

# CAPITAL PUNISHMENT

## “by man shall his blood be shed”

### Key question

How should Christians approach the issue of capital punishment?

### Key text

### Genesis 9:6

“Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image.”

### Introduction

1. Capital punishment may be defined as “the execution of a criminal under death sentence imposed by competent public authority.
2. Can capital punishment be fairly administered in societies tainted with racism and class consciousness where verdicts are often related to how much you can pay for a lawyer?
3. Does the use of such penalties actually deter potential murderers?
4. Is capital punishment inherently “cruel and unusual” punishment?
5. Is capital punishment consistent with a biblical ethic of love and forgiveness?
6. Should there be a distinction between the ethical prescriptions for the covenant community (believers) and the laws of a secular state?

#### A. History of Capital Punishment

1. Capital Punishment has been practiced since the beginning of recorded history.
  - a. Code of Hammurabi (1750 B.C.)
  - b. Law of Moses (1450 B.C.)
  - c. Assyrian laws (1500 B.C.)
  - d. Hittite legal codes (1400 B.C.)
  - e. Ancient Egyptian law (1500 B.C.)
2. The church has had mixed attitudes toward capital punishment down through history.
  - a. Augustine felt the state had a right to impose it but should be very reluctant to do so.
  - b. Lactantius opposed it.
  - c. The Council of Toledo (675) and the Fourth Lateran Council (1215) forbade the clergy to participate in capital judicial trials.
  - d. Thomas Aquinas favored it for certain crimes.

- e. Martin Luther and John Calvin supported it.
  - f. The Catechism of the Roman Catholic Church outlines three functions of punishment.
    - 1. Expiatory - it pays a debt
    - 2. Therapeutic - it works to correct the offender.
    - 3. Preservative - it safeguards personal safety and social order.
3. The uses of capital punishment in history.
- a. Some 72,000 people were executed during the 36 year reign of Henry VIII in England.
  - b. By 1769 the number of crimes for which the capital penalty could be imposed had grown in England to 160.
  - c. Drowning, beheading, burning at the stake were all used as forms of execution.
  - d. In 1814, three English boys, aged eight to eleven, were executed for stealing a pair of shoes.
  - e. During the revolutionary period in America, most of the colonies considered murder, treason, piracy, arson, rape, robbery, burglary, and sodomy to be worthy of hanging.
  - f. The nineteenth century saw the rise of abolitionist movements against capital punishment.
  - g. In 1967 the use of the death penalty came to a halt.
  - h. In 1972 (*Furman v. Georgia*) the Supreme Court held “that the imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.”
  - i. In 1976 (*Gregg v. Georgia*) the Court approved a new Georgia statute that set out in detail various aggravating and mitigating circumstances that would justify the imposition of the capital penalty. This has been used as a model by other states to reinstate the death penalty.
4. Cultural forces that have influenced modern views of capital punishment.
- a. Modern western culture has been reluctant to pass moral judgments of any kind. The tendency is to try to understand deviant behavior against a backdrop of social and psychological abuse in a classist, racist, society.
  - b. Many of the abolitionist arguments have trivialized and sentimentalized society’s general moral understanding.
  - c. As Christians we are called to visit prisoners in prison not to abolish prisons. Our call to love our enemies is not a call to deny that they are enemies that we may need to defend ourselves against.

**B. Three basic views held by Christians.**

<b>Reconstruction</b>	<b>Retribution</b>	<b>Rehabilitation</b>
Seeks to apply the O.T. law to modern life in a literal way.	Focus is on the integrity of the <b>law</b> .	Focus is on the therapeutic need of the <b>offender</b> .
Capital Punishment for all major crimes.	Capital Punishment for a very few crimes.	No Capital Punishment for any crimes.

1. **Reconstruction** - Capital Punishment for all major crimes.

- a. This view is committed to a strict following of the Mosaic Law in today's civil government. In the **Law of Moses** the death penalty was prescribed for many different offenses.
1. Murder (Ex.21:12-14)
  2. Causing the death of a pregnant woman (Ex.21:22-25)
  3. Killing a person by a dangerous animal that had killed before, yet was not kept caged (Ex.21:28-30)
  4. Kidnapping (Ex.21:16)
  5. Rape of a married woman (Deut.22:25-29)
  6. Fornication (Deut.22:13-21)
  7. Adultery (Lev.20:10)
  8. Incest (Lev.20:11-12,14)
  9. Homosexual acts (Lev.20:13)
  10. Sexual intercourse with an animal (Lev.20:15-16)
  11. Striking a parent (Ex.21:15)
  12. Cursing a parent (Ex.21:17)
  13. Rebelling against parents (Deut.21:18-21)
  14. Sorcery and witchcraft (Ex.22:18)
  15. Cursing God (Lev.24:10-16)
  16. Attempting to lead people to worship other gods Deut.13:1-16)
  17. Avenging a death despite acquittal by the law (Deut.17:12)
  18. Intentionally giving false testimony against someone in jeopardy of the death penalty.
  19. Contemptuous act against a judge (Deut.17:12).
  20. Breaking the Sabbath (Ex.31:14).
  21. Drunkenness by a priest (Lev.10:8-10).
  22. Unanointed individuals touching the holy furnishings in the temple (Num.4:15).
  23. Blasphemy (Lev.24:15-16).
  24. False prophecy (Deut.18:20).
  25. Apostasy (Lev.20:2).

**NOTE:** Deut.19:15 specifies that 2-3 eyewitnesses were required for conviction.

Circumstantial evidence alone would never be sufficient under these provisions.

- b. Arguments for reconstructionism.
1. God's law reflects his unchanging character and therefor must be applied today.  
**Response:** The moral Law of Moses was a superficial expression of the nature of God. It was refined in Jesus' life so as to reflect the inner heart not just the outward conduct.
  2. The New Testament repeats the Ten Commandments. **Response:** The N.T. reissues a number of the moral principles of Moses but it excludes many.
  3. The Old Testament was the Bible of the early church. **Response:** The O.T. is written for us but not to us or about us.
  4. Jesus said that he did not come to abolish the law. **Response:** Jesus fulfilled the law and removed its covenant status from us.

5. Capital punishment is repeated in the N.T. **Response:** Not all O.T. capital punishments are repeated in the N.T.
- c. A Critique of Reconstructionism.
  1. The distinction between ceremonial and moral categories in the Mosaic Law fails to hold up.
  2. The apostles set aside the law as a covenant.
    - a. Christians are no longer under the law. Rom.6:14.
    - b. The Ten Commandments have faded away. II Cor.3:7,11.
    - c. Christ is the end of the law. Rom.10:4.
    - d. The law was in place only until Christ came. Gal.3:24-25.
    - e. The Law of Moses was given only to Israel.
  3. Reconstructionism would eliminate our constitutional freedom or religion by establishing a theocracy.
  4. Reconstructionism has already been tried and has failed with Calvin's Geneva and the Puritans' early American experience.
2. **Rehabilitation** - No capital punishment for any crimes.
  - a. Biblical arguments against capital punishment..
    1. The purpose of justice is to reform, not punish. Ezek.18:23 "God takes no pleasure in the death of the wicked" **Response:** The primary purpose of justice is not rehabilitation but rather retribution as seen in the death of Jesus as in "The just for the unjust" I Pet.3:18; "the wages of sin is death" Rom.6:23.
    2. Capital punishment was abolished with Mosaic Law. Matt.5:38-39 "not an eye for an eye" but "do not resist an evil person" **Response:** Capital punishment was prior to the Mosaic Law. Gen.9:6
    3. Mosaic capital punishment is not practiced today. **Response:** This is true and it challenges us to be careful to keep capital punishment in a context for example where people are convicted only by eye witnesses - Num.35:30; Deut.17:6.
    4. Jesus abolished capital punishment for adultery. Jn.8:11 "go, and sin no more" **Response:** In reality what Jesus did was disarm the accusers of the woman. He threw the case out of court because of the motives of the prosecution.
    5. Cain was not given capital punishment. **Response:** While God commuted Cain's death sentence, Cain still seemed to realize that he was liable and in danger of being killed.
    6. David was not given the death sentence. When he repented (Ps.51), he was forgiven (Ps.32), and even restored to his throne (II Sam.18-19). **Response:** While David was guilty there were never any charges brought or witnesses to his crime.
    7. New Testament love rules out capital punishment. Jn.15:13. **Response:** If love and capital punishment were mutually exclusive, then the sacrifice of Christ was a contradiction.
    8. The cross was capital punishment for all men. **Response:** The cross did not remove certain consequences of sin.
  - b. Moral arguments against capital punishment.
    1. Capital punishment is unjustly applied. Minorities and poor people are too often abused by it. **Response:** We are not to remove all laws from the books just because they are not used lawfully. The challenge is to become more just in use of the law.

2. Capital punishment is not a deterrent to crime. Studies suggest that sure prosecution may be a deterrent but capital punishment is not. **Response:** The studies are inconclusive and very hard to conduct. We do know that those who are executed will not be repeat offenders.
  3. Capital punishment is cruel and unusual. **Response:** Punishment makes a statement about the high degree of moral responsibility that we have and also the supreme value of an innocent life that is taken. It seems perfectly reasonable that if a person takes an innocent life they forfeit their own as a sign of the dignity of the life taken.
  4. Capital punishment sends unbelievers to hell. **Response:** Unbelief not capital punishment sends an individual to hell.
  5. Criminals should be cured, not killed. **Response:** The most basic human problem is sin not sickness. Man needs repentance not rehabilitation. The fundamental focus of the law is justice before God's will not the comfort or even well being of the creation.
3. **Retribution** - Capital Punishment for some crimes.
- a. The primary purpose of Capital Punishment is to punish the offender out of respect for the dignity of the offended and the integrity of the moral principle of the law which reflects the character and justice of God.
  - b. Special considerations:
    1. The state, not the individual's next of kin, is responsible for justice. The state is to seek justice not revenge.
    2. Capital crimes require 2-3 witnesses before Capital Punishment can be enacted. Great effort must be taken to avoid executing an innocent person.
    3. Capital offenses should be limited to the most serious of crimes over which the state has a vested interest.
  - c. The Biblical basis for Capital Punishment.
    1. The image of God in man demands that the highest price be paid for taking an innocent life.
 

**Gen.9:6** "Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image."

      - a. This text seems to be prescriptive more than descriptive.
      - b. This text precedes and succeeds the giving and removing of the Law of Moses.
      - c. The image of God in a person suggests that when a person's life is wrongly taken there is an attack on God himself. In the same way an attack on a country's embassy is considered an attack on that country.
    2. God gave the power of Capital Punishment to human government. Gen.4:14.
    3. Capital Punishment was incorporated into the Mosaic Law.
    4. Capital Punishment is reaffirmed in the New Testament.
 

**Rom.13:1-7** "1 Let every person be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. 2 Therefore he who resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. 3 For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good, and you will have praise from the same; 4 for it is a minister of God to you for good. But if you do what is evil, be afraid; **for it does not bear the sword for**

**nothing**; for it is a minister of God, an avenger who brings wrath upon the one who practices evil. 5 Wherefore it is necessary to be in subjection, not only because of wrath, but also for conscience' sake. 6 For because of this you also pay taxes, for {rulers} are servants of God, devoting themselves to this very thing. 7 Render to all what is due them: tax to whom tax {is due;} custom to whom custom; fear to whom fear; honor to whom honor.”

**Acts 25:11** “if I have committed anything for which I deserve to die, I do not seek to escape death.”

c. Rational of Retributionism.

1. It is based on a high view of man made in God’s image.
2. It treats the criminal with respect as though he or she is responsible for their acts.
3. It respects justice.
4. It deters crime.
4. It protects innocent lives.

4. **Retribution** and **Restoration** can be compared in the following chart. *Source Training Manual for the Reconciliation and Reentry Ministry of Durham Congregations in Action 2004.*

<b>Retributive Justice</b>	<b>Restorative Justice</b>
Crime is an act against the State, an abstract idea.	Crime is an act against another person and the community.
The criminal justice system controls crime.	Crime control lies mainly in the community.
Offender accountability is defined as receiving punishment.	Accountability is defined as assuming responsibility and taking action to repair harm.
The offender is defined by deficits.	The offender is capacity to repair harm and participate in reconciliation.
Focus is on fixing blame or guilt, Focus is on fixing blame or guilt, on the past.	Focus is on responsibility and healing, on the future.
Impose pain to punish and deter.	Repair, restore & reconcile.
Community does not interact with the offender, and shuns him.	Community facilitates the restorative process, and welcomes and integrates the offender.
Process is dependent on professionals.	Process involves community folks and victims.
Process disempowers and disables the	Process builds responsibility,

offender.	skills, and competence.
Victims are bystanders.	Victims actively benefit in repair and can assist in reconciliation and re-entry
Does not concern social justice and wholeness of all parties including the community.	Focuses on social justice, peace and wholeness, well as criminal justice.
Focuses on punishment of the offender.	Balances the needs of the offender. victim, the offender and the community.

## **Pastoral advice**

### **How should Christians talk about capital punishment?**

1. I sense that while capital punishment is valid in theory it is not always wise in practice because, in our culture, capital punishment is often not accompanied by other important considerations - conviction based on the testimony of multiple eye witnesses for example.
2. The primary rationale for capital punishment is not deterrence although I believe that it can be a deterrent. Retribution (Respect for the sanctity of the life of a person made in the image of God and wrongly taken is the primary issue.)
3. There will always be mistakes, prejudice, and social inequity in law enforcement. We must work hard to correct such injustice but we should not overthrow the system unless or until it is perfect.

### **Questions that you should be able to answer.**

1. **Specific facts you should know.**
  - a. Which texts of Scripture are most important in our thinking about capital punishment?
  - b. How is the "image of God" in man a factor in any discussion of capital punishment?
2. **Issues that you should be able to discuss.**
  - a. What are the relative strengths and weaknesses of the three views that Christians have supported with respect to capital punishment?
  - b. How are we to respond to the fact that Blacks are over represented on death row?
  - c. Why might it not be wise for Christians to advocate capital punishment even though there is Biblical sanction for it?