the in principle case for capital punishment for murder, let us consider some common objections, some based on the Bible and some based on social situations.

1. Jesus Would Not Execute Anyone

Objectors claim that Jesus brought a message of forgiveness and mercy. He said to love our enemies and to turn the other cheek when we are wronged. One pastor made this point by saying that, “I cannot imagine Jesus executing anyone.” Therefore, capital punishment is sub-Christian and deeply wrong.

First, we should not limit our views of just punishment to our fallen imaginations. A safer ground is found in logical argumentation based on what the Bible in fact teaches directly. I cannot imagine the Apostle Paul dancing ballet, but that says nothing about the morality of ballet.

Second, there is a vast difference between *religious forgiveness and pardon* through the finished work of Jesus Christ and *civil forgiveness and pardon* based on the laws of human beings. Two criminals hung on crosses beside the crucified Lord of glory. One admitted his guilt and cried out to Jesus for salvation. Jesus said, “I tell you today you will be with me in paradise” (Lk. 24). That guilty man was forgiven of all his sin in

the presence of the Savior. He was not taken off the cross by Jesus, but received the penalty he said he himself said he deserved.

Third, Christians may forgive murderers for their crimes, following the example of Jesus who said to his murderers, “Father forgive them, they don’t know what they are doing” (Lk. 23:24). Like his Lord, Stephen, the first Christian martyr said to those stoning him:

While they were stoning him, Stephen prayed, “Lord Jesus, receive my spirit.” Then he fell on his knees and cried out, “Lord, do not hold this sin against them.” When he had said this, he fell asleep. (Acts 7:59-60).

Fourth, Jesus will not contradict anything in the Scriptures that he, as God, the Son, had inspired and endorsed (Matt. 5:17-20; Jn. 10:33). We have already noted that both the Old and New Testaments endorse capital punishment. Therefore, Jesus would not oppose it.

2. Capital Punishment Does Not Bring Back the Dead

To invoke an argument not taken from the Bible, some object to capital punishment by claiming that the death penalty does not restore the life of those who were murdered. Therefore, it is not just. This is a classic fallacy of the red herring. No one ever claimed that capital punishment could restore the dead to life. That is irrelevant. Only Jesus can do that. Justice is the issue. Further, if one supports life in prison as an alternative to the death penalty, the same principle holds: Putting the murder in prison for life does not bring the murdered back to life.

Some cry that the death penalty is non-Christian, because it takes away from the murderer the opportunity to repent of his sin and receive eternal life through faith in Christ. In fact, some convicted murderers have become model prisoners, serving fellow inmates, teaching Bible studies, and even leading others to saving faith. For this, the Christian rejoices.

Three responses suffice to refute this. First, as Dr. Samuel Johnson quipped, knowing that you have a week to live can concentrate the mind wonderfully, thus giving incentive for one to make peace with God before it is too late. Second, if one respects the sovereignty of God at all, he will realize that God gives all people ample time to repent, whatever their situation. Third, while some murderers change their ways and do good the rest of their lives spent incarcerated, many do not. They may even kill fellow prisoners or escape from prison to do more crime. Thus, the merely consequentialist argument fails.

3. Unfair Outcomes

Some make the case that capital punishment is wrong, because a disproportional percentage of one ethnic group suffers from it more than other ethnic groups. This may be so in some cases, but it does not harm the argument for capital punishment. If capital punishment for murder is a morally justified *principle*, then bad *effects* from its use do not undermine it. The argument given here is not that the death penalty will be applied perfectly, but that homicide deserves death by the state. Some medical operations kill the patients instead of curing them. But for that reason, we do not ban those operations, since wisely chosen and performed operations usually have a curative effect. The same holds true for capital punishment. In a fallen world, some innocent people will be put to death. However, this is far less an offense than never

putting any murderer to death. As stated earlier, the standard of evidence needed to convict for a capital offense is very high.

However, if a criminal justice system is deeply unfair and disadvantages one ethnic group over another, capital punishment could be suspended until needed changes are made. A *poorly run system* does not necessarily imply that *the ideal of the system* is morally wrong.

4. If You Oppose Abortion, You Must Oppose Capital Punishment

This objection has no logical force. First, it applies only to those who are against abortion. One may support abortion on demand (which is wrong) and make a case for capital punishment that is, in its own right, sound. Second, even if opposition to abortion and support for capital punishment is insistent, the case made above for capital punishment still holds, since none of the argumentation is directly transferable to the case against abortion. Third, and most significantly, death by abortion and death by capital punishment only have one thing in common—the killing of a human being. Killing an unborn child who is legally innocent is morally wrong. Killing a convicted murderer punishes a guilty person, who is not innocent. Thus, the argument commits the fallacy of false analogy. The cases are too dissimilar for this argument to have any rational legitimacy.

Capital Punishment Is Just

If my arguments are sound, God himself endorses capital punishment for murder. In a fallen world, the death penalty for murder is necessary to bring justice and to restrain evil. God holds human morally accountable for their conscious actions. If one image-bearer of God unjustly kills another image-bearer of

God, then the murderer forfeits the right to life. All people have the negative right not *to be murdered*; but those who murder lose their right not to life. They ought to be executed through the legal auspices of the state. In this, the kings of this world ought to bow to the Lord of the universe:

Therefore, you kings, be wise;
be warned, you rulers of the earth.
Serve the Lord with fear
and celebrate his rule with trembling.
Kiss his son, or he will be angry
and your way will lead to your destruction,
for his wrath can flare up in a moment.
Blessed are all who take refuge in him (Ps. 2:10-12).

But whatever our views on this controversy may be, all Christians can unite in prayer for our civil government:

I urge, then, first of all, that petitions, petitions, prayers, intercession and thanksgiving be made for all people—for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness. This is good, and pleases God our Savior. (1 Tim. 2:1-3).

¹ See Jeffrey E. Stern, “The Execution of Clayton Lockett,” *The Atlantic*, June, 2015.

² See Deut. 19:15; Matt. 18:16; “Justice and Righteousness,” in Christopher J. H. Wright, *Old Testament Ethics and the People of God* (Downers Grove, IL: InterVarsity, 2004), 253-80.

³ On God as the basis of morality, see Douglas Groothuis, “The Moral Argument,” *Christian Apologetics: A Comprehensive Case for Biblical Faith* (Downers Grove, IL: InterVarsity Press, 2011), 330-63.

⁴ The Protestant Bible contains the thirty-nine books of the Hebrew canon and the twenty-five books of the New Testament. The Roman Catholic Bible includes apocryphal books not in the aforementioned testaments.

⁵ Signers include Francis Schaeffer, R. C. Sproul, Carl F. H. Henry, and other evangelical authorities. It is available at: <http://www.bible-researcher.com/chicago1.html>.

⁶ Rousas John Rushdoony, *Institutes of Biblical Law* (Nutley, NJ: Craig Press, 1973), 4.

⁷ See these verses from the Qur’an which support punishment for apostates: Qur’an 6:93; 33:57; 33:61. On sharia law, see Nonie Darwish, *Cruel and Usual Punishment* (Nashville, TN: Thomas Nelson, 2009).

⁸ Richard John Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids, MI: Eerdmans, 1984).

⁹ See Timothy Sandefur, *The Conscience of the Constitution: The Declaration of Independence and the Right to Liberty* (Washington, DC: Cato Institute, 2014).

¹⁰ On the origins of compulsory education and a critique thereof, see Rousas John Rushdoony, *The Messianic Character of American Education* (Vallecito, CA: Ross House Books, 1963).

¹¹ All quotations from the Bible are from the NIV 2011.

¹² See Francis A. Schaeffer, *A Christian Manifesto* (Wheaton, IL: Crossway, 1981), 89-130.

¹³ Walter C. Kaiser Jr., *Toward an Old Testament Ethics* (Grand Rapids, MI: Zondervan, 1983), 91-92. Rushdoony categorizes them a bit differently in *Institutes of Biblical Law*, 76-77.

¹⁴ Walter C. Kaiser, “God’s Promise Plan and His Gracious Law,” *Journal of the Evangelical Theological Society* 35, no. 3 (1992), 293.

¹⁵ Frederick Rauscher, “Kant’s Social and Political Philosophy,” *Stanford Encyclopedia of Philosophy* at <http://plato.stanford.edu/entries/kant-social-political/>.

¹⁶ C.S. Lewis, “The Humanitarian Theory of Punishment,” *God in the Dock* (Grand Rapids, MI: Eerdmans, 1970), 313-33.

¹⁷ Mark Twain, Caroline Thomas Harnsberger, *Mark Twain at Your Fingertips: A Book of Quotations* (New York, NY: Dover, 2009), 36.

Chapter 3

MODERN SOCIETY, HUMAN DIGNITY AND THE DEATH PENALTY: A CATHOLIC PERSPECTIVE ON THE DEATH PENALTY

Jennifer Kraska

Introduction

Thank you for the invitation to be here with you all today. It is a great honor to be included among such a distinguished group of presenters regarding a very important topic. As was mentioned in my biography, I grew up in Minnesota and didn't move to Colorado until 2007. Growing up in Minnesota meant that I was imbued with the idea of "Minnesota nice." My siblings and I were regularly reminded that there were two things we weren't supposed to talk about in mixed company: politics and religion. Fast forward several years, and I decided to rebel! Today my job consists primarily of having conversations with people that have different backgrounds, political ideologies and faith traditions about the intersection of faith and politics— particularly as it relates to legislative matters in Colorado. As you can imagine, that requires me to talk about a great number of issues that span the political spectrum and are often quite controversial. Among those controversial issues I would include the death penalty.

I must admit that my thoughts and knowledge of the death penalty didn't really start to formulate until I was in law school. Since the death penalty in Minnesota had been abolished for quite some time, it was not an issue that arose with any frequency – at home, school or church. After my first year in law

school I had the opportunity to work with my criminal law professor on a death penalty case in Mississippi. That experience was a turning point in my life and compelled me to think about the death penalty in very real and serious ways. But moving to Colorado and having to advocate on behalf of the Bishops for the abolition of the death penalty helped me to understand and articulate the Catholic Church's position on this important topic.

Today I want to share with you information regarding the evolution of Catholic teaching regarding the death penalty, the foundation on which the Church bases her current position on the death penalty, and finally the practical implications of the Church's current position regarding the death penalty and the influence it has had on modern society – especially here in Colorado.

Evolution of Catholic Teaching & Thought Regarding the Death Penalty

To say that the Church's teaching on the death penalty is often misunderstood is a huge understatement! It is not unusual for me to encounter people, on a regular basis, who tell me that the Catholic Church's teaching on the death penalty 100% supports use of the death penalty, while at the same time encounter people telling me the exact opposite – and this is usually just among Catholics themselves! There is a nuance to the Church's teaching on the death penalty, and there always has been, contrary to what some people want to believe.

What has occurred over some time is an evolution of sorts that recognizes the improvements in the penal system over a vast number of centuries. Many Catholic theologians and Saints expressed their support for capital punishment: St. Augustine offered justification for the death penalty in *The City of God*;¹ Thomas Aquinas made arguments in favor of the civil

authority's ability to carry out capital punishment and stated that scripture supported this view.² Although, to be fair, not all early and medieval Fathers of Catholicism held the same view. The most striking example would be St. Ambrose, who objected to the use of capital punishment and encouraged clergy and laymen alike not to partake in any aspect of this type of punishment.

In 1566 the Roman Catechism codified the teaching that the power of life and death had been entrusted by God to civil authorities. Many other important Catholic thinkers, such as Robert Bellarmine, Alphonsus Liguori, and Thomas More believed that certain criminals should be punished by death. And even Cardinal John Henry Newman in a letter to a friend stated that the "magistrate had the right to bear the sword, and that the Church should sanction its use."³

Through over half of the 20th century Catholic theologians held firm to the notion that capital punishment was justifiable in extreme cases. It is also interesting to note that from 1929 to 1969 the Vatican City State's Penal Code included the death penalty as punishment for anyone who might attempt to assassinate the pope.

This notion of the death penalty "evolved" most dramatically with the papacy of Pope John Paul II. In 1995 he released an encyclical entitled: *Evangelium Vitae*. In paragraph 56 John Paul II states:

It is clear that, for the purposes of punishment to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon, and the state ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the

penal system, such cases are very rare, if not practically nonexistent.⁴

Many viewed this as a major shift in Catholic teaching, if not an outright reversal. But to be fair, the Catholic Church never taught that the State must inflict the death penalty, but only that it has the legitimate power to. Both Pope Benedict and Pope Francis have reiterated their support for this position, but Pope Francis very recently has taken it one step further by remarking that “Today, the death penalty is inadmissible.”⁵ The Pope continued saying, “no matter how serious the crime of the offender. It is an offense to the inviolability of life and the dignity of the human person that contradicts God’s plan for man and society and His merciful justice.”⁶ The death penalty “does not do justice to the victims, but encourages revenge,” he said.⁷

Catholic teaching on the death penalty is complex and nuanced and should not be oversimplified, distorted, or minimized by those supporting or opposing capital punishment. Rather, as Catholics our leaders urge us to receive and accept this teaching seriously and faithfully, as we contemplate this very grave issue.

Foundation of Current Catholic Teaching on the Death Penalty

After the release of Pope John Paul’s encyclical *Evangelium Vitae* many questioned what aspects of Catholic teaching and principles he based his teaching on. The Church rightly teaches that each of us is called to respect the life and dignity of every human being, even when people deny the dignity of others. We are all called to recognize that human dignity is a gift from God and is not something that is gained or lost through one’s behavior. The teaching on the common good also commits each

of us to pursue the good of everyone in society.⁸ Several years after his encyclical was released Pope John Paul II renewed his plea to end the death penalty by saying while he visited St. Louis:

The new evangelization calls for followers of Christ who are unconditionally pro-life: who will proclaim, celebrate and serve the Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil... I renew the appeal I made... for a consensus to end the death penalty, which is both cruel and unnecessary.⁹

As Catholics our teaching on the dignity of human life and the common good are directly linked. A society that ends human life, despite having non-lethal alternatives, suggests that we can only overcome violence with further violence. For this reason the Bishops of the United States have made clear that the use of the death penalty ought to be abandoned, not only for what it does to those being executed but for what it does to all of society.¹⁰

Currently, the Bishops of the United States remain steadfast in their opposition to the death penalty in the United States, maintaining that the death penalty does not respect the dignity of human life or further the common good of modern society. Current Catholic teaching on the death penalty finds its foundation not only in the modern papal teachings of John Paul II, Benedict XVI, and Francis, but also in what is known as the social doctrine of the Catholic Church, including the principles of the common good and respect for all human life. Modern day teachings, along with the outspoken nature of the Catholic Church in the United States on the issue of the death penalty,

have allowed the Church to use its influence to change hearts and minds in the realm of the public square.

Modern Society and the Catholic Church's Influence Regarding the Death Penalty

Today the Catholic Church, especially in the United States, is very active regarding advocacy for repealing the death penalty in states where it is still legal. During the writing of this chapter the Catholic Bishops in Nebraska have been victorious in their advocacy to repeal the death penalty with enough legislators favoring repeal to override a veto from the governor.

When I first began working in Colorado as the Executive Director of the Colorado Catholic Conference, Archbishop Charles Chaput was the Archbishop of Denver. He was very candid about his desire to see the death penalty repealed in Colorado. In an article written by Archbishop Chaput regarding this subject matter, he mentions a very moving letter he received. The letter was from a woman named Cathlynn, whose son was murdered. The letter is a beautiful reminder of the power of mercy and forgiveness that we all seek at different times throughout our own lives.

I keep a copy of this letter with me, when I am at the Capitol working on the issue of repealing the death penalty. In her letter Cathlynn says:

The legal system does not always work. The authorities have not filed charges against the man who murdered my son, because he is already in prison for a similar crime, serving 15 years to life... It is hard for me to accept this as it would bring a sense of closure for me, but I am working on it... My belief that all life is sacred has not changed. I do

not believe that the death sentence is one of society's legitimate choices. I feel blessed that our bishops speak out against capital punishment; it reminds me why I am grateful I became a Catholic. I am someone who has been directly affected by violence in my life, specifically the violence of murder. But my faith in a loving and forgiving God tells me capital punishment is morally wrong.¹¹

The death penalty is an issue that many Catholics and non-Catholics struggle with, but the witness of someone like Cathlynn, who has experienced such tremendous loss and violence, should be an inspiration to us all.

Colorado's political climate is often described as "purple"—somewhere between red and blue. When the issue of repealing the death penalty arises, it makes for interesting days at the capitol; many legislators and policy makers feel very strongly about this issue. One policy maker and his views stand out: Governor John Hickenlooper. In his first term as Colorado's governor Mr. Hickenlooper readily admitted that he was a pro-death penalty democrat, but he credits Archbishop Chaput with changing his views.

In an interview with *Men's Journal* Hickenlooper remarked that:

... he was always an eye-for-any-eye, tooth-for-tooth politician until he met with then Denver archbishop Charles Chaput for more than an hour as the Dunlap case sat on his desk. He left the meeting a changed man... I was so clueless says Hick. It has no deterrent value. It depends on which DA you get, in what county you committed your heinous

crime... I never realized that there is no eye for an eye, tooth for a tooth anywhere in the New Testament...¹²

This is just one example of the influence people of faith can have on the discourse in the public square. It is a powerful reminder that the voice of faith is needed and important when it comes to policy debates.

But the Catholic Church's influence is not just seen in the political debate regarding the death penalty. It is also seen within the Church itself in regards to those the Church chooses to recognize as worthy of sainthood. Jacques Fesch grew up in Belgium. When he was twenty-four, he attempted a robbery, but while being pursued he shot and killed a police officer. Fesch was sentenced to death and went to prison, where he was executed in 1957. But the story of Jacques Fesch does not end with his execution. Fesch encountered the love of Christ while he was in prison; he had a conversion and repented for his sins. He believed in the mercy and love of Jesus Christ to forgive him and he spent the remainder of his time in prison witnessing to Christ's mercy. Today he is being considered for canonization in the Catholic Church, which would make him a saint.

In modern civil society responding to evil with love means we must seek punishments that are severe, but also just. Justice requires that we respect the life and dignity of every human person, even those who commit unspeakable crimes. To solve the problem of evil in modern society we must learn to love.

Conclusion

It has been my great honor to be here today and share the Catholic Church's perspective on the issue of the death penalty. Tension regarding this issue is inevitable, even within the Church itself, but we must not forget that ultimately the ability of any faith community to be influential in this area, and in culture more broadly, depends on how deeply and honestly we live our faith.

I would encourage all of us as we leave here today to take some time to engage in prayer and reflection regarding ways we can take the voice of our faith and make it more present in the public square. Finally, I will leave you with a quote that sums up the Church's current thoughts on the death penalty:

As citizens, our choices and our actions matter, because they create the kind of future our families and our nation will inhabit. What we choose, what we do, becomes who we are. In God's own words in Deuteronomy: "I have set before you life and death, blessing and curse; therefore choose life, that you and your descendants may live" (30:19). Choosing against the death penalty is choosing in favor of life. We need to end the death penalty now.¹³

Thank you.

¹ "The same divine authority that forbids the killing of a human being establishes certain exceptions, as when God authorizes killing by a general law or when He gives an explicit commission to an individual for a limited time... The agent who executes the killing does not commit homicide; he is an instrument as is the sword with which he cuts. Therefore, it is in no way

contrary to the commandment, 'Thou shalt not kill' to wage war at God's bidding, or for the representatives of public authority to put criminals to death, according to the law, that is, the will of the most just reason." Saint Augustine, *City of God*, trans. M. Dods (Modern Classics Library; New York, NY: Random House, 2000), 27 (Book 1, Chapter 21).

²See Thomas Aquinas, *Summa Contra Gentiles*, trans. V. J. Bourke (New York, NY: Doubleday & Co., 1956), 186-90 (Book 3, Chapter 146).

³Avery Cardinal Dulles, "Catholicism & Capital Punishment," *First Things*, April 2001. <http://www.firstthings.com/article/2001/04/catholicism-amp-capital-punishment>.

⁴Pope John Paul II, *Evangelium Vitae, Encyclical Letter on the Gospel of Life*, 25 March 1995 (Boston, MA: Pauline Books & Media, 1995), sec. 56.

⁵Pope Francis, *Letter of His Holiness Pope Francis to President of the International Commission Against the Death Penalty*, March 20, 2015. http://w2.vatican.va/content/francesco/en/letters/2015/documents/papa-francesco_20150320_lettera-pena-morte.html.

⁶*Ibid.*

⁷*Ibid.*

⁸See U.S. Catholic Conference, *Catechism of the Catholic Church*, (New York, NY: Doubleday, 1994), parr. 1906.

⁹Dulles, "Catholicism & Capital Punishment," *First Things*, April 2001.

¹⁰U.S. Catholic Bishops, *A Culture of Life and the Penalty of Death*, (Washington, D.C.: U.S. Conference of Catholic Bishops, 2005), 11.

¹¹Charles J. Chaput, O.F.M. Cap., "Justice, Mercy and Capital Punishment" (Washington, D.C.: U.S. Conference of Catholic Bishops, 1997). <http://www.lpca.us/Chaput%20on%20death%20penalty.pdf>

¹²Stephen Rodrick, "Governor John Hickenlooper: The Man in the Middle", *Men's Journal*, September 2014.

<http://www.mensjournal.com/magazine/governor-john-hickenlooper-the-man-in-the-middle-20140819>

¹³Chaput, "Justice, Mercy and Capital Punishment".

Chapter 4

THE SOUND OF A COCK CROWING

Jim Ryan

If I have to identify the fault, if you force me into a corner and make me place the blame, then I would say that it is because of what happened on April 18, 1954.

One of the Sunday morning news show's tag line is, "If it is Sunday, it is *Meet the Press*." Well, in my life as a child it was, "If it is Sunday, I am in Church."

So it was Sunday, April 18, 1954. I found myself as a sixth grader walking down the aisle to the front of the sanctuary where I met my minister, Franklin Mink. He asked me a question, "Do you believe that Jesus is the Christ, the Son of the living God and do you accept him as your Lord and Savior?" I really like that question because it contains both belief – Do you believe – and action – when you accept him as Lord and Savior, you are committed to follow him. Faith involves both belief and action. I answered, "Yes!" In a moment I was in the baptistery – none of that sprinkling as a baby, I was fully immersed. Dr. Mink lowered me into the water, burial of the old, rising into the new, and my life was forever changed.

All those years later, I was still being formed by that experience and the commitment I made as a sixth grader. It was the answer to that two-part question and the cleansing by the waters of baptism that caused me to write a piece about the death penalty.

It was June 11, 2001, the day Timothy McVeigh was executed as a result of his bombing of the Murrah Federal

Building in Oklahoma City on April 19, 1995. In the midst of all the clamor for his execution, I wrote:

I think lethal injection is too good for him. I think we ought to string him up. I think we ought to line him up in front of a firing squad. I think we ought to fry him. Because he ruthlessly killed so many people, including children; because he devastated the lives of so many families and friends of the victims; because he infused this vicious act of terrorism into our culture's psyche; I think he **DESERVES** to be put to death. He deserves to die. He does not deserve to live. That is what I think.

The problem is that, as a Christian, what I think does not count. As a Christian, I am called to base my positions and decisions on the Gospel of Jesus Christ. The Gospel is my bottom line for moral decisions, not my own sinful, emotion driven, revenge seeking, desires.

I have searched and searched the Gospel of Jesus Christ to find support for what I think we should do to him, but I can find nothing. I have tried and tried to visualize an image of Jesus placing a hangman's noose around McVeigh's neck, or taking a gun and shooting him, or strapping him to an electric chair and pulling the switch or even inserting the needle and punching the plunger to inject the lethal serum. I have tried and tried to visualize Jesus giving him what he really deserves. But, I have been completely unsuccessful.

I find myself in conflict between what I feel/think and what my position about the death penalty is called to be, based on my understanding of Jesus' teachings and life. In essence, I am faced with the question, "Do I care what Jesus says?" My understanding of the Gospel says that once he is arrested, convicted and imprisoned for life without the chance for parole, the issue is no longer about what he DESERVES, but rather about who we are as a people and as a society are going to be. What is the moral standard that defines who we are?

As Christians, followers of Jesus, can we support the taking of a life, any life, of a person who is no longer a threat? As Christians, followers of Jesus, can we support the taking of a life, any life, when that act perpetrates the cycle of violence? As Christians, followers of Jesus, can we take a life, any life, in an effort to affirm the value of life? My reluctant, but inescapable conclusion is... no!

We must all be in prayer for the families and loved ones of the victims who have suffered so much. We must be in prayer for the perpetrator and his family. But, we must also be in prayer for our own souls that we do not allow our emotional responses to any horrific act cause us to violate our own faith based moral values. May God have mercy on us all.

In the upper room, Jesus said to Peter that Peter would betray Jesus three times before the cock would crow. And Peter goes, "No Lord, No! No! No! I would die first." And he goes forth and denies Jesus three times, and off in the distance he hears the cock crow.

It is my faith conviction, a faith conviction grounded in that 1954 answer to that question and the burial in the water and rising to new life, it is my faith conviction that as the people gathered outside the prison clamoring for Timothy McVeigh's execution, that if they listened carefully, off in the distance they would have heard the sound of a cock crowing.

So, hopefully, I have been clear that I oppose the death penalty, and my primary opposition grows out of my faith perspective based on the Gospel of Jesus Christ and how I believe Jesus would respond to this issue. My acceptance of Him as my Lord and Savior defines my position on this issue.

But, now I would like to move further and explore several of what I perceive to be some ethical and moral aspects that this issue forces us to confront.

The first issue is that by definition, the execution of a perpetrator eliminates the possibility of the redemption of the perpetrator. I realize that in our society, this moral issue is only a concern within the faith community.

There are those, though even in the faith community, who would argue that the perpetrator does not deserve to be exposed to the possibility of redemption. They would even see it as their prerogative to decide who deserves redemption and who does not.

This is not a new perspective. In fact it is a biblical perspective. We only have to turn to one of my favorite stories in the Bible, the book of Jonah.

God wants Jonah to go to Nineveh and cry out against their wickedness. But Jonah refuses (we will find out why later). He secures passage on a ship, but God brings forth a great storm. The sailors throw Jonah overboard. He is swallowed by a great fish and remains in the belly of the fish for three days. And then he was spewed up on the beach. And Jonah goes, "Alright, alright, I get it." He heads out to Nineveh. He arrives. Preaches

to the people what would happen to them, if they did not repent. The people believe him (preachers, wouldn't you like to see his sermon outline?) and begin to repent. God is so touched that God decides not to punish them.

Now here is the most fascinating part. Jonah gets very angry with God. God says, "What's your problem?" Jonah explains this is why he ran away. He knew all along that if he preached redemption to the people of Nineveh, they would repent and then God would give them God's grace. And Jonah felt deeply that these evil people did not deserve God's grace or to experience redemption. Jonah believed he had the prerogative to decide who deserves the opportunity for redemption and who does not. And God says, "No, no, no! Not your job. I will decide who receives redemption."

Now we must be careful. If I could just get us into an argument over whether or not a human could exist in the belly of a fish for three days or not, then we would not have to get to the end of the story and be forced to deal with the meaning that we do not get to decide who should be exposed to the possibility of experiencing God's redemption and who does not deserve even the opportunity. I believe that the moral of the story of Jonah has something to say about whether it is our role to decide if a perpetrator may be put to death and, therefore, is not exposed to the possibility of redemption.

To illustrate this point a bit further. Before he was transferred to Philadelphia, Archbishop Chaput and I would get together on occasions for conversation. Although we disagreed on some issues, we always enjoyed the conversations and each other's company. And respected each other's perspective.

On one occasion, we were discussing how he was suggesting that Roman Catholic politicians who were pro choice should refrain from participating in the Eucharist. I said that I did not understand that. I said, if we believe that Christ is present in

some form in the elements at the Lord's Table and if we believe there is transformative power in the very presence of Christ, then it would seem to me that there would be no place any more important for sinners to be than at the Table. That we would want to do everything within our power to expose them to that Power.

When I was the Senior Minister of First Christian Church in Des Moines, Iowa, a man was arrested for keeping his son chained in the basement forced to live in his own urine, feces and vomit. He was fed very little and when he was found, he had cigarette burns all over his body.

I happened to have a meeting of our Diaconate (Deacons and Deaconesses) the evening that that news broke. In Disciple Churches, people do not come forward for communion rather the Diaconate bring the trays and serve the people in the pews. I ask them this question, "Let's say that this Sunday as you approach the pew with that tray of elements of Jesus broken body and shed blood, you look down and that father is sitting there. What would you do?" Every person present that night said, "I would serve him." As one person said, "There would be no one in the sanctuary would need those elements any more than that father."

No matter the crime, or more accurately because of the crime, no person needs the opportunity for redemption any more than the perpetrator.

The next ethical/moral aspect of the death penalty concerns the several messages that are being sent within our society and to our children.

Let me identify the process of capital punishment in a way that perhaps is a bit different than we are used to, although all of a sudden in the middle of it, it will begin to sound very familiar. The process of capital punishment is society sanctioning—that is, giving its approval—for a law enforcement officer to use the tools at his access to extinguish the life of an unarmed man. The fact that the men whose lives are extinguished

tend to look like each other at least in skin color is not lost on us either. Ferguson, New York, Cleveland, Denver all were where law enforcement officers were taking the life of unarmed man, boy or girl. They just had not been sanctioned before the act. That sanctioning process had to wait for the grand juries.

A white United Methodist Bishop has said, "I wish I lived in a kind of world where George Zimmerman would have offered Trayvon a ride home to get out of the rain." I wish we lived in a world where the message that is sent is that Black lives matter, that Brown lives matter, that White lives matter, that lives of victims matter, and that lives of perpetrators matter. Lives matter! The death penalty sends just the opposite message.

Another message that capital punishment sends, particularly to our children, is that our society believes that the appropriate response to violence is more violence. That the appropriate response to the loss of life is more loss of life. Violence overcomes violence. I believe most of us in the faith community would like to send the message that love and mercy are what overcomes violence. I believe capital punishment sends just the opposite message to our children.

Another moral/ethical aspect is the amount of discrimination that is present in the application of the death penalty sentence.

It has a lot to do with the perpetrator's zip code. The poor and particularly poor people of color tend to live in similar zip codes. The death penalty is pretty much reserved for the poor. 90% of those facing capital charges (note I did not say those on death row; I said those whom the prosecutors have chosen to even charge with the death penalty) are too poor to afford their own lawyer. In 90% of death penalty cases the defendant's legal representative is a public defender.

In Colorado all three men sitting on death row are African-American, all convicted in the same District Court. In

fact, all three come from the same high school. The message that is sent is that only some lives matter. Some do (victims), some don't (perpetrators). Too often the one that doesn't is a poor person of color.

80% of those who were convicted of murder in the US were convicted of killing a white person, even though 50% of victims are African-American. Black on White gets treated differently in our legal system than Black on Black.

Another moral/ethical issue is the "oops factor." The number of convictions that end up getting overturned at a later date because of DNA evidence is shocking. I call it the "oops factor." In such cases, there is no question that the original conviction was wrong. The Innocent Project tells us that there have been 325 cases of exoneration by DNA evidence. Twenty of those were of cases, where the "non-perpetrator" was sitting on death row. In 16 more cases, where the prosecutor sought the death penalty but the jury convicted but gave a life sentence instead of the death penalty. On Sunday, April 19, 2015, the *Denver Post* ran an article outlining how the FBI was admitting that "nearly every examiner in an elite FBI forensic unit" overstated forensic evidence to aid the prosecutors' cases. Out of 268 cases before the year 2000, 95% had false testimony. Of those cases, 32 defendants were sentenced to death. 14 have already been executed. These cases are spread out over 46 states. This is not to say that those 32 defendants were all innocent. The point is we cannot be sure either way. False testimony is given, mistakes are made, and we are going to kill, put to death, take the life of someone, when we cannot be sure?

"Ooooooops! Sorry. Hey, shh, don't worry about it. It was only a black dude. It was only some Mexican. Some poor guy, who couldn't afford to hire his own lawyer. He wasn't contributing anything of value to society. No big deal. Don't tell

anybody I said that.” You think that attitude isn’t present on the witness stand or in the jury box?

When having this discussion around the death penalty with a person who supports the death penalty, perhaps the word you will hear most often is, “deserves.” “He deserves to be put to death. He does not deserve to be allowed to live.” And right alongside of that word “deserve” the Scripture most often quoted, even by people who do not know that it comes from the Bible, is “an eye for an eye...”

The Bible quote is easier to deal with. We who are Christians, those of us who have committed to follow Jesus, to claim him as our Lord and Savior find him in the New Testament. It is there in that wonderful Sermon on the Mount we hear him set us on a new path.

You have heard that it was said to those of ancient times, “You shall not murder”; and “whoever murders shall be liable to judgment.”... You have heard that it was said, “You shall love your neighbor and hate your enemy. BUT I say to you, Love your enemies and pray for those who persecute you.” (Matt. 5:21-22, 43-44; NRSV)

You have heard that it was said, “An eye for and eye and a tooth for a tooth.” BUT I say to you, ... if anyone strikes you on the right cheek, turn the other also... If anyone forces you to go one mile, go also the second mile.” (Matt. 5:38-39, 41; NRSV)

I see why we just want to quote the Old Testament. For Jesus continually calls on us to go much further in being concerned for the one who has wronged us.

“Deserves” is a much more difficult issue to deal with. The problem is that they are absolutely correct. A person who has committed a heinous crime of taking the lives of innocent people who had gone to eat at a Chucky Cheese or had simply gone with friends to see a new movie, such a person “DESERVES” to be put to death. He does not “DESERVE” to live.

If I did not have a Jesus-based perspective on this issue, I would agree that he does not deserve to live. I could advocate for the “eye for an eye” mentality.

It is my faith perspective that leads me to the position that yes, society has a right to protect itself, but once the perpetrator is arrested and convicted in a *fair* trial, and sentenced to life without the possibility of parole, and imprisoned where he is no longer a threat to society, then the issue is no longer what he “deserves.” Rather, the issue is what kind of society are we going to be? Are we going to jointly be a people who will kill an unarmed, non-threat of a person, or will we be a people who demonstrate mercy and value of every life? Lives matter. Will we be a people who teach our children that the correct response to violence is violence, or will we say, “No, there is another, better way. Jesus has set us on a different path.”?

To close this presentation I want to ask one more question. What role does Jesus have in this issue? Certainly, I have referred to this in this presentation. But let me be specific. I begin with a story.

The story is told of a small town in Iowa. The economic center of the town for years has been the meat packing plant. Recently, however, the plant is having a difficult time recruiting enough employees. It seems that more and more of the younger folks in town are not willing to do that kind of work. So the plant begins to recruit people from the southwest United States. Well, if truth be told, perhaps they recruited a bit south of the

Southwest. As the new folks moved into this small town in Iowa, a mobile home park grew up. That first summer, a church held its annual Vacation Bible School. No one was quite sure who invited those kids from the park to come. Folks were surprised when they showed up, but it was for just one week and after all they were really kind of cute.

Just like every year, the following Sunday worship service was turned over to the kids to recite their memorized scripture pieces and to sing their little songs. To everyone's surprise, some of the parents from the park showed up. Well, of course, they wanted to see their kids perform. The next Sunday, even more parents showed up. The next Sunday, even more. A meeting was held after church. What were they going to do about this?

They did not seem to be able to come to any solution. So, they invited an outside church leader to come and help them. He thought it best to begin with some Bible study.

They studied how Jesus seemed to keep including folks that others rejected—women, children, lepers, Samaritans, tax collectors—he just kept including. Finally, in the midst of the study a young mother stood up and shouted, “I don't care what Jesus says, I don't want those people in my church.”

When the other people in the room heard that out loud, they decided they do care what Jesus says. So they organized a calling committee to call on the families in the mobile home park and to officially invite them to church—not their church, Jesus' church.

As we deal with the moral and ethical aspects of the death penalty, I believe it really boils down to one question, “Do we care what Jesus says?”

I have never witnessed this personally, but I have seen it on television. Outside a prison on a day of an execution, a good sized crowd has gathered. There are even people selling

souvenirs, tee shirts. People in one voice are calling for the death of this human being. I have noticed how loud they are calling, It is my faith conviction that when we are calling for an execution we have to call so loudly in order to overcome the sound of the crumbling of our souls. It is so loud that the people there that day cannot hear the sound of the cock crowing.

Amen!

Chapter 5

IS THE DEATH PENALTY FACING THE DEATH PENALTY?

Hon. Judge Raymond Dean Jones, Retired

The Process for the Application of the Death Penalty

A person commits a class one felony, in Colorado, when that person unlawfully takes the life of another human being. The penalty for such a class one felony shall be the death penalty, which is the lawful taking of the life of the person who unlawfully took the life of another (C.R.S. 18-1.3-1202).¹ If evidence and circumstances dictate that the perpetrator cannot be put to death, such as the prisoner's mental incapacity, or that the prisoner was under the age of 18 at the time the offense was committed, that person shall be incarcerated for life. The death penalty, when ordered by the court, is carried out by the introduction into the veins of the prisoner, a substance that will cause the cessation of the life of that person—a process called Lethal Injection.

In order to better insure the fairness of the process of determining the penalty for the defendant, and that the penalty should be the death penalty, the General Assembly has provided that, unlike in cases not concerning the death penalty, in which one or two alternate jurors are seated and sworn in along with the jury, in death penalty cases, an entire alternate jury must be seated and sworn.

Prior to any final punishment being pronounced by the court, the jury panel must find the defendant guilty of the crime that is charged. After the jury has so convicted the defendant, that jury along with all of the alternate jurors, must consider

additional evidence, beyond that produced at trial. In order for the death penalty to be imposed on the defendant, the jury must consider that additional evidence, not produced at trial. The nature of the additional evidence which all of the jurors must then consider tends to be evidence of life experience that affects or could affect the person's ability to know right from wrong, or knowing what is right, could affect the person's ability to do the right and refrain from doing the wrong. After such evidence is received and considered by the juries, all jurors must determine unanimously, and in writing, in the separate hearing, that an aggravating factor or factors—as set forth in Section 18-1.3-1201(2)(a)(I)(II)(A)—were present, and that there are insufficient mitigating factors—as set forth in Section 18-1.3-1201(2)(a)(I)(II)(A) and as set forth in Section 18-1.3-1201(2)(a)(I)(II)(B)—to not impose death, or that all of the evidence requires the sentence of the death penalty.

The point of this procedure is to give the convicted defendant every opportunity to show that the death penalty is not the proper punishment under the circumstances of the case, and that mitigating factors are present such as should relieve the defendant from the death penalty.

Should the case be appealed, the Supreme Court must consider and “re-weigh” the aggravating factor or factors, giving any such factors a narrow construction, as with all mitigating factors, in determining whether death is the appropriate punishment in the case, and, using harmless error analysis, must consider whether any invalid aggravating factor or factors, if they had not been considered by the sentencing court, would nevertheless have resulted in the defendant being sentenced to death.

A careful consideration of the various tasks that the General Assembly has put to the trial court and the two juries helps to enlighten the public as to why the trials and jury

considerations in a first degree murder case take so much time and careful consideration, and why interested citizens are puzzled as to the need for so much time and such additional trials. Additionally, citizens are often unaware of the burdensome tasks the General Assembly has assigned to the trial courts and the jury—and even the alternate jurors, in such cases.

The Human and Emotional Toll of a First Degree Murder Trial

In its efforts to be completely fair to defendants charged with first degree murder, it has sketched out tremendous burdens for the trial courts and the jurors.

If citizens were aware of the incredible burden that the General Assembly has imposed on the court and its staff, and others who are charged with maintaining the court building and the safety of the public and the participants, the public would have a better understanding of the burdens placed on the trial courts and their staffs, along with the citizens who come to the courts as jurors.

The General Assembly in Colorado has placed a heavy burden on the participants in a first degree murder case in which the prosecution is requesting the death penalty.

Not often considered in these proceedings are the relatives of the victims, the relatives of the jurors, and of the judge and the court staff. The burdens of having to serve and dispense kindness to the defendant, and to sit quietly and obediently while all manner of human emotions explode in the minds and bodies of these participants. Court staff and others who are participating are constantly reminded that they must appear neutral and professional, being required to bury their rage, anger, fear, and—yes—fear concerning the defendant, who is innocent until proven guilty. My eighteen and a half years as a

trial judge, and that many more years as an appellate judge, helps me to understand and recognize these deep seated emotions and fears.

That same experience leads me to understand how court staff and others required to be present in the courtroom leave each day with fear surrounding them, concerning the possibilities of people hostile to the case against the defendant, striking out against court staff and even the judge. They generally receive no protection as they leave the courthouse in full view of the public, which includes persons bitter and exposed to the actions being taken against their possible loved one who is on trial, and the hostility of some whose resentment against the process could lead them to strike out against those they regard as responsible for the proceedings and the possible death of their friend, the victim, or relative. These fears and tensions are overlooked and often ignored, while the public and the participants rightly expect a perfect sense of objectivity and fairness.

One of the most consistent concerns from court staff was: “What if he did it but is acquitted? Will the defendant try to take it out on me? Who will be protecting me? Fear of reprisal is real, and is deeply felt.

All during the trial, court staff, witnesses, and even on occasion, the trial judge, recognize how thin and fragile is the barrier that separates a possible killer from them; to say nothing of their relatives, and loved ones, and compatriots of the defendant.

Many believe that the process of a first degree murder case is so wearing and the protections of the defendant’s rights so carefully seen after, that it may be almost unfairly difficult to convict someone of first degree murder.

Current Attitudes Toward the Death Penalty

Some believe that the Colorado statutes concerning the death penalty have become so technical that it is almost impossible to convict someone of that crime when death is the possible penalty.

Some may believe, wrongly, that the Colorado statutes concerning the death penalty have become so technical that it is almost impossible to convict and to get a death penalty.

For instance, in the death penalty trial of Dzhokar Tsarnaev, the Boston Marathon bomber, several survivors came forward and have spoken out against the use of the death penalty in the case. Two victims who lost limbs, Jessica Kensky and Patrick Downs, have spoken out against the death penalty and have called for life in prison for Tsarnaev with no possibility of parole. The Boston case is a federal jurisdictional case which may require less to be proven than a state case would—certainly less than a Colorado state case would require for proof. Similarly, the parents of 8 year-old Martin Richard have called for life in prison for Tsarnaev with no possibility of parole. Some believe this attitude is growing strongly in the United States generally, especially among Black citizens, women, and other minorities, who have for so long suffered disproportionate use of the death penalty; also among women and minorities, and Democrats generally, this opinion has been noted.

Among those groups, the possibility of endless appeals of a death penalty punishment would hurt them more and prolong the process of getting back to a normal life; and it could otherwise result in disturbing the process of getting back to a normal life.

The Massachusetts INC Polling Group for Boston relates in a radio poll that, "close to half of respondents said they favored life without parole over death for Tsarnaev."²

Massachusetts abolished the death penalty in 1984. Because the Tsarnaev case being in the federal jurisdiction, it falls under the federal law. The death penalty for people convicted of murder under federal law holds that promise for Tsarnaev, especially given the breadth and horror of the nature of the crimes he and his brothers committed.

The Pew Research Center reports that the majority of Americans still favor the death penalty for people convicted of murder, but the percentage is down to 56 % from 78% who favored the death penalty 20 years ago. Pew reports that approval of the death penalty has come mostly from Democrats, but did not explain the apparent discrepancy as to the general notion that Democrats tend to favor the abolishment of the death penalty.³

A recent Washington Post poll reported that approval of the death penalty has declined among a significant percentage of women, seven percent among Hispanics, and fifteen percent among Black people. Overwhelmingly, the decline of approval of the death penalty resides in the fear of executing innocent persons. However, the Post poll noted that a rising opinion was strongly in the direction that even the known guilty should not be executed. The common opinion was that the country “should overcome the impulse for seeking vengeance.” But additionally, the feeling is that there should be no possibility of parole or release.⁴

In December 2011, the family of a Philadelphia police officer, who was murdered while on duty, surprised the entire community when the family members requested that the District Attorney not seek the death penalty, but requested that there be no possibility of parole or release. The family did not want another death on their hands.

There is a notable downward trend in the seeking of the death penalty in cases in which it could be requested, and, indeed, executions have declined across the United States. Only

34 states continue to utilize the death penalty. But the trend in the United States is to stop capital punishment, and to limit or ban parole and release of the defendants.

But the downward trend does not presage the end of capital punishment by any means. Five states carry out most of the executions that take place in the United States, and only one of those five states is in the top five in terms of the number of prisoner on death row.⁵

As of April 1, 2015, there are 3,002 prisoners on death rows in the fifty states. The state that has carried out the death penalty most often is Texas. As of April 1, 2015, Texas had approximately 271 prisoners on death row. California and Florida had more death row inmates, with 746 and 401, respectively. But Texas leads the country in the number of executions per year, with an average of 21 executions, all by lethal injection.⁶ Texas has performed more than one-third of modern executions in the United States, including Charles Brooks, the first person to be executed by lethal injection. Since 2007, 85 men have been executed in Texas: 36 were Black; 28 were Anglo; and 21 were Latino. These remaining executions seem certain to be carried out, as the Texas Constitution forbids a moratorium on executions.

Second in this morbid race of death is the state of Ohio. It has risen from two executions in 2007 to five in 2009, and to eight in 2010. Of the fifteen executions, eight were of white men; seven were of black men; and one execution was held up by the courts over concern about Ohio's process for carrying out executions.

Third among the states is the state of Alabama, which averaged 4.6 executions per year between 2007 and 2010. Eight of the inmates were Anglo; seven were Black. Alabama actually leads the country in per capita executions.

The state with the fourth highest rate of execution is Oklahoma, with eleven executions since 2007. Eight of the condemned were Anglo; three were Black. Oklahoma was the last state to execute a prisoner for a crime committed while the perpetrator was a juvenile.

The state with the fifth most executions since 2007 is Virginia. It had none in 2007, but has carried out the death penalty ten times since then. In Virginia, the condemned can choose between lethal injection and electrocution. Of the ten executed, six were Black; three were white males; and one was a white woman. One of the executed persons was John Allen Muhammad, the D.C. Beltway sniper.

Colorado currently has seven prisoners on death row. If they should come to be executed, the method by which they will die will be lethal injection. Two states had only one prisoner on death row: Wyoming and New Hampshire.

These statistics tend to demonstrate that the states are steadfast in threatening the use of, but slow to actually carry it out. Several states have abolished the death penalty, but the abolition of the death penalty was not made retroactive in any of those states. Thus, even in those states, including New Mexico which abolished the death penalty in March 2009, Connecticut which abolished the death penalty in April 2012, and Maryland which abolished the death penalty in May 2013, a fair number prisoners remain on death row. The governor of Maryland commuted the death sentences of the four persons on death row.

In conclusion, it should be stated that given the trends in most of the states, the death penalty may be facing its own end in this century. But even if that should be the case, most of the people on death row in the several states may still be doomed, as penalties, especially those determined by juries, generally cannot be changed *ex post facto*. However, as in the state of Maryland, the political act of commuting the death sentence may save some

of those currently on death row. However, many governors may believe the power to commute death penalty sentences is not politically feasible for them.

Is the death penalty facing the death penalty? It is a certainty that its use is not being favored as often as it was over the last forty to fifty years. It may be that the governors and General Assemblies have determined that its monetary costs and human capital do not demand it much as has been the case in the past. The newly found problems with lethal injection seem to be assisting, and its failures to cause speedy and “efficient” death may be a causal factor in the death penalty equation. Warehousing prisoners for a decade on death row seems not to meet the values that many people have developed, even as to the most heinous prisoners. Leaving people to die a natural death on death row is probably not what most citizens have in mind for an efficient and humane approach to causing the death of a prisoner.

¹ C.R.C. is the abbreviation for Colorado Revised Statutes.

² <http://www.wbur.org/2015/03/23/wbur-poll-tsarnaev-death-penalty-life-in-prison>.

³ Pew Research Center, “Less Support for Death Penalty, Especially among Democrats.” www.people-press.org/2015/04/16/less-support-for-death-penalty-especially-among-democrats/.

⁴ Reid Wilson, “Support for Death Penalty Still High, But Down,” *The Washington Post*, 5 June 2014.

<http://www.washingtonpost.com/blogs/govbeat/wp/2014/06/05/support-for-death-penalty-still-high-but-down/>.

⁵ For statistics, see <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year>.

⁶ For statistics by state per year, see <http://www.deathpenaltyinfo.org/node/5741>.

INTRODUCTION TO THE VERNON GROUNDS INSTITUTE OF PUBLIC ETHICS

In every age, God raises persons who not only have a keener sense of his ideals for life in community than their contemporaries, but who also have the courage and foresight to pursue these ideals for themselves and the ability to lead others to do the same. For more than a generation Vernon Grounds played such a prophetic and catalytic role in the arena of social ethics within the evangelical community. In doing so, he established a legacy of Christian witness in the social domain that has been hailed by many as epoch-making and pace-setting.

It is to perpetuate Vernon's legacy of a vigorous Christian engagement in the public domain that the Vernon Grounds Institute of Public Ethics was established at Denver Seminary, where he has given a lifetime of dedicated service.

In embracing this task, and keenly aware of Dr. Grounds' lifelong stance, the Institute makes several bedrock commitments. First, it is committed to always anchoring its teaching and position in the Word of God. Second, it will endeavor to remain true to the Christian world view and the evangelical understanding of Christian faith. And, driven by the passion to see these resources brought to bear on social reality with a view to transforming it for the better, it further commits itself to pursuing an ethical agenda that will seek to be as all-embracing as its means allows.

From what has been said so far, it should be clear that VGI's arena of endeavor is social ethics. But it needs to be said that, in laboring in that realm, its mission is mainly educational. More precisely, what it aims to do is provide an environment, resources, and tools with a view to sensitizing, educating and

training Christians in a broad array of ethical issues so that they may be empowered and equipped to fulfill the biblical mandate to be “salt” and “light” in a morally decadent world (Matt 5:13-14, Phil. 2:15-16). As used here, the term ‘Christian’ is meant to embrace several groupings: students in training, Christian leaders, lay persons and the broader Christian community.

In the pursuit of this educational mission, VGI intends to employ a variety of delivery modes, including lectures, workshops, seminars, and informal discussion and, of its own limitations, VGI welcomes partnership with others who are also interested in a comprehensive and a robust Christian witness in the public square for the Glory of God.

Dieumème Noelliste
Director of the Vernon Grounds
Institute of Public Ethics
Professor of Theological Ethics
Denver Seminary