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THE BASIS OF PUNISHMENT

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THE PROTESTANT FAITH

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There has recently been a good deal of discussion in the newspapers about the rights and wrongs of capital punishment. But before we can particularize about one form of punishment, we must discover what is the reason and basis for any punishment.

The teaching of the Christian faith is that punishment is based on the concept of justice. Justice may be defined as giving everyone what is their due. Justice treats people as people. We never ask, for example, about a plant, what is due to it, or even about an animal. We deal with plants and animals not from the point of view of what is due to them but rather from what is advantageous or beneficial for some object we have in mind. But men and women must never be treated in this way, and the concept of justice is the recognition that men and women have rights - rights which are due to them.

Justice is a concept very deep rooted in our personality. One of the earliest expressions of a child in a family is the cry "It is not fair", meaning, of course, "It is not fair to me". But at least this shows that even a child has a sense of what is due to each person within the family group.

The Bible makes clear that God treats us on the basis of justice. Constantly throughout the Bible the phrase occurs that "God renders to every man according to his works". Justice is two-sided: to those who deserve a reward it is unjust to keep it back and to those who deserve punishment it is unjust to disregard it. Justice, then, is distributive and retributive: rendering to every man his due, whether by way of reward or punishment.

Christ taught that God will not overlook even the most insignificant action that deserves a reward. He said that those who even gave a cup of water in His name would receive

their reward (Mk.9:41), and at the same time He taught that God would not overlook even the most insignificant wrong-doing, but warned that we will have to give an account even for every idle word (Mt.12:36). How much more, therefore, for every other wrong action or thought?

Justice then includes the double aspect of reward and retribution. Sometimes retribution, which is the basis of punishment, is confused with revenge; but the difference is very clear. Revenge is selfish, and the Bible makes clear that there must be no revenge in the administration of justice. You must render what is due, not what gives you satisfaction. That is why the Bible lays down in the beginning of the Old Testament that in meting out punishment, justice (or what is due) must not be exceeded. Normally when somebody does us a quite unprovoked wrong our anger wells up and we feel like paying him back double, if not sevenfold, but the Bible forbids it. "An eye for an eye and a

tooth for a tooth"; nothing more. Of course Scripture points out that there is even a better way, and that is to accept the wrong done to ourselves by extending mercy and forgiveness. We are not to be like the murderer Lamach in Genesis 4 who threatened a seventy seven times revenge; we are to forgive personal injuries, if necessary seventy seven times (Mt.18:22). But mercy must always start from justice: forgiveness can only be extended when retribution has been deserved. It is only when the principle is accepted of an eye for an eye as a just principle, that we are able to modify it by extending mercy. So the starting point in determining what punishment should be imposed must be "What does the crime deserve?"

The Bible makes clear that if for selfish wilful reasons you murder someone, cut short his life, make his wife a widow and his children fatherless, then you deserve to die yourself. This is taught

clearly in the Old Testament in Genesis 9, "Whosoever sheds man's blood, by man shall his blood be shed". Then again in the New Testament in Romans 13 where the Apostle speaks of the judge as "God's minister" in using the sword, that is to say in putting to death those who deserve death. St. Paul's approval of the magistrate's possession of the 'sword', which is an instrument of death, and his use of it as God's minister, implies the apostle's approval of the importance of capital punishment when it is deserved.

It is, of course, possible to mitigate justice by mercy if the circumstances indicate that this ought to be done. But the first thing to establish is what does the crime deserve? In other words we must look back to the crime and not forward to the effects of the punishment on the criminal.

There are, of course, a lot of people in the community who have an interest in opposing

capital punishment, such as social workers, penologists, psychiatrists, and all those who give themselves to the rehabilitating of offenders, because they are interested in the effects of punishment on the criminal. And if you take away a man's life there is no opportunity for the exercise of their professions. Their work is a very noble work, but we must remember that punishment is not inflicted primarily for the benefit of the criminal nor for the benefit of society, but because justice indicates the criminal deserves punishment. So in assessing what deliberate murder deserves, we must treat as secondary the arguments which spring from the effect of the punishment.

This doctrine of retribution is in fact the only basis on which punishment can ever be inflicted, for we have absolutely no right to lay even a hostile hand on our fellow man by way of arresting him, or later imprisoning him unless he deserves it, and unless we are

acting in the name of his Creator, that is to say acting as a minister of God, as the Bible speaks of the magistrate.

We cannot treat men and women as though they were plants and animals and use them in a way that we think beneficial either to themselves or to society. It is only because a person has deserved to be punished that we can take into consideration secondary benefits such as the opportunity of reforming the criminal, or of the deterrent example of his punishment.

The first question to be asked is "What does the crime he has committed deserve?" This question seems seldom to have been asked by those who were so loudly discussing the merits of capital punishment recently.

Not everyone has the right to punish (or to blame). Status is essential for inflicting punishment (including blame). This is true in the

home, in society, or between the nations. Thus it is only because the private soldier is united with the nation that he has the right to take part in inflicting the judgment of war.

The Humanitarian view of punishment, which is that it should be only inflicted as a deterrent or as a cure for criminal propensities, though it has the appearance of being merciful, is most cruel to the criminal, for it means that from the moment he breaks the law he is deprived of his rights as a human being. The Humanitarian theory removes from punishment the concept of desert. But desert is the only connecting link between punishment and justice.

On the humanity theory punishment is removed from the sphere of the common man's ability to estimate whether it is fair, into the sphere of the expert as to whether it is effective. If we stood in the dock we would all much prefer

to be judged by the community's sense of fairness, rather than by some expert's view of what was good for us.

On the remedial view of punishment the offender should, of course, be detained until he is cured. This is the communist theory of punishment, often involving lifelong curative treatment in Siberia. But what right have we got to cure a man against his will in this way? And how terrifying is the prospect of living in a community where justice, that is to say retributive punishment, is abandoned, and the curative or remedial theory alone holds the field? Anyone might be arrested and subjected to this curative treatment whether or not they deserve it (as we would say), because the concept of desert belongs to the theory of retribution and this has been abandoned by the Humanists. The fact is, of course, that punishment in itself does not reform. Love reforms; when punishment is administered by someone who is loved, it becomes chastise-

ment and leads to repentance and reformation.

The alternative Humanist theory is that punishment is inflicted for deterrence as a safeguard of society. This is an even worse basis for punishment, as it involves using people as a means to an end; and the benefit aimed at is not the culprit's, as in the reformatory theory, but the community in general; that is to say, it uses people for somebody else's end, which is morally reprehensible. This theory means that punishment need have no relationship to the crime but only to the effect, as to whether it actually deters or not. It might well be argued, if our society were to become non-Christian, that grossly cruel punishments are the most effective deterrents. This was the case in society before Christianity made its influence felt. The cruel punishment of crucifixion, for example, was inflicted for the sake of deterring criminals, as a safeguard to society. But it

was unjust to use people this way, even criminals. You must only inflict on a criminal what he has deserved. This is the Christian doctrine of justice and retribution.

But if this is true, then you are not at liberty to ignore the question "What does this crime deserve?" as it has been completely ignored in the recent controversy. This is the starting point. What does the deliberate wilful murder of a man doing his duty, what does this crime deserve? The Bible, as well as unbroken Christian tradition, has always said it deserves death. This may be modified by mercy, but justice, retributive justice (not revenge), is the starting point. At the same time, if punishment is deserved, then it must be imposed by those who have the responsibility for administering justice in society. We are not at liberty to neglect or modify this duty when we find it very unpleasant.

If this is the true way

of looking at things, we must remember that God, the perfect Judge, will treat us in the same way, and ask the question "What does our life deserve?" There can only be one answer, our condemnation, and that is why the Christian faith makes the cross of Christ central; for Jesus Christ alone of mankind has lived the perfect life, and so has deserved and received God's approval, and in His death He has borne our punishment. And so in this double way He is our Saviour. It is only by relationship with Christ by faith that we can be forgiven and so be approved at God's judgment throne, and received into His fellowship. It is because God loves us that He became our Saviour. Unless we are forgiven, we must endure the just retribution of our sins. Forgiveness does not come through our own moral efforts, but God forgives freely and completely all who come to Him through Christ.

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