

Thesis One: In principle a case can be made on moral grounds both supporting and opposing capital punishment.

Thesis two: Concretely and in practice, compelling arguments against capital punishment can be made on the basis of its actual administration in our society.

Two different cases can be made. One is based on justice and the nature of a moral community. This leads to a defense of capital punishment. The second is based on love and the nature of an ideal spiritual community. This leads to a rejection of capital punishment.

A central principle of a just society is that every person has an equal right to "life, liberty, and the pursuit of happiness." Within that framework, an argument for capital punishment can be formulated along the following lines: some acts are so vile and so destructive of community that they invalidate the right of

the perpetrator to membership and even to life. A community founded on moral principles has certain requirements. The right to belong to a community is not unconditional. The privilege of living and pursuing the good life in society is not absolute. It may be

negated by behavior that undermines the nature of a moral community. The essential basis on which community is built requires each citizen to honor the rightful claims of others. The utter and deliberate denial of life and opportunity to others forfeits ones

own claim to continued membership in the community, whose standards have been so flagrantly violated. The preservation of moral community demands that the shattering of the foundation of its existence must be taken with utmost seriousness. The preciousness of life in a moral community must be so highly honored that those

who do not honor the life of others make null and void their own right to membership. Those who violate the personhood of others, especially if this is done persistently as a habit must pay the ultimate penalty. This punishment must be inflicted for the sake of maintaining the community whose foundation has been violated. We can debate whether

some non-lethal alternative is a fitting substitute for the death penalty. But the standard of judgment is whether the punishment fits the crime and sufficiently honors the nature of moral community.

#### LOVE AND AN IDEAL SPIRITUAL COMMUNITY

Christian love, is unconditional. It does not depend on the worthiness or merit of those to whom it is directed. It is persistent in seeking the good of others regardless of whether they return the favor or even deserve to be treated well on the basis of their own incessant wrongdoing. An ideal community would be made up of free and equal citizens devoted to a balance between individual self-fulfillment and the advancement of the common good.

Communal life would be based on mutual love in which equality of giving and receiving was the norm of social practice. Everyone would contribute to the best of ability and each would receive in accordance with legitimate claims to available resources. What would a community based on this kind of love do with those who committed brutal acts of terror, violence, and murder? Put negatively, it would not live by the philosophy of "an eye for an eye, a tooth for a tooth, and a life for a life." It would act to safeguard the members of the community from further destruction.

Those who had shown no respect for life would be restrained, permanently if necessary, so that they could not further endanger other members of the community. But the purpose of confinement would not be vengeance or punishment. Rather an ideal community

would show mercy even to those who had shown no mercy. It would return good for evil. The aim of isolation is reconciliation and not revenge. never gives up. It is ever hopeful that even the worse among us can be redeemed so that their own potential contribution to others can be realized.

Opportunities for confronting those who had been hurt most could be provided to encourage remorse and reconciliation. If a life has been taken, no full restitution can be made, of course, but some kind of service to the community might be required as a way of

partially making amends.

#### EVALUATION

Such, in brief, is the argument for and against capital punishment, one founded on justice and the nature of moral community, the other resting on love and the nature of an ideal spiritual community. If we stand back from this description and make an attempt at evaluation, one point is crucial. The love ethic requires a high degree of moral achievement and maturity. It is more suitable for small, closely-knit communities in which members know each other personally and in some depth.

Forgiveness and reclamation flourish best in a setting in which people can participate in each other's lives. If you press the motif to its highest manifestation, it becomes an ethic of non-resistance to evil, unqualified pacifism, and self-sacrifice in which self-interest is totally abandoned. The non-resisting Jesus on the cross who surrenders his life to save others is the epitome of at this level.

Love at this point becomes superethical. It is grounded in a deep faith in God that surrenders any reference to earthly justice. That is the reason for speaking of love and the nature of an ideal spiritual community. Love of this kind abandons the right to kill

another in self-defense and will refuse absolutely to kill enemies even in a just war. If made into a social ethic, it requires the poor to sacrifice for the rich, the sick to sacrifice for the

healthy, the oppressed to sacrifice for the oppressor. It allows the neighbor to be terrorized, brutalized, and slaughtered, since restraint of the aggressor is forbidden. All this is indefensible on moral grounds.

To make sense of this, it is helpful to distinguish between an ethical dimension of love and an ecstatic dimension. Love as an ethical ideal seeks a community based on mutuality and reciprocity in which there is an equality of giving and receiving.

Mutual love has a justice element in which every person has an equal claim to fulfillment and an equal duty to be responsible. Ethical love is unconditional and will reach out to others even when they lack

merit. But it will resist encroachment upon its own equal claim to fulfillment and will repel if possible any denial of one's own right to be fully human in every respect. Against the pacifist, ethical love would justify killing in self-defense and killing enemies in

a just war when non-lethal alternatives are unavailable. They are necessary and tragic emergency means here and now to stop present and ongoing violence. Capital punishment is opposed since the crime has already been committed, and isolation can protect society

against future violence.

Love in the ecstatic dimension becomes superethical. In ecstasy one is delirious with impetuous joy in the presence of the other and totally devoted to that person's happiness and well-being. In ecstasy we do not count the cost to ourselves but are totally self-giving, heedless of our own needs. In this mood

sacrifice for the other is not an ethical act of self-denial but the superethical expression of what we most want to do. Ecstasy

involves the unpremeditated overflow of boundless affection and the impulsive joy of exhilarating union with the loved one. The ecstatic lover dances with delight in the presence of the beloved.

Sensible calculations balancing rights and duties have no place. Rational ethics has been transcended by spiritual ecstasy. Ecstatic love expresses itself spontaneously in a certain frame of spirit. Love expressed in ecstasy gives all

without regard to whether the recipient has any claim on the gift. It is pure grace.

Consider the story of the woman who poured expensive perfume on the feet of Jesus (Mk. 14:3-9). She was displaying love in the ecstatic dimension. Some present were thinking ethically. They complained that this perfume could have been sold and the proceeds given to the poor. On ethical grounds they were right. What the woman did was indefensible as a moral act. It was irrational and superethical. This deed flowed spontaneously from ecstatic love.

Love has both an ethical and an ecstatic or superethical dimension, and we should not confuse the two. It is quite clear, however, that ecstatic cannot be the norm of large, impersonal societies. A corporation cannot exist on the basis of forgiving seventy times seven an incompetent employee whose repeated ineptness is costing thousands of dollars. Ecstasy is not even the mode in which we can live all the time in the most exemplary family life with spouses and children. Ecstatic love is an occasional, fabulous, wonderful overflowing of spectacular affection that adds immeasurably to the joy of life, but it cannot

be the day to day standard for ordinary life even in the family or the church.

Can Christian love in the ethical sense be an appropriate norm

for a large, secular, pluralistic, civil society? Can unconditional love for the other that regards the welfare of the neighbor equal with one's own be the ideal expected of the citizens of New York or the United States? Surely, to agree with Reinhold Niebuhr, that would be to hope for an "impossible possibility." Ethical love is a description of ideal life in the family, in the church, and other small communities in which unconditional regard for each other can be lived out in face-to-face relationships. Even in these settings, we will often fail, but we can hold it up as the criterion by which we are judged and to

which we aspire even in our shortcoming. In this sense, ethical love is the supreme norm that serves as both goal and judge of all conduct. Realistically, however, we can hope only for some rough approximation with decreasing levels of attainment as we move away from

intimate communities toward larger collectives. Nation states are not likely, even occasionally, to become ecstatic in their devotion to each other! Mutual, not even to mention sacrificial, love is hardly the guiding rule of relations between General Motors and Toyota, nor does either have aspirations in that direction. A workable ethical standard for the state and the nation will appeal to the ideals defined by justice and the requirements of a moral community. To say it otherwise, ethical love expressed as social policy for large, impersonal societies takes the form of justice. What that norm involves for New York or the United States as secular, pluralistic societies cannot be spelled out here.

Within this framework a strong but debatable case can be made for capital punishment. Pragmatically and politically, of course, Christians have to work within the framework of justice as defined by the secular society in which they have their citizenship and seek to transform it in the light of their own ideals.

#### PRACTICAL CONSIDERATIONS

This brings me to thesis two. The most compelling arguments against capital punishment can be made on the basis of its actual administration in our society. I will list five of the usual points.

1. The possibility of error. Sometimes a person might be put to death who is innocent.
2. Unfair administration. Capital punishment is inflicted disproportionately on the poor and minorities.
3. Weakness of the argument from deterrence. The claim that the threat of capital punishment reduces violent crime is inconclusive, certainly not proven, extremely difficult to disprove, and morally suspect in any case.
4. The length of stay on death row. If there were ever any validity to the deterrence argument, it is negated by the endless appeals, delays, technicalities, and retrials that keep persons condemned to death waiting for execution for years on end. One of the strongest arguments right now against capital punishment is that we are too

incompetent to carry it out. That incompetence becomes another injustice.

5. Mitigating circumstances. Persons who commit vicious crimes have often suffered from neglect, emotional trauma, violence, cruelty, abandonment, lack of love, and a host of destructive social conditions. These extenuating circumstances may have damaged their humanity to the point that it is unfair to hold them fully accountable for their wrongdoing.

Corporate responsibility somehow has to be factored in to some degree. No greater challenge to social wisdom exists than this.

The conclusion of the matter is that the present practice of capital punishment is a moral disgrace. The irony is that the very societies that have the least right to inflict it are precisely the ones most likely to do so. The compounding irony is that the economic malfunctions and cultural diseases in those same societies contribute to the violence that makes it necessary to unleash even more repression and brutality against its unruly citizens to preserve order and stave off chaos. To the degree that society provides opportunities for all citizens to achieve a good life in a sensible culture, it is reasonable to believe that the demand for capital punishment will be reduced or eliminated. The fact that our prisons are so full is the most eloquent testimony imaginable of our dismal failure to create a good society. Massive incarceration indicates the bankruptcy of social wisdom and social will. It points to the shallowness of our dedication to solving the basic problems of poverty, moral decay, meaninglessness, and social discord. Meanwhile, our leaders divert our attention with the alluring fantasy that capital punishment will make our citizens more secure against violent crime.

#### THE CHURCH AND CHRISTIAN WITNESS

What, then, is the role of the church? It is two-fold.

(1) Ideally and ultimately, followers of Jesus are the salt of the earth, light of the world, leaven in the secular loaf. As such, Christians go into the world with the aim of moving, lifting, and luring society in the direction of ethical love. The vocation of

Christians is to hold up ethical love as "a transcendent gauge exhibiting the moral defects of society and thus spread the infection of an uneasy spirit" (A. N. Whitehead). In particular, Christians should work to overcome the larger injustices, social disarray, and cultural illness that create an atmosphere conducive to violence. This work will involve both political action and cultural transformation.

(2) Pragmatically and immediately, Christians will translate ethical love into mandates of secular justice and work for the best approximation of the norm that is possible under given circumstances.

Hence, Christian witness may be but is not necessarily directed against capital punishment on moral grounds in principle. The choice is a matter of practical discernment and social wisdom in a particular situation. Christians should insist that if capital punishment is

to be practiced, it must be administered in a just way. On this count, present-day society fails miserably. My prediction is that a society that becomes sensitive enough to make sure that the death penalty is administered in a just way will then do away with it altogether in favor of more humane practices such as life imprisonment with no possibility of parole.

In short, for the moment the Christian witness to society is this: first demonstrate that capital punishment can be administered in a just and efficient manner. Then we will debate with you as to whether capital punishment is in principle necessary, fitting, and right or whether a humane society will find non-lethal alternatives to protect citizens from persistently violent criminals. Until then the church should say "no" to this extreme measure.

