

CAPITAL PUNISHMENT

The debate of whether we should or should not reintroduce the death penalty for murder has been going on for 50 years. Many are for its reintroduction while others are not. Many argue that it is not a deterrent and on that basis alone propose that it is ineffective and therefore that it not be reintroduced to the New Zealand statute book.

The first execution in New Zealand was that of a young Maori man named Maketu convicted in 1842 at Auckland. The last was in 1957 at Mount Eden prison of a Walter Bolton for the murder by poison of his wife. All told there have been 83 executions 82 men and 1 woman, Millie Deans, the infamous “baby killer,” of Invercargill.

The offences that constituted the death penalty were, murder, treason, and piracy. This was in step with English common law at the time. The Labour Party opposed capital punishment and when it came to power in 1935 it abolished it and commuted all death sentences to life imprisonment. The National Party reinstated it in 1950, and from 1951 to 1957, there were 8 executions. Following this in 1961, the issue was put to a “conscience” vote and capital punishment was removed from the statute book.

At the end of 2005, however, a “Close up” programme polled viewers and the result was that out of 9,685 viewers, an overwhelming majority of viewers, 7,063 voted for capital punishment with 2,622 saying, “no.”

Now the argument used against the death penalty is usually based on the fact that it is not a deterrent to murder. This is true. However, it is also a very bad argument. If we applied that kind of reasoning to all crime then we would not have prisons. Why? Because prison is not a deterrent for any crime at all. In fact the argument is an old one from the utilitarian school of philosophy.

Jeremy Bentham an English utilitarian said of punishment that. “All punishment is mischief and evil.” He went on to say, “the deliberate infliction of suffering on a person who has committed an evil act such as murder merely adds more evil and suffering to the world. Therefore, punishment can be justified only if it is the only way to remove an even greater evil.”

At least Bentham is true to the outcome of his argument here. He then went on to propose a prison system based on reform and rehabilitation which was sanctioned by an act of parliament in 1791. The prison however was never built. (**Jeremy Bentham, “An introduction to the principles of morals and legislation.”**) This is the argument now being used in New Zealand and more and more prisons are being built.

Interestingly, however, John Stuart Mill, another English utilitarian and student of Bentham did not oppose capital punishment. He believed that capital punishment outweighed the harm in **not practising it**. In 1868 Mill told the House of Commons that the death penalty was appropriate for brutal crimes. He argued that it **DID** have a deterrent affect. (**John Stuart Mill “Parliamentary debate on capital punishment within prisons bill.” Hansard 1868.**)

John Locke in his (**Second Treatise of government**) was nearer the truth when he said: “Every man has the right to punish the offender, and be executioner of the law of nature. Thus it is that every man in the state of nature has the power to kill a murderer, both to deter others from doing the like injury, **which no reparation compensates**. And also to secure men from the attempts of a criminal, who having denounced reason, hath by unjust violence and slaughter he hath committed on one, declared war on all mankind. Therefore he is to be destroyed as a lion or a tiger one of those savage beasts, with who man has no security or sovereignty. Upon this is grounded the great law of nature: “Whosoever sheds man’s blood, by man his blood be shed.” (Genesis 9:6).

Another philosopher, Immanuel Kant, rejected all the consequentialist arguments for capital punishment. He argued that a murderer must die. Not because of any social benefits that would accrue as a result of capital punishment, but because this was the only way to satisfy the requirements of **retributive justice**. Kant says in his (**Philosophy of law**)_“The penal law is a categorical imperative, and woe to him who creeps through the serpent windings of utilitarianism to discover some advantage that may discharge him from the justice of punishment, or even from the due measure of it. For if justice and righteousness perish, human life would no longer have any value in the world.”

Kant then is maintaining that not only does the state have the right to punish, wrongdoers also have the right to be punished. Punishment

including capital punishment. Thus Kant is affirming the criminal's dignity by acknowledging that unlike children, the mentally incompetent, or wild animals **they are responsible for their actions.**"

Kant is on the proper path here and so was Locke. However, there is also a compelling case for capital punishment that is found in the scriptures themselves. Not only is it compelling, it is an explicit command from God Himself. **Genesis 9:6:** puts the case in favour of capital punishment this way. **"Whoever sheds man's blood, by man his blood shall be shed. For in the image of God He made man."**

The Hebrew word for shed here is **shaphak** and it has the meaning in this context *to spill forth (blood), to commit slaughter (murder)*. Now the proposition of Genesis 9: 6 simply put is this:

All persons who shed man's blood by murder.
By man (government) his blood will be shed.

This is a universal affirmative proposition applying to all and every person. Further the reason is given very specifically for the punishment and is enthroned in creation law. That reason is this: **Because man is created in the image of God.** Therefore when "A" murders "B" then "A" must be executed for murdering one created in the image of God Himself. Further we find in **Romans 13:1 ff.** that God has empowered the state to act on His behalf by giving the state *"The power of sword."* This is simply the right for the state to carry out God's explicit command that all murderers be executed. This accords with the proposition in Genesis 9:6.

From the evidence of these things then we find without doubt that: **God requires the enforcement of capital punishment of all murderers given by Divine decree.** Therefore any nation that does not enforce it is disobeying the explicit command of God; it is just that simple.

So we see that there are two aspects for capital punishment (1) the murder itself and (2) the fact that man is created in the image of God. We see too that the death penalty itself has two aspects to it: (1) It is **retributive justice for the crime this is its primary function.** (2) It is also to act as a deterrent this is its **secondary function.**

It is well known that the death penalty does not deter all persons from committing murder but this as we have said is only a **secondary purpose of the command**. True it is hoped that it will deter others but it doesn't in all cases. That is why the primary purpose of capital punishment is retributive.

There is yet a third reason for using the death penalty for murder and that is that by not imposing it allows innocent blood to remain unavenged in the land. That blood cries out to God for retribution, just as Abel's blood cried to God after he was murdered. Look at **Exodus 23:7** "**Do not kill (murder) the innocent or the righteous, for I will not acquit the guilty.**" If God will not acquit a murderer, then we ought to do as He does and put the guilty to death. Then in **Deuteronomy 19:13** We are told in explicit terms, "You shall not pity him (the murderer), but you **shall purge the blood of the innocent from the land that it may be well with you.**"

II Kings 2:31 says the same thing: where Solomon says, concerning Joab's execution, "**fall on him (kill him) and bury him (why?) That you may remove from me (the king) and my fathers house (House of David) the blood which Joab shed without cause. (That is innocent blood.)**"

Here we plainly see that God requires (demands) retributive justice and not just simply a deterrent (the secondary feature of the command). Therefore it is incumbent on every nation including New Zealand to execute those who commit murder since they have murdered innocents (in the case of children) and also those created in God's image.

If we look at our country, we have had 50 years of the government not purging the land of innocent blood by denying them the retributive justice that God has said to give them. The question remaining then is this. How long can the New Zealand government continue to increase the amount of innocent blood in our land? Eventually the land will vomit out that blood and many will suffer as they do now by being denied the justice they are entitled to. The legislators need to look long and hard at this question and get back to obeying the express command of God on the issue. God has not revoked one word of what He has said in Genesis 9:6 or in Romans 13:1ff. We need to remember that.