

# The Death Penalty

**Church of Scotland**

**Church and Society Council**

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## 1. Introduction

**1.1** At the 2007 General Assembly, the Church and Society Council brought a brief report deploring the use of the death penalty in the case of Saddam Hussein and in particular the lack of condemnation either of the fact or the manner of his execution from politicians in the UK. It sought to give the Assembly the opportunity to do what it had never done before, namely to make an unambiguous statement that capital punishment is always wrong.

**1.2** After debate, the following deliverances were passed:

6. *In light of the Biblical, theological and ethical arguments surrounding the death penalty, instruct the Council to report more fully on these to the General Assembly of 2008.*
7. *Express deep regret that HMG has not done more, especially in the context of Iraq, to advance the understanding that capital punishment does not provide an answer even to the most heinous of crimes (6.7).*

**1.3** The Council has been clear that the conclusions reached about capital punishment should be firmly based upon a biblical and theological understanding of crime and punishment within the wider context of God's justice, God's grace and God's plan for the redemption of humanity. The question is essentially a moral one. Is it ever right judicially to deprive someone of life? This cannot be answered solely by determining whether the death penalty achieves its stated objectives, among which are the deterrence of crime, justice for the victim or his/her family and retribution. Still less can it be answered by considering whether there can ever be an acceptable way of administering the sentence.<sup>1</sup>

## 2. What is punishment for?

**2.1** For the good ordering of society, the protection of citizens and because some acts are inherently wrong, all societies have deemed certain behaviours unacceptable. Some behaviours are universally deemed unacceptable, others are considered acceptable in some societies but not in others, while the degree to which some behaviours are considered unacceptable varies quite considerably<sup>2</sup>. All societies, recognising that not all citizens will refrain voluntarily from the behaviours deemed unacceptable have instituted systems of sanctions the better to control unacceptable behaviours. The perceived severity of the offence will be reflected in the perceived severity of the punishment – making the punishment fit the crime. Those who transgress become, if caught, subject to punishment.

**2.2** Punishment seeks to serve a variety of purposes and these may be divided into two basic categories, retribution and measures designed to control crime. Theories of retribution state that punishment is required as a public and political judgement that an offence has been committed and that an appropriately weighted form of suffering (e.g. fine or imprisonment) is required of the convicted person. This function of the state is necessary for upholding just laws and the good ordering of society. Retribution, on one level, is the idea that a person who has caused suffering to others through a criminal act should, in some measure, experience suffering himself or herself. On another, the retributive element of punishment may be seen as a political judgement. According to this understanding, retribution is not so much an act of retaliation as a way of publicly judging that an action is wrong and is therefore a threat to the good order of society. Retribution is not, or should not be, a means of satisfying the victim's thirst for revenge. Hegel argued that it is in the very nature of a crime that it deserves to be punished judicially. This is a fundamental requirement of the justice that the state ought to administer. Thus retribution in this sense is about justice, prior to any consideration of its social effects.

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<sup>1</sup> Arguments against the death penalty in the USA have frequently rested upon questions of its constitutionality, namely whether it constituted "cruel and unusual punishment". It was reported on BBC Radio 4 news on 25<sup>th</sup> September, 2007 that a case was coming before the Supreme Court arguing that execution by lethal injection which many suspect causes severe pain, would be argued on these grounds. However, this was not the reason why the US Supreme Court imposed a moratorium on executions in 1972. At that time the constitutional question was whether or not it was being applied in an arbitrary, capricious or discriminatory manner, contrary to the eighth and fourteenth amendments to the US Constitution. (Roger Hood: *The Death Penalty – A worldwide perspective*; third edition, OUP, 2002.

<sup>2</sup> Gun laws, smacking of children, abortion, euthanasia, homosexual activities, Sunday trading, treatment of animals, smoking in public places all provide instances of changes to and differences in the law both across societies and across time in our own society.

**2.3** Consequentialist theories of punishment speak of three broad purposes. First, there is the intention that the knowledge that punishment may ensue will deter persons intending criminal activity. This can only be effective if it is seen publicly that those who transgress do suffer the punishment determined for the crime committed. Second, punishment may be intended to protect society by removing, temporarily or permanently, those who have committed criminal acts. Third, society may deem it appropriate that attempts should be made to rehabilitate offenders back into society. This may be done by assisting offenders to understand the effects their acts have had upon victims and upon society and to address the causes of their criminal behaviour. The aim of rehabilitation is both to reduce the possibility of future harm to society and for the good of the offender. In these ways, society seeks to protect itself.

**2.4** Capital punishment has a very long history indeed and it can readily be seen how it fits in with some of the purposes of punishment outlined above. It can be argued that the fear of being killed may deter a person contemplating a criminal act for which death is the prescribed punishment but the certainty of detection rather than the nature of the possible penalty is more likely to have a directly deterrent effect. The execution of an offender prevents the commission of further crime by that individual.

**2.5** Executing a murderer would seem, on the face of it, to be appropriately retributive. Many have argued that those who kill forfeit the right to their own lives. Serious questions must be asked about this line of reasoning. At least within western judicial systems, no other crime is punished by so closely mimicking the offence. Thieves do not have their houses broken into and their possessions taken. Muggers are not beaten up. Drunk drivers are not forced to take their chances on a roadway populated by other drunk drivers. Other forms of punishment for serious offences have been developed based largely on the loss of liberty or on being fined. Within prison sentences, there is deemed to be an element which is retributive – the so-called tariff – but this is not intended to mete out to the offender a level of suffering commensurate with the suffering caused by his or her offence. It would be impossible accurately to measure suffering and calibrate punishment in this way.

**2.6** Even though capital punishment can be seen to meet three of the purposes of punishment, deterrence, protection of society from future crimes and retribution, it is certainly not rehabilitative. The ending of a person's life ends the possibility that he or she will be rehabilitated into society.

**2.7** The General Assembly has on a number of occasions<sup>3</sup> given strong support to the idea of restorative justice. Restorative justice is not just about the rehabilitation of offenders. It is about the restoration of the victims of crimes and of society itself. This is attempted by various means including bringing offenders and victims together in dialogue, looking for solutions rather than guilt and focussing on making things right rather than inflicting punishment. As reported to the General Assembly in 2007, this is still a discipline in its infancy and as such is only being applied to minor crimes. None the less, some of its principles should be applicable to crimes of all levels of gravity. Exponents of the death penalty have argued that its administration should provide a proper opportunity for acknowledging responsibility, for repentance, for confession and for offering compensation to victims and that therefore capital punishment does not altogether exclude restorative issues.

**2.8** It is true that crime adversely affects society as a whole and not just the victims of particular crimes. It can be argued that there are some crimes so heinous that only the death of the perpetrator can restore the equilibrium of society. In the context of the present debate, questions need to be asked about whether we really consider the violence of judicial execution to be an appropriate response to the violence of crime, or indeed a response which is divinely approved. Violence begets violence and studies in the United States (which has by far the most studied death penalty system) have suggested that inflicting the death penalty has a brutalising effect upon those who carry it out and a brutalising effect on society as a whole. Furthermore, there is evidence to suggest that some who have committed murder have believed that, in some way, they have acted on the state's behalf, a belief which would be much more difficult to hold if the state eschewed killing as a response to killing. The existence of the death penalty may in fact increase the severity of crimes because the criminal will have a greater incentive to ensure that there are no witnesses to his or her crime and may kill more readily in order to eliminate testimony against him or her.

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<sup>3</sup> See Church and Nation Report, 1999 and Church and Society Report, 2007 in particular.

**2.9** The assumption that executing criminals in some sense restores society needs examination. Those close to the victim of a murder may feel that their loved one's death has been avenged, but is this truly restorative for them? Some who have been in that position have argued that it has been. Others have reported the opposite effect, noting that another parent, another spouse or another child has been bereaved by the execution of a member of their family. The removal of the power to punish from victims to the state is in part to safeguard against vengeance, which is clearly prohibited in Scripture and which history has shown tends more towards destruction than restoration. Even in the case of murders which receive substantial publicity, it seems unlikely that those who had no pre-existing emotional connection with the victim will feel in any sense restored by the death of the murderer. Other considerations may apply to extraordinary situations such as following war and acts of genocide.

### **3. The Death Penalty around the world**

**3.1** In 1977 only sixteen countries had abolished the death penalty for all crimes. Today the figure stands at ninety. A further eleven are abolitionist for ordinary crimes and thirty-two<sup>4</sup> are abolitionist in practice<sup>5</sup>, though these figures must be treated with caution as countries deemed abolitionist in practice have reverted to inflicting the death penalty in the past. In April 1999, the UN Commission on Human rights voted overwhelmingly in favour of a moratorium on the death penalty. For the first time, the resolution was introduced by the European Union.<sup>6</sup> Switzerland, on abolishing the death penalty in 1992, declared that it was a 'flagrant violation to the right to life and dignity.' Spain has stated that 'the death penalty has no place in the general penal system of advanced, civilised societies . . . What more degrading or afflictive punishment can be imagined than to deprive a person of his life?'<sup>7</sup> Canada's Pierre Trudeau has written, 'My primary concern here is not compassion for the murderer. My concern is for the society which adopts vengeance as an acceptable motive for its collective behaviour. If we make that choice, we will snuff out some of that boundless hope and confidence in ourselves and other people, which has marked our maturing as a free people.'<sup>8</sup> Amnesty International reports: 'In a historic vote at the UN General Assembly (UNGA) Third Committee's 62nd session, on 15 November 2007, resolution L29 calling for a global moratorium on executions was adopted by 99 countries in favour, 52 against and 33 abstentions.'<sup>9</sup> The General Assembly endorsed the decision in a plenary session in December.

**3.2** During 2006, at least 1,591 people were executed in 25 countries and 91 per cent of all known executions took place in six countries: China, Iran, Pakistan, Iraq, Sudan and the USA<sup>10</sup>. At least 3,861 people were sentenced to death in 55 countries. These were only minimum figures. The true figures were certainly higher. In China, which is estimated to account for around 80% of annual executions, information about the death penalty is treated as a state secret making gathering accurate information very difficult.<sup>11</sup> Based on public reports available, Amnesty International estimated that at least 1,010 people were executed in China during the year, although these figures are only the tip of the iceberg. Credible sources suggest that between 7,500 and 8,000 people were executed in 2006. Iran executed 177 people, Pakistan 82 and Iraq and Sudan each at least 65. There were 53 executions in 12 states in the USA.

**3.3** The worldwide figure for those currently condemned to death and awaiting execution is difficult to assess. The estimated number at the end of 2006 was between 19,185 and 24,646 based on information from human rights groups, media reports and the limited official figures available.<sup>12</sup>

### **4. The European Position**

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<sup>4</sup> Figures from Amnesty International's website and accurate on 19/09/2007.

<sup>5</sup> Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty.

<sup>6</sup> International Perspectives on the Death Penalty on [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org) accessed on 23<sup>rd</sup> January 2008

<sup>7</sup> Roger Hood, *The Death Penalty – a worldwide perspective*, Oxford, 2002

<sup>8</sup> *When the State Kills: The Death Penalty v. Human Rights* (1989) Amnesty International

<sup>9</sup> From <http://web.amnesty.org/pages/deathpenalty-index-eng> accessed on 29<sup>th</sup> November, 2007

<sup>10</sup> [www.amnesty.org/en/death-penalty#figures](http://www.amnesty.org/en/death-penalty#figures) accessed on 18<sup>th</sup> February, 2008

<sup>11</sup> Roger Hood, *The Death Penalty – a worldwide perspective*, Oxford, 2002

<sup>12</sup> From <http://web.amnesty.org/pages/deathpenalty-sentences-eng> accessed on 29<sup>th</sup> November, 2007

**4.1** Abolition of the death penalty is a requirement for countries seeking membership of the European Union or the Council of Europe. All forty-seven countries have signed Protocol No. 6 to the European Convention on Human Rights (ECHR), concerning the Abolition of the Death Penalty. In addition, EU Member States are all signatories to Protocol 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, which was adopted in Vilnius in May 2002. This treaty explicitly bans the death penalty in all circumstances, including in war-time.<sup>13</sup> EU governments will not extradite people accused of capital crimes to countries which retain the death penalty. There has been no instance since 1997 of capital punishment in any part of the geographical area made up by the 47 member countries of the Council of Europe, including the European Union Member States.

**4.2** The European Union campaigns towards the universal abolition of the death penalty. This stance is rooted in the belief in the inherent dignity of all human beings and the inviolability of the human person, regardless of the crime committed. The European Union is at the forefront of campaigns in the UN and elsewhere to abolish the death penalty worldwide and regularly seeks to bring pressure to bear on those countries which still retain it. The European Commission has established an annual European Day against the Death Penalty on October 10.

**4.3** In launching the European Day against the Death Penalty, European Commission vice-president Franco Frattini said, "The death penalty is a violation of the most fundamental of human rights, namely the right to life. Nothing justifies the death penalty, whether it is considered effective in combating crime or not. Such practice is ethically unacceptable, cruel, legally wrong and can all too often lead to innocent people being killed where no redress is possible."<sup>14</sup>

## **5. The UK legal position**

Until 1834 there were about 50 capital crimes in Scotland, whereas in England there were then about 300. After that, these were steadily reduced by statute, and by practice, until by 1887, when the Criminal Procedure (Scotland) Act was passed, the death penalty was limited to cases of murder, attempted murder and treason. The Homicide Act 1957 restricted the death penalty further, by introducing the concept of capital murder, and limited it to murders in the course of theft, by shooting, by explosion, in the course of resisting or avoiding arrest, of a police officer acting in the course of his duty, or of a prison officer acting in the course of his duty. The death penalty for murder was abolished in 1965 for a period of five years. This was made permanent by resolution of Parliament on 31 December 1969. The death penalty for treason, contained in the Treason Act of 1790, was repealed by the Crime and Disorder Act of 1998. The last person executed in the UK died in 1964.

## **6. Biblical perspectives**

**6.1** The death penalty was a known and accepted part of criminal justice systems throughout biblical times. The acceptance of the penitent thief that he and the other crucified alongside Jesus were receiving what they deserved for their deeds bears witness to this. Within the Hebrew Bible, there are a number of offences for which death was the prescribed penalty, many of which would not now be considered capital offences or, in some cases, even crimes<sup>15</sup>. No Christian retentionist would argue for the death penalty to apply to all the

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<sup>13</sup> From [http://ec.europa.eu/external\\_relations/human\\_rights/adp/index.htm](http://ec.europa.eu/external_relations/human_rights/adp/index.htm) accessed on 27th November, 2007

<sup>14</sup> From <http://www.eurunion.org/News/press/2007/2007072.htm> accessed on 29 November, 2007

<sup>15</sup> 1. Anyone but the priests touching the tabernacle furniture (Num. 1: 51; 3: 10, 38; 4: 15; 18: 7) 2. Priests drunk on duty (Lev. 10: 8-11) 3. Blaspheming the Divine Name (Lev. 24: 16) 4. Profaning the Sabbath (Exod. 31: 14; 35: 12) 5. False prophecy (Deut. 13: 1ff; 18: 20) 6. Sacrifice to or worship of pagan gods (Exod. 20: 1ff; Deut. 13: 1-19; 17: 2-7) 7. Sorcery (Exod. 22: 18; Lev. 20: 6, 27) 8. Cursing either of one's parents (Exod. 21: 17; Lev. 20: 9) 9. Striking either of one's parents (Exod. 21: 15) 10. Being an incorrigible son (Deut. 21: 8ff) 11. Murder (Exod 21: 12; Lev. 24: 17; Num. 35: 16ff) 12. Kidnapping for ransom or to sell into slavery (Exod 21: 16; Deut. 24: 7) 13. False testimony in a capital trial (Deut. 19: 16-21) 14. Adultery (Lev. 20: 10; Deut. 22: 22ff) 15. Male homosexual intercourse (Lev. 20: 13) 16. Sexual intercourse (Lev. 20: 13) 17. Sexual intercourse between humans and animals (Exod. 22: 19; Lev. 20: 15-16) 18. Prostitution of a daughter still living in her father's house (Lev. 21: 19; Deut. 21: 13-21) 19. Rape (Deut. 22: 25) 20. Ten other forbidden sexual relationships (Lev. 20: 11-13, 17f, 19ff) 21. Contempt for a court's decision (Deut. 17: 8-13) 22. Repeatedly allowing your bull to gore people to death (unless the victim is a slave) (Exod. 21: 29ff) 23. Negligence resulting in loss of life (Deut. 22: 8) 24. Sacrificing one's child to Molech (Lev. 20: 1-2) 25. A bride falsely claiming to be a virgin (Deut. 22: 13-21) And there are others . . . List taken from Biblical Perspectives on the Death Penalty,

crimes for which it is prescribed in the Torah. Most single out premeditated murder as being the only crime still deserving of death but it is not clear why, if faithfulness to Mosaic Law is considered normative for that crime, it should not be for the others. All are found exclusively in the first five books of the Bible. Scholars have suggested that people were rarely executed for these crimes, in no small part because the burden of proof was set so high. Israel's law codes required the unambiguous testimony of two or more eyewitnesses<sup>16</sup>.

**6.2** Those crimes for which death was prescribed were ones which were seen to compromise the purity and holiness of Israel and which could therefore only be expiated by blood. For Christians, expiation of sins was accomplished once for all by Christ on the cross. If it were to be argued that capital punishment is necessary for the expiation of sins, that would be to deny the efficacy of the sacrifice of Christ.

**6.3** In biblical terms, what is the purpose of death? According to one reading of Genesis, death came into the world when Adam sinned. It has therefore been argued that death is punishment or a time of judgement ordained by God. There are, however, a number of problems with this. Death is a biological necessity. Without the death of plants or other animals further down the food chain, no creature could eat. All other living things, because they do not have moral responsibility analogous to that of humans, die without the stain of sin. Death and sin are therefore not necessarily linked. Without death, eternal ageing would be intolerable. Perhaps most pertinently for this discussion, the leap between recognising that God chose to limit the possible term of life for all creatures to justifying the judicial killing of criminals is very great indeed. Moreover, following the resurrection of Christ and by our justification through faith in him, death at the time of God's appointing may be seen as the way into his nearer presence, and therefore not as a punishment inflicted by God. Death is part of God's loving plan for humanity and creation. For Christians, death is not to be feared. For those bereaved, it is painful because of God's gift to us of the ability to love.

#### **6.4 *The Old Testament and the Death Penalty***

##### **6.4.1 Legal Precedents and Narrative Examples**

**6.4.1.1** While it is undoubtedly the case that many punishments in the Old Testament, both in the legal sections and in the narrative portions, take the form of execution, there are several things to say about the scope and relevance of these within the wider context of the Bible as a whole, and the cultural setting of ancient Israel.

**6.4.1.2** The wider context is that of a world in which death was meted out on a regular basis for what today seem to be relatively minor offences, something which was also true as late as Victorian Britain. Thus the Bible cannot be used to justify a distinction between crimes 'worthy' of death and those of 'lesser' significance. Those who argue for the death penalty today always reserve it for the most heinous of crimes, a distinction for which there is no biblical support. Exodus 21:28-32 provides a complex and instructive example; a brief exegesis follows:

**6.4.1.3** The crime is that an ox gores a person who then dies. Two cases are identified. First, if this has not happened before then the owner bears no liability. However, if the owner knew the animal was violent, they are liable, and the death penalty is imposed. Note that in modern law the death penalty would never be imposed in such an instance. Interestingly, there is also provision for a ransom to be paid in place of the death penalty. Finally, where slaves are involved then only a fine is imposed.

**6.4.1.4** Many other examples relate to cultic offences or to the 'ban' in holy war. Few today argue that cultic offences should merit death. Examples are to be found in Exodus 22:18-20, where the death penalty is enjoined for witches, bestiality and making sacrifices to gods other than Yahweh. Narrative examples are also to be found: Samuel's destruction of Agag in 1 Samuel 15, completing Saul's partial genocide, on the supposed basis of God's instructions; in Elijah's slaughter of 450 prophets of Baal in 1 Kings 18:40; and the curious story of God's killing of the young prophet in 1 Kings 13, ostensibly because of disobedience

**6.4.1.5** It is not clear how the legal precedents and narrative examples in the Old Testament could be used to justify any modern practice of capital punishment. Many, though not all, refer to matters now not generally regarded as capital offences, to cultic crimes which modern law does not recognise, and belong to a world whose customs were so different as to make comparison with modern practice difficult.

**6.4.1.6** If modern jurists wish to defend the use of the death penalty, it will have to be done on the basis of other principles; one which may seem appropriate in the Old Testament is the so-called ‘eye for an eye’ principle, more accurately the *Lex Talionis* – an eye for an eye, a tooth for a tooth – (Exodus 21:23-25). Verse twenty-three certainly permits ‘a life for a life’, but that can only be used as a principle if the rest of it is also applied: ‘an eye for an eye, etc.’ Retentionists do not argue that people’s eyes or teeth or limbs should be removed as a judicial punishment, and so the charge of selectivity and inconsistency would once again apply. Furthermore, in the Old Testament, this “law” appears only three times. It has gained high prominence through the teaching of Jesus, who overturned it. The first time it appears,<sup>17</sup> it is appended to a case law dealing with what should happen if two men fighting accidentally hit a pregnant woman. If the baby is born prematurely but is not seriously harmed, a fine is to be imposed. If the baby dies or is injured, Exodus says that the perpetrator, even if the act was an accident, is to be killed or injured in a way commensurate with the injuries of the baby. The next case however, concerning the loss of an eye or tooth by a slave through abuse by his or her master, prescribes freedom for the slave and not the removal of the master’s eye or tooth. In the next instance<sup>18</sup>, a man who curses God is sentenced by Moses to die by stoning. Logic would imply that his sentence should be to be cursed by God. The final occurrence of the “law of retribution,” in Deuteronomy 19:19-21 concerns giving false evidence and lays down that the penalty to which the accused would have been subject shall be applied to the false accuser. Again, logic would dictate that the false accuser should be lied about in return. In short, the *Lex Talionis* is never seen in the Bible being interpreted literally.

**6.4.1.7** In Genesis 9:6 God says to Noah, “Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man.”(NIV) This is the main Old Testament text used by retentionists to support their biblical case for the death penalty. There is no agreement over whether this text should be read as a statement of fact, a legal penalty<sup>19</sup>, the reason for the condemnation of murder, a prophetic admonition or a proverb. It does not command the death penalty, it provides no indication as to the process which might lead to such a penalty or who should carry it out but warns about the likely consequences of killing. It would seem more likely to be a statement about the likelihood of revenge. In Matthew 26:52, Jesus interprets this verse as a proverb when he says, “all who draw the sword will die by the sword,” teaching not to use a sword to kill.

**6.4.1.8** An examination of well known murders in the Bible is instructive. In Genesis 4:10-16, Cain’s murder of Abel is dealt with by God’s explicit refusal to execute him. Instead he is made to bear a far worse burden of living for the rest of his life with his sense of guilt and his knowledge of being separated from God (especially vv.13-16). God warns Cain of the consequences of his anger, seeking to prevent the crime. After he murders Abel, God punishes him but protects him from the vengeance of others. After murdering an Egyptian, Moses fled to the desert where, after forty years, God confronts him face to face, changing Moses into God’s agent for Israel’s redemption. The implication of this is that God regards even murderers as capable of reformation. If that is God’s view, then Christians are called to hold it too. King David, who compasses the death of Uriah, is similarly confronted by God through Nathan, who leads him through the realisation that he deserves death to receiving forgiveness. David is fully aware of his crimes and of God’s displeasure. The Old Testament recognises ‘sins of a high hand’, sins for which no expiation by sacrifice is possible. These are sins which hit specifically against the Covenant and are named as blasphemy, adultery and murder. Hence David enters into the temple and throws himself exclusively on the mercy of God. The outcome is that he is restored by God and allowed to continue to reign. All of these examples indicate the power of God’s mercy and grace.

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<sup>17</sup> Exod. 21: 22-25

<sup>18</sup> Lev. 24:13-22

<sup>19</sup> This may be justified either because, being made in God’s image, human beings have God’s authority to execute murderers, or because the killing of a human being is an assault on the image of God himself.

**6.4.1.9** All of these stories show God acting in a way which reveals his character. Repentance and renewal are possible because God “is gracious and merciful, slow to anger and abounding in steadfast love.”<sup>20</sup> The first murderer is spared and God works on Moses and David to bring them to redemption while still upholding justice.

#### **6.4.2 Issues of Principle**

**6.4.2.1** It could be argued that the Ten Commandments provide a moral framework which transcends the rather primitive practices identified in Sections 3.4.1.1ff. There are two points on the basis of which this can be maintained. First of all, the rhetorical flourish in Exodus 20:5-6, which proclaims that God is jealous, and will punish three or four generations of those who reject him, actually goes on to proclaim his steadfast love ‘to the thousandth generation’ for those who love him. This is a characteristic Hebrew trope, in which the intended meaning of the language is to be found in the concluding statement.

**6.4.2.2** More significant, however, is the well-known sixth commandment, ‘You shall not kill (or murder)’. The reference of this injunction is debated. The verb used is most commonly found in connection with vengeance feuds; if capital punishment is seen as primarily an act of communal revenge, then the commandment can be held to oppose the practice. But the precise meaning of the Hebrew verb is less important than we might think; for there is internal evidence within the Decalogue itself that – long before the Sermon on the Mount – it was being interpreted not as a series of specific rules, but as a guide to attitudes. This is most clearly seen in the tenth commandment, which as it now stands refers to a purely interior state of mind and not to a punishable offence. It can be argued, therefore, that the highest interpretation of the sixth commandment is entirely in keeping with the purpose of the Decalogue as a whole.

**6.4.2.3** There is another often-repeated saying in the Old Testament whose influence should be taken very seriously. It is an expansion of the principle referred to in the previous paragraph, and is found in its fullest form in Exodus 34:6-7:

*The Lord, the Lord,  
a God merciful and gracious,  
slow to anger,  
and abounding in steadfast love and faithfulness,  
keeping steadfast love for the thousandth generation,  
forgiving iniquity and transgression and sin,  
yet by no means clearing the guilty,  
but visiting the iniquity of the parents  
upon the children  
and the children’s children,  
to the third and the fourth generation.*<sup>21</sup> (NRSV Translation)

**6.4.2.4** A close reading of these passages must lead to the conclusion that the Old Testament takes a profoundly moral view of the nature of God’s mercy, a conclusion which must surely impinge on any merely legalistic argument for capital punishment. Whatever else may be deduced from this evidence, it is certainly clear that there is no simple or straightforward correlation between the Old Testament on the one hand and contemporary arguments for the use of the death penalty.

#### **6.5 The New Testament and the Death Penalty**

**6.5.1** Turning to the New Testament, supporters of the death penalty argue that Jesus did not speak out against it and make the, somewhat precarious, argument from silence to suggest he supported or at least accepted it. Retentionists have claimed that Jesus’ teaching in the Sermon on the Mount that he had not come to abolish the Law means that the Torah is still in effect and that therefore murderers must be executed in faithfulness to Jesus’ words. Such legalism would surely mean that all the provisions of the Torah held, including dietary laws and executing drunk priests. In Matthew 5:21-26, Jesus speaks about murder and

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<sup>20</sup> Ps. 145: 8

<sup>21</sup> Compare Exodus 20: 5-6; Numbers 14: 18; Deuteronomy 4: 31; 2 Chronicles 30: 9; Nehemiah 9: 17, 31; Psalms 86: 15; 103: 8-14; 116: 5; 130: 3-4; 145: 8-9; Jeremiah 3: 18; Daniel 9: 4; Joel 2: 13; Jonah 4: 2 [note Jonah’s anger because God is merciful; Jonah would have preferred God to have executed all the Ninevites]; Micah 9: 18-20



alludes indirectly to Cain and Abel. His teaching is directed towards making peace before anything serious occurs, to do what is right and, if things go wrong, engage in practices of reconciliation. In Matthew 5:38, he quotes “and eye for an eye and a tooth for a tooth” but stops short of quoting “a life for a life.” Indeed, nowhere does Jesus quote a passage from the Hebrew Bible which calls for the death penalty. In Matthew 5:39, Jesus appears to teach that evildoers should not be resisted. Walter Wink has shown that the word translated as ‘resist’, *antistenai*, more commonly refers to violent or armed resistance<sup>22</sup>. A response to murder which involves inflicting death becomes highly questionable in this light of this reading. Jesus’ injunction to turn the other cheek, give your cloak and go the second mile are about responding to injustice without retaliation but in ways which open possibilities for transformation.

**6.5.2** When a woman was brought to Jesus accused of adultery<sup>23</sup>, he teaches that only the sinless are morally qualified to execute others. He does not imply that she has not really sinned. He tells her not to sin again and forgives her. Consistently, Jesus practices and promotes compassion and mercy.

**6.5.3** The crucifixion of Jesus himself has a bearing on this discussion. Does the fact that Jesus was subjected to the death penalty indicate, in some sense, God’s approval of such a practice? A closer examination of the circumstances surrounding Jesus’ death show that they bear little relation to the circumstances surrounding the contemporary death penalty debate, except, of course, that the execution of the innocent continues to be a horrifying possibility. Jesus was accused of crimes which the governing authority with the power to execute, the Romans, did not recognise. He was effectively found not guilty by Pilate. His innocence was recognised by one of his fellow condemned. His execution was unjust and his death little better than a state sanctioned lynching. The cross should remind us that the death penalty allows for the legal execution of the innocent. There is little here which would support the use of the death penalty as part of a modern penal system.

**6.5.4** Romans 13:1-7, in which Paul discusses the Christian’s relationship with civil authority, and, to a lesser extent 1 Peter 2:13-17, which discusses submission to earthly rulers, have been used to support the death penalty. Paul argues that civil authority exists because God has ordained it. He appears to accept that the civil government has the power to execute offenders and is, in doing so, acting on behalf of God. One may ask what the Christian response to brutal and unjust government is. Paul is not advocating meek acceptance. The reference in this passage to authorities wielding the sword is a passing one and it is far from clear that it refers to the death penalty as the sword mentioned refers to the kind worn by those who guarded and accompanied tax collectors, not the kind used in executions.<sup>24</sup> The thrust of this passage is about the payment of taxes and it was written in the context of a brewing tax revolt.

## **7. Capital Punishment in Historical and Theological Perspective**

**7.1** By virtue of its status as a community living apart, the early church was able to maintain the command of Christ not to retaliate to violence (Matthew 5:39) while also admitting the right of the civil authorities to wield the power of the sword (Romans 13:5). The early Christians thus neither sought political office nor enlisted for military service. Nevertheless, the right of the state under God to exercise capital punishment seems to have been generally assumed, even by Tertullian. Features of the Mosaic law were regarded as necessary for human societies, including the *Lex Talionis*,<sup>25</sup> even if Christians were required not to participate in these actions.

**7.2** After Constantine’s conversion of the Roman Empire to Christianity, the relation of church and state was dramatically altered. What emerges is acknowledgement of the legitimacy of the death penalty but attempts to moderate its severity. The practice of bishops interceding with the civil authorities on behalf of those under the sentence of death emerges at this time. O’Donovan<sup>26</sup> speaks of a dialectic between legal right and compassionate practice as summed up in Ambrose’s remark. ‘Authority has its rights, but compassion has

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<sup>22</sup> Walter Wink, “Beyond Just War and Pacifism: Jesus’ Nonviolent Way,” *Review and Expositor* 89:2 (Spring 1992): 199.

<sup>23</sup> John 7: 53-8: 11

<sup>24</sup> Michael L Westmoreland-White and Glen H Stassen, Biblical Perspectives on the Death Penalty in *Religion and the Death Penalty – a call for reckoning* ed. Owens, Carlson and Elshstain, Eerdmans, 2004

<sup>25</sup> The *Lex Talionis* was intended to limit vengeance. Jesus, however, replaced it with the command to love enemies and pray for those who persecute. (Mt. 5: 21-26)

<sup>26</sup> From an unpublished paper made available to Rev Prof David Fergusson of Edinburgh University

its policy. You will be excused if you use it; but you will be admired if you refrain when you might have used it.<sup>27</sup> Nevertheless, despite this moderation, there is no attempt to place a blanket condemnation on capital punishment. The command not to kill has its exceptions, Augustine argued. This includes waging war at God's command or through public authority executing criminals in accordance with divine law.<sup>28</sup> To this extent, there is continuity with the Old Testament. The coupling of capital punishment with the justifiable waging of war is significant. These are not acts of private revenge or personal retaliation so much as authorised ways in which divine justice is maintained and prosecuted. A measure of peace within the earthly city is thus secured.

**7.3** Throughout the middle ages and Reformation, there is widespread theological acceptance of the right and necessity of the state to execute criminals, although different arguments are offered. This is a function reserved for the civil authorities, however, and not properly exercised by the church or individual citizens. *Ecclesia non sinit sanguinem* (The church is not bloodthirsty.) Luther argues that the provisions of the Sermon on the Mount applied to individuals while what Paul wrote in Romans 13 applied to those in public office, the clear implication being that those acting on behalf of the state are subject to different rules. Some differences are evident surrounding those offences meriting capital punishment, for example heresy. According to Scotus, for example, the death sentence should be reserved only for those offences specified in Scripture as warranting such penalty. Some thinkers, including John Knox, were prepared to defend the legitimacy of sedition and tyrannicide in the case of the fundamental disobedience of civil rulers themselves.<sup>29</sup> In the system of discipline outlined at the Scottish Reformation, capital punishment remains a judicial act of the state rather than the church.

**7.4** The first principled and wholesale objections to capital punishment emerge in the Enlightenment in the writings of the Italian thinker Cesare Beccaria (1738–94) who argued on contractual grounds that the tacit agreement between an individual and society could not include the consent to be executed. This was widely condemned at the time (the Roman Catholic Church placed Beccaria's book on the Index of proscribed works) although other minority voices, including Schleiermacher, continued to criticise the death penalty. While capital punishment gradually became reserved for serious offences, especially murder, it was widely accepted until the mid-20<sup>th</sup> century. Since then some theological consensus has emerged in Protestant and Catholic theology against the death penalty, although this has seldom been expressed in terms of an absolute prohibition.<sup>30</sup> The teaching of the Catechism of the Catholic Church provides a convenient summary of this position:

*If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.*<sup>31</sup>

**7.5** It may be maintained that the state must retain the right to exercise capital punishment as a fitting response to particular crimes under specified conditions and there is a good deal of material in the Psalms and the prophetic literature that sees the king as executing God's justice; this is his primary role in the created order. For example, where an outbreak of criminal acts against a civil population is so great in terms of the threat posed, it may be necessary for the state to execute those guilty of heinous crimes. (Here there is an analogous though not identical set of arguments with the theory of the just war.) Nevertheless, there are important moral considerations that would regard this at most as a last resort against social breakdown, hence creating an imperative for a system of justice in which the death penalty is no longer available.

**7.6** The refusal of a civil society to make the death penalty available to its judges may be seen as formalising the previously-quoted remarks of Ambrose in paragraph 4.2. Nevertheless, it requires an adequate criminal

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<sup>27</sup> Article on *Todesstrafe* in TRE. Ambrose quotation is from Ep 50 (25).3 Cf. James Megivern, *The Death Penalty: A Historical and Theological Survey* (New York: Paulist, 1997).

<sup>28</sup> *City of God*, 1.21.

<sup>29</sup> See *First Blast of the Trumpet*.

<sup>30</sup> Nevertheless, a pacifist position will tend to rehearse a theological argument against capital punishment on the grounds that the deliberate taking of life is always wrong.

<sup>31</sup> *Catechism of the Catholic Church*, 2267. This argument is developed in the 1995 papal encyclical *Evangelium Vitae*, 56.

justice system and a prison regime that does not merely allow inmates 'to rot in jail'. Here it might be added that Ambrose also argued against those magistrates who, simply in order to avoid offending the church by executions, allowed accused persons 'to rot in noisome dungeons without trial'.

**7.7** The position taken by Luther and Calvin that different rules apply to those acting on their own behalf from those acting on behalf of the state needs to be examined. Does this go as far as killing? What place does individual conscience play? Comparisons may be made with the idea of the just war, in which soldiers are required to kill on behalf of the state. Likewise, the use of police marksmen raises similar questions. Few churches have adopted wholly pacifist positions and so must make some doctrinal allowance for state authorised killing. It is dangerous though to take the comparisons too far. In warfare, it is recognised that killing should be for military ends, that the object of inflicting lethal force is primarily to achieve some end other than simply the slaying of enemy personnel. This is borne out by the injunction to limit the scale of action in order to use the minimum necessary force and by the protection against arbitrary killing afforded to prisoners of war under the Geneva Conventions. The police may legally kill someone only when there is the belief that there is a real and imminent danger of that person endangering the life of another person and if other means of prevention are too dangerous or not possible. In both war fighting and crime prevention situations, lethal force is only acceptable where there is no alternative. Once a murderer has been caught and convicted there is always the alternative of custody. Whether the question is about war, crime prevention or criminal justice, the purpose is the protection of society. In the first two, lethal force may be unavoidable. It is always better for those ends to be achieved without loss of life, in order to mitigate the suffering of war or to allow for the proper legal processes to be followed. The death penalty presents different ethical considerations because the death of the offender is the chief end of the process.

**7.8** Traditional reformed interpretations of the atonement have stressed the penal substitutionary interpretation which assert that Christ substituted himself and bore the punishment due to all humanity and that the demands of divine justice were met on the cross and that the sin of humanity could only be expiated by the death of Christ. Only through the inflicting of the ultimate punishment could humanity be restored to God's favour. This, however, is not the only way of understanding the atonement. It is possible to understand the atonement starting from a recognition of the non-violence of Jesus and that, by submitting non-violently to violence, Jesus was victorious over death. It is possible to argue that Scripture suggests a means of restoration and redemption even for murderers such as David and Paul. In the light of Christ's offers of forgiveness and the disclosure of God's kingdom in his life and death, these possibilities were intensified in the life of the early church.

**7.9** However the redemption of humanity, achieved by the atoning self offering of Christ, is understood, it is important to remember that, as stressed in the Letter to the Hebrews<sup>32</sup>, that Christ's sacrifice was offered once for all time and for all people. It was only possible because he was sinless.

**7.10** Can the death penalty be interpreted in the light of atonement theology? While there are some superficial similarities, to claim that the execution of criminals is in some way a sacrifice for the good of society would seem to attempt to elevate a human action and make it analogous to a unique divine action.

## **8. Ethical and Moral considerations**

**8.1** Having examined the theological and biblical background to the debate on the death penalty, we turn to ethical and moral considerations. These considerations include the impossibility of rehabilitating those sentenced to death, the apparent failure of capital punishment to serve as an effective deterrent, the length of time some convicts spend on death row, especially in the United States, the lack of recourse to appeal, especially in China, and the prospect of executing those subsequently found to be innocent. We might add to this the brutalising effect of a regime of capital punishment upon those charged with its implementation.

**8.2** It is a fundamental principle of natural justice that the severity of the punishment should fit the gravity of the crime. This works two ways. It is unjust to punish a relatively lesser crime with too severe a punishment, even if this would act as a deterrent to others. That is the objection to exemplary sentencing. However, it is also unjust to punish a crime with less than it deserves. This raises the question. Are there crimes so serious that they merit death as a punishment? Many have argued that the answer to this is 'yes',

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<sup>32</sup> Hebrews 10: 1-18

arguing that if this is not so, some of the most brutal behaviour of which human beings are capable is ranked on the same level as bad but far less wicked actions.

**8.3** However, another principle of natural justice is that it is better for the guilty to go free than for the innocent to be punished. Given that no human system of justice is infallible, we may well ask if it is morally acceptable to risk executing an innocent person?<sup>33</sup> Numerous problems with ensuring fair trials, the right to appeal and the right to seek pardon or commutation of sentence have been reported from jurisdictions around the world. The gravest miscarriages of justice occur when the severest possible sentence is administered to an innocent party, and if there can be no recompense once his or her innocence is known, then the injustice is irremediable. There is a great deal of evidence that the pressure to secure convictions, particularly in cases of murder and terrorism, has led to miscarriages of justice. Even in good systems the innocent do get wrongly convicted. So, although it may be possible to justify the death penalty in principle on grounds of retribution, it does not follow, and is not the case, that this is sufficient to warrant the institution or perpetuation of a system of capital punishment.

**8.4** Serious questions abound as to the equality and fairness with which death sentences are imposed and carried out. Those who are poor, badly represented, ill-educated and of a minority ethnicity are often particularly vulnerable. In the United States, a very small proportion of those arrested and charged with first degree murder are actually executed. Many others, having been convicted of comparable crimes, serve prison sentences. Critics of the death penalty have argued that this amounts to little better than a lottery.

**8.5** Studies, particularly in the United States, have shown that the majority of those who commit capital offences do not do so in a premeditated fashion.<sup>34</sup> Most homicides are crimes of passion and it is at least arguable that those people who commit them are not thinking of possible future punishment. That is not to say that others are not deterred. However, given that many capital offences are not premeditated and that most people who commit murder kill people to whom they are closely related, it is often the case that the circumstances which gave rise to the offence in the first place will not be repeated. Roger Hood writes, “[M]ost murders are not committed for large gains by professional or calculating criminals but are the outcome of innumerable woes: the murderers are ‘characteristically uneducated, impoverished social misfits whose crimes appear to be the stupid or senseless manifestations of anger or fear’.<sup>35</sup> The inference drawn is that the fear of capital punishment rather than long imprisonment will not restrain those who are apt to commit murder, because murder usually arises from an explosion of temper or a loss of control, from mental illness or defective personality, or from panic when faced with imminent capture.”<sup>36</sup>

## **9. Ecumenical perspectives**

**9.1** For centuries, the Roman Catholic Church accepted capital punishment as part of the armoury of the state in the control of crime. However in his 1995 encyclical *Evangelium Vitae*, after stating that public authority must impose adequate penalties in order to defend public order, to ensure people’s safety and to give offenders adequate opportunity for rehabilitation, Pope John Paul II wrote:

*“It is clear that, for these purposes to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity; in other words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organisation of the penal system, such cases are very rare, if not practically non-existent.”*

**9.2** This raises a number of questions. What is ‘absolute necessity’ and who decides upon it? How would this doctrine work in societies without adequate prisons? Is capital punishment more acceptable in some places than in others, depending upon the custodial alternatives available? In fact, this brings the Roman Catholic Church close to the classic Jewish position on the death penalty which is so hedged about with

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<sup>33</sup> In February and July 1998, the Court of Appeal in London quashed the convictions of Mahmoud Hussein Mattan and Derek Bentley who had both been hanged for murder in 1952.

<sup>34</sup> For a detailed survey of studies of the deterrent effect of capital punishment, see Roger Hood, *The Death Penalty – a worldwide perspective*, Oxford, 2002 Chapter 7.

<sup>35</sup> Bowers, with Pierce and McDevitt, *Legal Homicide: Death and punishment in America, 1864-1982* (2<sup>nd</sup> edn., 1984) Boston, Northeastern University Press

<sup>36</sup> Roger Hood, *The Death Penalty – a worldwide perspective*, Oxford, 2002, p.227

safeguards as to make it virtually impossible to get to the point of executing someone. The Roman Catholic Church is now *de facto* abolitionist, as indeed the Vatican City State has been since 1969.<sup>37</sup>

**9.3** For various reasons including the continuing use of the death penalty, free access to information and freedom of speech, the churches in the United States have been particularly active around the issue of the death penalty and in making their views widely accessible. This brief survey of church opinion beyond the Roman Catholic church reflects that. Among American churches and church bodies to support retaining the death penalty are the Southern Baptist Convention (at approximately 13 million members the second largest denomination in the US after the Roman Catholic Church with approximately 60 million), the Lutheran Church (Missouri Synod), the Latter-Day Saints, the National Association of Evangelicals and many small conservative denominations. Those who advocate abolition include the Roman Catholic Church in the United States, the American Baptist Churches, the United Methodist Church, the Evangelical Lutheran Church of America, the Eastern Orthodox Church in America, the Presbyterian Church (U.S.A.), the Episcopal Church, the Reformed Church in America, the United Church of Christ, the Disciples of Christ, the Quakers, the Church of the Brethren, the Mennonite Church, and the Moravian Church in America. Pentecostal churches are split on retention or abolition as is Judaism in America, Reform Judaism supporting abolition and Orthodox Judaism supporting retention.

**9.4** The World Council of Churches has been a long standing opponent of the death penalty as has the World Alliance of Reformed Churches which passed the following resolution at its 24<sup>th</sup> General Council in 2004:

*“WARC reaffirms its call for the abolition of the death penalty, calling on all nations to immediately establish a moratorium, and asks its member churches to step up their campaigns to include establishing a moratorium, working in collaboration with NGOs to support and assist the broad based abolition movement; and that the General Council encourages all member churches to adopt a clear position in opposition to capital punishment and engage in a dialogue that promotes a restorative justice that heals.”*

**9.5** In July 1983, the General Synod of the Church of England debated capital punishment and the following motion was carried: “That this Synod would deplore the reintroduction of Capital Punishment into the United Kingdom sentencing policy.” This subject has not been debated by the Synod since 1983. The Methodist Church of Great Britain has, since the 1950s, consistently and strongly opposed the death penalty or its reintroduction in the United Kingdom. The United Reformed Church has called made statements in support of a complete and irrevocable ban on capital punishment worldwide. While recognising that the opinions of Salvationists are divided, the Salvation Army states that “to advocate in any way the continuance or restoration of capital punishment would be inconsistent with the Army’s purposes and contrary to its belief that all human life is sacred and that each human being, however wretched, can become a new person in Christ.”<sup>38</sup>

**9.6** Archbishop Desmond Tutu, a man who knows more about compassion than many, wrote in the Guardian newspaper on November 13<sup>th</sup>, 2007:

*“I have experienced the horror of being close to an execution. Not only during the apartheid era of South Africa, when the country had one of the highest execution rates in the world, but in other countries as well.*

*“And I have witnessed the victims of the death penalty the authorities never speak of – the families of those put to death. I remember the parents of Napoleon Beazley, a young African-American man put to death in Texas after a trial tainted by racism. Their pain was evident as the killing of their son by the state to which they paid taxes approached. I can only imagine the unbearable emotional pain they went through as they said their final goodbye to their son on the day of his execution.*

*It is often asked by those favouring the death penalty: “What if your child was murdered?” And it is*

<sup>37</sup> Roger Hood: *The Death Penalty – a worldwide perspective* Appendix 1, Table A1.3. The date of the last execution is not known, perhaps implying that the Vatican State has not executed anyone for a very long time indeed.

<sup>38</sup> [www.salvationarmy.org.uk](http://www.salvationarmy.org.uk) accessed on 23/01/08

*a natural question. Rage is a common reaction to the homicide of a loved one, and a wish for revenge is understandable. But what if the person condemned to death was your son? No one raises a child to be a murderer, yet many parents suffer the grief of knowing their child is to be killed. In 1988, the parents of those on death row in South Africa wrote to the president, saying: "To be a mother or father and watch your child going through this living hell is a torment more painful than anyone can imagine." We must not put these children to death. It is to inflict horrific and unacceptable suffering upon them, and their mothers and fathers.*

*"Retribution, resentment and revenge have left us with a world soaked in the blood of far too many of our sisters and brothers. The death penalty is part of that process. It says that to kill in certain circumstances is acceptable, and encourages the doctrine of revenge. If we are to break these cycles, we must remove government-sanctioned violence.*

*"The case for abolition becomes more compelling with each passing year. Everywhere experience shows us that executions brutalise both those involved in the process and the society that carries them out. Nowhere has it been shown that the death penalty reduces crime or political violence. In country after country, it is used disproportionately against the poor or against racial or ethnic minorities. It is often used as a tool of political repression. It is imposed and inflicted arbitrarily. It is an irrevocable punishment, resulting inevitably in the execution of people innocent of any crime. It is a violation of fundamental human rights. The time has come to abolish the death penalty worldwide."<sup>39</sup>*

## **10. Conclusion**

**10.1** Within the Churches, there are opposing and honestly held views on whether the death penalty is acceptable. In preparing this report, the Council has tried hard to hear different views and give them all serious consideration. Church history shows that widespread support for abolition is relatively recent, largely stemming from the middle of the last century. But can we accept that Christian theology and thought may develop over time, even to the point of directly contradicting previously held positions? It is the contention of the Council that, on this issue, Christian theology and thought has changed.

**10.2** This study has led to the conviction that judgement is God's prerogative. While humans, acting under his authority, are called upon to judge, human judgement must always be understood as provisional. If we act in ways that interfere with the redemptive work of God, we are guilty of hubris. No human is omniscient and therefore mistakes can be made. The irrevocable nature of death makes such mistakes extremely grave.

**10.3** But we do not act in ignorance. We know something of the character of God and are called upon to emulate it. In particular, we know that God is compassionate. He calls us to be likewise. In this matter, our compassion must extend to victims, to offenders and to society itself. This is, at times, hard to maintain, but compassion to society will entail finding the most appropriate ways of protecting it and healing its wounds. Inflicting more violence cannot be a part of that. Compassion to victims will entail working towards their restoration, providing comfort and support, giving opportunity to ask the searching questions and hear the truth in answer, allowing for the expression of the deepest pain and for the release of anger. Compassion for offenders will entail helping them towards confession and repentance, towards making restitution and to return to society changed and better people.

## **11. A Statement on the Death Penalty**

**11.1** No system of justice devised and operated by humans is free from error or arbitrariness. The death penalty conflicts with the right to life enshrined in the European Convention in Human Rights, and the possibility of the death penalty has manifestly failed to deter murder, war crimes and genocide. The death penalty brutalises the society which practices it, and alternative sentences for serious crimes exist through which restitution and rehabilitation may be achieved. Inflicting death as a punishment limits the redemptive work of God in this life, work modelled by Jesus in his life of God's compassion and mercy, and in his teaching of non-violence.

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<sup>39</sup> From an article entitled *The doctrine of revenge*, <http://www.guardian.co.uk/comment/story/0,,2209941,00.html> accessed on 29 November, 2007. © Amnesty International and IPS Columnist Service

**11.2** Therefore the Church of Scotland affirms that capital punishment is always and wholly unacceptable and does not provide an answer even to the most heinous of crimes; and commits itself to work with other churches and agencies to advance this understanding, oppose death sentences and executions and promote the cause of abolition of the death penalty worldwide.