

Lecture #22: Capital Punishment (Detailed Notes)

"Consequently, he who 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 he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an angel of wrath to bring punishment on the wrongdoer" (Rom 13:2-4)

Purpose of this Lecture: To bring a Biblical perspective to the issue of Capital Punishment, the single punishment that government wields that ushers one directly into Eternity

- o The secular justifications for continuing or discontinuing the practice
- o The Biblical view of capital punishment
- o Some contemporary issues surrounding the practice
- o Some statistics from this country in the last century

1. Introduction: Must be careful about approaching this subject - natural tendency can be to rejoice when the wicked are destroyed (imprecatory Psalms)

- o We know every sin will receive its rightful punishment (**Heb 2:2**) by God
- o Should we ever rejoice at one's death, even those that are manifestly evil, when we consider the eternal state they will be condemned to?
- o This punishment should give us pause, since we deserve from God what the state gives to the wicked
- o Much has been written over the years, the world has been moving away from this practice over the last century (exception being some Muslim countries and countries with strong Communist ties)
- o The Bible is our only true source to address this controversy - otherwise it is only man's opinion and reasoning (**1 Cor 1:20**)
- o Even though sincere Christians have much in common, they are divided over this issue, just as they are over many other ones
 - o "Eye for an eye" approach; if you take another person's life, you forfeit your own
 - o Western cultures up until the 18th century practiced a retribution approach
 - o Martin Luther supported it, as did most Christians through the ages
 - o Most surveys show a majority of Americans support some application of capital punishment
 - o Christians are to show compassion & forgiveness and love our enemy not hate him (**Matt 5:44**)
 - o Most mainline denominations reject capital punishment as unchristian (Baptist also)
 - o Pope John Paul II and Chuck Colson oppose it
 - o Belief that retribution is also a crime (just as bad as the perpetrator), revenge, primitive or barbaric
 - o We're called to love enemies, not kill them; The Lord is to avenge (**Rom 12:17-21**)
- o You may not think this is a topic of concern but consider:
 - o The Supreme Court is again facing issues relating to the death penalty (see current events)
 - o Each execution is publicized extensively, so that it continues to be in the public's eye
 - o Control of life and death in criminal cases compared to abortion, euthanasia and infanticide show how schizophrenic the society is
 - o There is a wide range of opinion amongst Christians as to how to approach this subject, and many mis-perceptions of what a Christian believes (**Rom 14**)

2. Basics: Four general types of legal punishment exist in this country, of which Capital Punishment is the most drastic:

- a. Loss of money or property (fine paid to the state, or restitution paid to the victim)
- b. Loss of freedom (imprisonment)
- c. Restriction of liberty (probation; parole; work release program; house arrest; restricted access to family; limitations on owning of firearms; restrictions on voting)
- d. Loss of life (capital punishment). Types of execution practiced in the U. S. (which way would an

animal be put to sleep?)(See Handout: Capital Punishment, Some Selected Statistics)

- o Firing squad
- o Hanging (public hanging: 1918; DuPage County, Illinois; vendors sold refreshment, etc.)(one of very last was Kentucky, African-American male in 1936; 20,000 people gathered to watch)
- o Electric chair
- o Gas chamber
- o Lethal injection

3. Secular Arguments for or against Capital Punishment attempt to justify their position primarily from a Utilitarian, Compassion, or Constitutional Standpoint

- a. Typical reasons given to justify capital punishment (and general responses):
- o Deterrence of other murders from occurring (others that may commit murder will think twice)
 - o By itself this is not justified (same result by executing an innocent person)
 - o Statistics to determine the affect are inconclusive and highly dependent upon the assumptions and variables addressed (states with D.P. average 7.5 criminal homicides per 100,000; abolitionist states average 7.4 (*ref(5)*))
 - o Criminal is being used for another purpose vice punished for their own deeds (effect on society in view more than the individual paying for his crimes)
 - o However, see **Deut 17:12-13; 19:18-21**, some Biblical warrant, but not the primary reason
 - o Rehabilitation (provides motivation for others to reform their ways, not just self-control)
 - o Little, if any, objective evidence to support this theory
 - o This has society more in view than the individual who is responsible for their actions
 - o Protection of society from this particular murderer (permanently removed)
 - o However, the same affect can be obtained by: medical treatment; social retraining; or long term jail sentence, why not use those approaches instead?
 - o What about the one that is highly probable of committing violent crimes in the future, should they be treated also since the goal is to protect society (minimize risk)?
 - o Affect on society becomes the issue vice the personal accountability of the individual
 - o Retribution (punishment is something that the individual earns, and it fits the crime; repaid)
 - o This is individualized to the person who has earned the punishment, and them alone
 - o Proportionality applies - more serious crimes deserve more severe punishment (not unlimited)(Lex talionis)
 - o This is the fundamental principle governing Christ's payment of His life for ours to pay the price of our sin (our personal accountability and sentence of death was paid for on the cross) - this is an individual payment, He did not die for an entire family, clan or nation, but for individuals!
- b. Most legal battles over capital punishment involve addressing it's Constitutionality (ACLU)
- o 8th Amendment: cruel and unusual punishment
 - o 5th and 14th Amendments: requiring equal protection under the law for all citizens
 - o Denial of due process under the law - it is irrevocable, and deprives an individual of the benefits of new evidence or a new law
 - o Denial of equal protection since it is disproportionately imposed upon those whose victims are white, on offenders who are people of color, and on those who are poor and uneducated (statistical 'proof' of bias?)
- c. Other moral arguments:
- o Murder demonstrates a lack of respect for human life (state death penalty is referred to as State authorized killings)
 - o A decent and humane society does not deliberately kill human beings. This practice teaches the permissibility of killing people to solve their problems
 - o Executions give society the message that human life no longer deserves respect
 - o Use of capital punishment as a form of punishment obscures the true causes of crime and distracts attention from potential measures to control the real causes
 - o The U.S. is linked to nations well recognized for their human rights disregard by likewise imposing the death penalty (China; Iraq; Iran; South Africa; former Soviet Union)

- d. Some logical arguments
 - o Not a deterrent since pre-meditated murderers don't think they will get caught, and those committed under great emotional stress don't consider the consequences
 - o Punishment in like kind is not done with other crimes, why with this one?
 - o Capital punishment wastes valuable resources (N.Y. 1982, if death penalty reintroduced, it would cost twice the cost of a life term in prison; *ref (6)*)
 - o Statistics used that shows it has no effect on the rate of murder (not a deterrent)

4. To address application of God's word must look in at least three ways: Commands for all mankind; Principles for righteous governance from the O.T.; N.T. teaching

- a. God's commands that speak to all of mankind and not just to His chosen people
 - o Man's relationship to God
 - o The creation ordinances and early commands of God
- b. General principles of Mosaic law that govern righteous judgment and proportionality of punishment
 - o The ten commandments and other Pentateuch teachings
 - o Cities of refuge
 - o Standards of evidence
 - o Execution by stoning by large numbers of people vice a single executioner
- c. Christ's example and N.T. teaching for our personal lives in regards to others
 - o Did He abolish the death penalty?
 - o The difference between the governmental role and our individual role

5. Creation ordinances and early commands of God apply universally and throughout time

- a. First and foremost - man is uniquely created in God's image (**Gen 1:27; 5:1; 1 Cor 11:7**)
 - o As such - every human being has a unique dignity and worth
 - o We are fearfully and wonderfully made by God (**Psalm 139:14**)
 - o Our days are numbered by God (**Psalm 139:14; Job 14:5; Eccl 8:15; Acts 17:26; Matt 6:27**)
 - o God, the Giver of life, determines when to take life away (**Deut 30:19-20**), and when it has finished its tasks on earth (**Phil 1:6**)
 - o In a very real sense, all mankind falls under the sentence of death (**Rom 3:23; 6:23**), and deserve death (capital punishment) from God
- b. Man is to deal with man in a way different from animals - life is accounted differently
 - o Our lives are precious in God's sight, so much so that He paid an infinite price for our lives to be redeemed by His Son on the cross (**2 Cor 8:9**)
 - o The shedding of innocent blood is severely condemned (see c. and d. below) (**Gen 4:1-16; 9:6**)
 - o Man's death uniquely defiles the land (**Gen 4:10; Num 35:33-34**) as does man's sin (**Lev 18:1-25**)
- c. The first murder (**Gen 4:1-16**) provided a unique opportunity to see God's mercy and His will for man
 - o As far as we know, God had not explicitly commanded man to not murder, however, this would be contrary to the command to be fruitful and multiply to fill the earth
 - o God's punishment was fourfold, but did not include taking Cain's life:
 - o Driven from God's presence
 - o Driven from the land (no longer yield its crops for him)
 - o Cain was to become a restless wanderer (not a farmer)
 - o He would be in danger of being murdered himself (vengeance upon him)
 - o Why didn't the first case of murder result in the death penalty? Some possibilities:
 - o Cain may have been repentant ("punishment" in **verse 13** may be translated "iniquity" or "guilt" but not usually). God may have demonstrated compassion for Cain because of his sorrow and thus spared his life
 - o God protected Cain from being avenged by others ("...vengeance seven times over"); implying capital punishment will be used against murderers from then on
 - o God had not yet established capital punishment as an instrument of government (**Rom 13:1-4**); He did later in **Gen 9:6**)
 - o The Lord alone determines when life is to be taken (His prerogative; **Deut 32:39**); in this instance, He commuted Cain's death penalty ("Listen! Your brother's blood cries out to me from the ground" - implying vengeance is being demanded)

- o God may have used this to establish His righteous command clearly, as a result of man's sin (Establishes also that God is compassionate, and that murder is to be severely punished)
- o "But sin is not taken into account when there is no law" (**Rom 5:13b**) Although we are all guilty before the Lord, the execution of punishment for sin occurs after God has revealed His just standard. After Cain's sin, the death penalty is clearly indicated when man takes man's life
- o God can suspend His law when He wants to in order to fulfill His righteous purposes (**Num 13:26-14:38; 20:12,24; 21:4-9; Rom 1:32**)
- d. The first formal warning against murder (**Gen 9:4-6**) established need for civil government & order:
 - o The taking of life countermands God's command to be fruitful and fill the earth (**Gen 9:7**)
 - o The universal punishment for murder is death (proportionate to the offense)
 - o This command is for all mankind (Noah and all his descendants) just as commands to Adam and Eve were for all generations that were to follow, e.g.:
 - o Marriage
 - o Dominion over the earth
 - o Be fruitful and multiply upon the earth
 - o Rest the seventh day
 - o God has ordained the way to execute a murderer - by man (legitimately formed government, civil authorities exercising this function)
 - o Not by wild animals
 - o Not by exposure to the elements
 - o Not by starvation
 - o Side note: if this authority is granted to man (capital punishment - retributive) for cases of murder, how much more is man granted the authority to rule and punish for lesser crimes (property; home; business; etc.)

6. Mosaic law governed righteous judgment and proportionality applied to a Theocracy but General Principles can Apply to us Today

- a. Man's life is specially protected
 - o Specific commands against murder (**Ex 20:13; Gen 6:9**)
 - o Creation of Cities of Refuge that allowed distinction between murder (intentional) and manslaughter (accidental death)(**Num 35:6-34**)
- b. Mosaic law codified many conditions under which capital punishment was allowed to take place
 - o See **Handout: "Death Penalty under the Mosaic Law"**
 - o Given to govern Israel as God's chosen people in the promised land
 - o They were to be holy as He is holy
 - o God dwelt amongst them in a unique, physical way
 - o Absolute obedience, and strict conformance to His law was demanded
- c. Mosaic law was not given to other nations (**Psalm 147:19-20** "He has revealed his word to Jacob, his laws and decrees to Israel. He has done this for no other nation; they do not know his laws")
 - o However, God's law was to be a beacon to other nations as they see the wisdom of His righteous decrees (**Deut 4:5-8; Psalm 96:1-13; 98:2-3; 119:98**)
 - o Influence the moral standards and civil laws of other nations
 - o These laws could not be developed from "natural law" or "general revelation" by other nations (natural law is necessary, but not sufficient), only a shadow was possible
 - o They do, however, provide principles that other nations should note
 - o See **Session #32: Justice**
 - o Justice is to be swift (**Deut 25:1-3**)
 - o The principle of proportionality ("eye for an eye")(Ex 21:24; Lev 24:20; Deut 19:21)
 - o Principle of fairness in judging (**Prov 18:5; 17:15**)
 - o Principle of witnesses (two or more) needed to prove the offense (**Num 35:30; Deut 17:6; 19:15; Matt 18:16**)
 - o Circumstantial evidence was not sufficient
 - o High standard required because the consequences were irreversible in some instances (death)

- o Principle of due process (two witnesses (**Deut 19:15**); See **Handout: Judicial Principles from the Book of Proverbs of Session #6: Is this a Christian Country?**)
- o Cities of Refuge to protect the innocent from vengeance (**Num 35**)
- o Bottom line - man uniquely reflects God's image and possesses qualities/characteristics that reflect God. Therefore:

7. The New Testament Teaching Provides even more Insights into Capital Punishment

- a. What did Jesus teach relating to Capital Punishment? Did He do away with it?
 - o **Matt 5:21-22:** "You have heard that it was said to the people long ago, 'Do not murder, and anyone who murders will be subject to judgment.' But I tell you that anyone who is angry with his brother will be subject to judgment."
 - o He did not abolish the punishment or show the judgment was wrong
 - o He elevated the seriousness of the sin and pinpointed the root heart problem
 - o He affirmed that murder merits judgment
 - o **John 8:1-11:** The woman caught in adultery
 - o The penalty for adultery was death for both parties (**Lev 20:10; Deut 22:22-24**)
 - o The penalty for false witnesses in a capital crime was death (**Deut 19:16-21**)
 - o The false accusers left, the requisite two or three witnesses were not present, Jesus did not condemn the woman - it was a setup from the very beginning
 - o This passage does not teach the abolishing of capital punishment for adultery, if anything it upheld the standards with which to judge it. It does show Jesus' compassion and His knowledge of men's hearts however!
 - o **John 19:10-11:** "Do you refuse to speak to me?" Pilate said. "Don't you realize I have power either to free you or to crucify you?" Jesus answered, "You would have no power over me if it were not given to you from above."
 - o Pilate was a pagan authority, not under the Mosaic law
 - o Both Jesus and Pilate acknowledged Pilate's authority to execute a prisoner
 - o Jesus did not cancel the death penalty, but affirmed the authority God had given Pilate over life and death judgments
 - o **Matt 26:52:** Jesus said "...for all who draw the sword will die by the sword."
 - o The implication is that judgment falls on those that are violent - those who kill will themselves be killed
 - o This could be referring to wickedness reaping wickedness to themselves
 - o This could also affirm just punishment (execution) for unjust taking of life
- b. What about the rest of the New Testament? Two distinctive domains (realms) exist: the church & state
 - o The Church (and believers individually) have the example of Christ to follow
 - o We are to love our neighbor (and our enemies) as ourselves (**Matt 22:39; Lev 19:18**) and pray for them (**Matt 5:43-45**)
 - o We are not to conform to this world and act like it (revenge); instead we are to overcome evil with good (**Rom 12:2; 19-21; 13:8**)
 - o We are not to resort to physical violence (**Matt 5:38-42; Luke 22:49-52; John 18:36**)
 - o We are not to retaliate when evil comes upon us (**1 Peter 2:22-23**)
 - o We are to turn the other cheek (**Matt 5:38-42; Luke 6:27-36**)
 - o In a word, we are to walk like Christ walked (**1 John 2:6**)
 - o The church doesn't wield the sword, but disciplines God's people a number of ways:
 - o Incest resulted in excommunication within the church, not death - even though it was a capital offense under the O.T. (**1 Cor 5:1-5**)
 - o One who was unrepentant and unwilling to be reconciled faced being treated as a pagan or tax collector (**Matt 18:15-17; Titus 3:9-10**), not execution
 - o Those who reject the faith were handed over to Satan (**1 Tim 1:18-20**), not summarily executed
 - o Paul taught we are no longer under the supervision of the law but ruled by faith (**Gal 3:25; Rom 7:6**)
 - o Paul acknowledged the civil authorities right to execute (**Acts 25:10-11; Rom 13:1-7**)
 - o For us, the law serves to teach what sin is and show us our need for Christ (**Gal 3:24**)
 - o God uses human agents (government) to execute vengeance on wrongdoers (**Rom 12:19; 13:4**)

- o Government has the authority to wield the sword (take life as necessary)(**Rom 13:4**)
- o In punishing the evil doer (murderer), government acknowledges the value of life and can use the ultimate punishment
- o Peter taught we are to be subject to the authority placed over us as it exercises its God ordained role (**1 Peter 2:13-14**)
- o Biblical commands and moral standards are to influence the nation we live in, but they will never be perfectly applied

8. Bottom lines:

- o Man is made in God's image, and as such carries a dignity that is not to be lightly ignored
- o Statistics and humanistic reasoning is not the foundation to determine whether the death penalty should be used or not - but God's standard (His word)
- o I believe God has, and still does allow the taking of a person's life when necessary - for crimes that society deems the death penalty is the only reasonable punishment
 - o This fulfills the God ordained role of government in wielding the sword to punish the evil doer, and to maintain peace in the land
- o God has given a multitude of principles to govern the dispensing of justice
 - o These stem primarily from Mosaic laws and wisdom issues in dealing with evil
 - o These include the honoring of human life by applying the ultimate punishment in this life against those who murder others
 - o These have not been abrogated in N.T. times, but are relegated to the civil authorities and not to the church - which is to follow the example of Christ Himself
 - o Government is to maintain peace in the land, protect the church in freely exercising its role and punish the evil doer up to and including the taking of their life
- o The greater the Christian influence in a society, the more important the balance between compassion and just punishment is needed:
 - o To reflect God's mercy He has shown to us (who are murders in thought alone, and deserve death due to our sins)
 - o To reflect God's perfect and righteous standard that calls all men to repent, and that there are consequences to violating this standard
 - o Civil and moral laws govern relationships between people
 - o Prudence and wisdom must govern their application in today's economy to bring about justice (see discussion questions)

9. What Should or Could a Christian do?

- a. Support creation and strong enforcement of just laws
 - o Proportional to the crime
 - o Support restitution as well as retribution principles
 - o Don't begrudge the appeal process - mankind is sinful, and can make mistakes - capital punishment, when exercised, is not reversible
 - o Remember the Biblical standard required to convict a murderer
 - o Remember our ultimate recourse is the justice of God, not of man!
- b. Remember sincere believers disagree on capital punishment and what should be done (**Rom 14**)
 - o Be sensitive to the weaker brother who's tender heart may not agree with capital punishment under any circumstances
 - o Be careful of gross generalizations in this area
- c. Forgive those who commit crime against us, but allow the state to avenge the wrong (God works thru the authorities He has established for our good (**Rom 13:1-7**))
- d. Be careful of our attitude concerning those facing execution - Jesus paid the ultimate price and died for His people, did we do anything less in requiring such an infinite price to be paid?
- e. Consider ministry to those in prison or facing the ultimate punishment; support ministries to them (The separating of the sheep and goats; prison, hungry; etc. (**Matt 25:31-46**))
- f. Become aware of the issues our society is facing in this area, e.g.:
 - o DNA usage
 - o Plea bargaining
 - o Inhumane punishment methods
 - o The rich and the poor being treated differently

- g. Use discussions as opportunities to bring moral principles to bear and raise eternal issues
 - o Whether we have justice in this life or not, there will be in the next life
 - o The effects of sin now (punishment) is a foretaste of the eternal punishment that awaits

10. References:

1. *"The Death Penalty Debate," H. Wayne House & John Howard Yoder; 1991*
2. *"Justice and Mercy - A Christian Solution to America's Correctional Crisis." Donald Smarto; 1987*
3. *"Biblical Principles - Concerning Issues of Importance to Godly Christians," Plymouth Rock Foundation; 1984*
4. *"When Critics Ask" Norman Geisler & Thomas Howe; 1997 (1992)*
5. *"Uniform Crime Reports, 1980-1989" as cited in "The Case Against the Death Penalty" by Hugo Adam Bedan in Ethics Updates (<http://ethics.acusd.edu>)*
6. *"N.Y. State Defenders Assn., Capital Losses" (1982)*

11. Some Historical Notes on Crime and Punishment

- a. Ancient Rome
 - o Prisons 400 B.C. to the time of Christ served the purpose of confinement while awaiting trial (Mamertime Prison - series of small cages beneath the sewer system of Rome)
 - o Punishment - flogging, mutilation, exile, death if found guilty; confinement as a punishment was not used
- b. Constantine (4th C.) criminals were segregated from society and brought to place of seclusion where they could feel sorry for their wrongdoing
- c. Roman Catholic church instituted a similar practice as penance
- d. Dark Ages: monasteries & abbeys used as places of banishment for criminal offenders. Rooms that confined the prisoner often were monastic cells. Concept of using small cells to create an environment for penitence and contrition would influence roots of American prison system
- e. Constitutions of Clarendon (1166 A.D.) by Henry II authorized jails (gaols) in England. Abusive places: jail tax imposed upon inmates (if not paid - longer term served); charges for food (starved the poor); filthy and disease ridden
- f. First extensive penal system appeared in England, 1557, Parliament ratified construction of Bridewell House. Both prison and workhouse; strict discipline; use of uniforms; human warehousing resulted with no thought of reform
- g. In the 1600's England prescribes death for 14 offenses, but the American colonies impose the death sentence for fewer crimes
- h. 1636 - The Massachusetts Bay Colony lists 13 crimes punishable by death, including idolatry and witchcraft
- i. August 6, 1890; Murderer William Kemmler is the first person executed in the electric chair, at New York's Auburn Prison. The "chair" is later installed at Sing Sing Prison
- j. 1907 - Kansas abolishes capital punishment. Eight more states follow suit over the next 10 years
- k. June 29, 1972 - The Supreme Court in *Furman v. Georgia* rules that the death penalty amounts to cruel and unusual punishment because juries impose sentences arbitrarily. The decision overturns all existing death penalty laws and death sentences. States began rewriting their laws to accommodate the two stage process required
- l. July 2, 1976 - The Supreme Court holds in *Gregg v. Georgia* that under the state's new two-stage trial system, the death penalty no longer violates the Eighth Amendment
- m. 1977 - Capital punishment begins again
- n. 1977 - Oklahoma becomes the first state to adopt lethal injection
- o. 1986 - The Supreme Court bars executing insane persons in *Ford v. Wainwright*
- p. 1989 - The Supreme Court in *Perry v. Lynaugh* holds that executing mentally retarded persons does not violate the Eighth Amendment
- q. Some statistics
 - o Approximately 3600 condemned inmates in the United States; Texas has most with 452 men and women awaiting execution, longest waiting is 25 years (Robert Excell White); three others in nation are longer ("The San Diego Union-Tribune" 28 March, 1999; "Execution looms for the dean of death row" article)
 - o According to a 1985 study "a murder takes place every twenty-three minutes"