

# Capital Punishment\*

---

DEREK KIDNER, M.A.

Senior Tutor, Oak Hill College, London

IT is all too seldom that any calm thought is given to basic theories of punishment, or to the data available in Scripture, when capital punishment is in debate. With a text or two, a few statistics and some emotive epithets ('barbarous', 'progressive', 'starry-eyed') the rival camps confront each other with mutual impatience rather than with careful argument and biblical exposition. It seems wise, then, to approach the subject by considering, first, the nature of punishment in general, secondly capital punishment in Scripture, and finally the application of any principles which have come to light in the first two sections.

## 1. THE NATURE OF PUNISHMENT

To punish is obviously more than to inflict pain or hardship: it is to inflict it both (a) by authority and (b) for an offence. We can use the term loosely of any harsh action (e.g. of the batsman who forgets himself enough to punish the bowling), and we can use the thing itself flexibly, so that the good it does to the offender becomes its most striking feature; but any accurate use of the word must do justice to the twin ideas of authority and offence. In view of what you *are* or what you *may do*, you can be put under restraint or treatment; it is only in view of what you *have done* that you can be 'punished'. To use a technical term, the core of punishment is *retribution* — i.e. the inflicting of a penalty as (to quote the penitent thief) 'the due reward of our deeds'.

We may decide that the whole retributive notion is false; if so, we should drop the word 'punishment' and speak only of treatment, training, preventive detention, and so on. On the other hand we may consider that when we have allowed for all the constructive ways in which society should react to an offence, we have not reached the heart of the matter unless we have based what we do to an offender on what his guilt deserves. Within these two schools of thought there are varieties of emphasis, but *between* the two there is disagreement in principle. Retribution is the crux of the matter: the rights and wrongs of it will be argued in the rest of this section.

'Modern penological thought', says the report of the Royal Commission on Capital Punishment (1953), 'discounts retribution in the sense of vengeance.' While Lord Templewood, consulted by the Commission, was content to *subordinate* the ideas of retribution and deterrence to that of reformation, Sir John Anderson went much further, and claimed to speak for the majority in saying: 'I think there would be general agreement that the justification for the capital sentence, as for other salient features of our

\* This article is also being published by the Church Pastoral-Aid Society, as a Falcon Booklet, under the title *The Death Penalty*.

penal system, must be sought in the protection of society and that alone.' He went on to say: 'There is no longer in our regard of the criminal law any recognition of such primitive conceptions as atonement or retribution. We have, over the years, fortunately succeeded to a very large extent . . . in relegating the purely punitive aspect of our criminal law to the background.'<sup>1</sup>

There are probably three main reasons for this general rejection of retribution.

(i) It is seen as a rationalization of the urge to hit back. One can argue that a quite non-moral impulse has dressed itself up in the robes of justice in the course of being brought under social control. Society, that is, for its own stability, would tend to encourage a man to keep his vengeance down to the scale of the injury he has suffered; then at a later stage it would remove this exercise from private hands; finally it would come to think of this public paying-back of an injury as a veritable duty — forgetting its origin as a mere social convenience.

(ii) It is seen as unconstructive. A second 'wrong' — or at least a second hurt — is added to the first, to make a 'right', and there are now two people damaged where at first there was one. This has been argued since Plato; though Plato spoils his case by overstating it. (Harm a man, he reasons, and you make him worse, worse as a man, worse in human excellence; now justice is a human excellence, therefore (!) you make him less just — which cannot be the work of justice.<sup>2</sup>)

(iii) It is seen as unchristian. 'Recompense to no man evil for evil' (Rom. 12: 17) is a characteristically Christian maxim, and the Christian attitude to the sinner is positive: to love him and reclaim him. If there must be measures taken about an offender, surely they should be a healing operation, concerned with re-making, not repayment.

However, retribution is not as easily dismissed as it might seem. True, it is seldom so much argued against as brushed aside (e.g. a recent writer is satisfied to predict that 'the retributive element in punishment will diminish as man develops his faculties'<sup>3</sup>), but its abandonment is found to raise as many questions as it appeared to settle. We should look again at the three arguments we have noted.

(i) Is it true that retribution is no more than an urge that has been rationalized? Such statements about the prehistory of human ideas are mostly beyond proof or disproof; but at least it is as allowable — and usually more fruitful — to interpret the primitive in the light of the full-grown (the acorn as the future oak) as to do the opposite. In other words, we can argue just as plausibly, if admittedly as inconclusively, that a cave-man hitting back is partly actuated by an embryonic sense of justice, as that a judge reckoning what an offender deserves is conducting a vestigial jungle fight. Certainly when we conjecture the respective states of mind of these two, the only common ground we are likely to find is the intuition that an offence *deserves* some counter-measures.

(ii) To object that retribution is 'unconstructive' is to beg two ques-

<sup>1</sup> Report of Royal Commission on Capital Punishment, 1949-53 (HMSO), para. 52, p. 17.

<sup>2</sup> Plato, *The Republic*, 335.

<sup>3</sup> C. H. Rolph, *Common Sense about Crime and Punishment* (Gollancz, 1961), p. 17.

tions: (a) whether a punishment is a second 'wrong' to make a 'right', and (b) whether constructiveness should rank higher in the scale than fairness.

(a) A crime and its punishment are not two unrelated events, two units of unpleasantness where one would have been more than enough. They are two parts of a whole, of which we should ask, 'Which is the more fitting total situation: one in which crime must be paid for, or one in which it escapes that necessity?' To quote C. D. Broad: 'The contention of believers in retributive punishment is that there is a certain appropriateness of pain to wrongdoing, which, unless the pain be altogether excessive . . . makes the whole state of affairs less bad than it would be if the wrongdoing were unpunished. This opinion seems to me to be true in spite of being old-fashioned.'<sup>4</sup>

(b) If we rule out the question, 'What does this man deserve?', and ask only, 'What will do him (or society) the most good?', we are throwing away, along with retribution, some of the chief safeguards of human liberty. 'To deny the retributive element in punishment', argues E. F. Carritt, 'is to deny any meaning to the words desert, merit, justice, and, I think, forgiveness'.<sup>5</sup> In fact we run this risk as soon as we make retribution step down even into second place, where it will be only one means among others of promoting the general good. At once the individual is at the mercy of our policy. Sir David Ross, who propounds this view of punishment, is candid enough to admit as much, when he writes: 'The interests of society may sometimes be so deeply involved as to make it right [*sic!*] to punish an innocent man "that the whole nation perish not"'.<sup>6</sup> The admission, with its frank allusion to the decision of Caiaphas against Jesus (Jn. 11: 50), is all the more striking in that it comes from a moralist whose total system is conceived chiefly in terms of Right and Duty, but cannot quite stomach retribution as a primary duty.

C. S. Lewis, then, is not being an alarmist when he shows that the logic of what he calls the Humanitarian theory inexorably leads to this conclusion. 'The Humanitarian theory removes from punishment the concept of desert. But the concept of desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust. I do not here contend that the question "Is it deserved?" is the only one we can reasonably ask about a punishment. We may very properly ask whether it is likely to deter others and to reform the criminal. But neither of these two last questions is a question about justice. There is no sense in talking about a "just deterrent" or a "just cure". We demand of a deterrent not whether it is just but whether it will deter. We demand of a cure not whether it is just but whether it succeeds. Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a "case"'.<sup>7</sup>

So the wrongdoer — or the deviationist, or the inconvenient person — is handed over to the experts (once we have got the retributive notion quite

<sup>4</sup> *Five Types of Ethical Theory* (Routledge, 1930), p. 205.

<sup>5</sup> *The Theory of Morals* (Oxford, 1928), p. 110.

<sup>6</sup> *The Right and the Good* (Oxford, 1930), p. 61.

<sup>7</sup> C. S. Lewis, 'The Humanitarian Theory of Punishment' (reprinted in *The Churchman*, June 1959, pp. 55ff., from the Australian periodical *Res Judicate*).

out of our system) for an indefinite time, for unspecified treatment. 'Only the expert "penologist" (to quote Professor Lewis again) . . . , in the light of previous experiment, can tell us what is likely to deter: only the psychotherapist can tell us what is likely to cure. It will be in vain for the rest of us, speaking simply as men, to say, "but this punishment is hideously unjust, hideously disproportionate to the criminal's deserts". The experts with perfect logic will reply, "but nobody was talking about deserts. No-one was talking about *punishment* in your archaic vindictive sense of the word. Here are the statistics proving that this treatment deters. Here are the statistics proving that this other treatment cures. What is your trouble?"'

A glimpse of the remedial theory in actual operation was given in a report of a tour of the Danish prison system, in *The Daily Telegraph* of June 27, 1961. The investigating party was 'confronted on the one hand with . . . the Danish predilection for "indeterminate" sentences, and on the other hand with the roomy comfort and personal freedoms given to offenders. . . . They wondered about the efficacy of a system in which the whole running of a prison rests with a medical man with a vast experience of criminal psychology. But they were assured by one of these dedicated men . . . that under an indeterminate sentence the co-operation of an inmate was "of a more earnest character than when there is an interest merely in the terms of his release".' Nothing in this article suggested that the Danish penologists were anything but benevolent; but a final quotation from C. S. Lewis is apposite: 'Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. . . . Their very kindness stings with intolerable insult. To be "cured" against one's will and cured of states which we may not regard as disease is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals. But to be punished, however severely, because we have deserved it, because we "ought to have known better", is to be treated as a human person made in God's image.'<sup>8</sup>

The Royal Commission's Report on Capital Punishment does indeed show more awareness than did some of its witnesses of the inseparability of justice and retribution. It realizes that in some sense 'retribution must always be an essential element in any form of punishment; punishment presupposes an offence and the measure of the punishment must not be greater than the offence deserves'. Yet having said this, it does its best to unsay it, first by holding up *reprobation* as the purest form of retribution, and then by implying that retribution in any other sense is demanded by a somewhat backward public opinion (para. 53, p. 18). *Reprobation*, however, is a kind of moral shudder, the community's 'Ugh!' of disgust, which may be conveyed in words or acts, and which may be proportionate or disproportionate to the offence, according to the contemporary mood. It is itself in need of the regulative standard which retribution supplies by its objectivity. The Commission's attempt to hold on to the safeguards which the retributive idea provides, while half disowning the notion itself, suggests that it is prejudice rather than reason which disallows it; and this is confirmed by the general tendency, which we have already noticed, to oppose it with

<sup>8</sup> *Ibid.*, p. 58.

aspersions (e.g. that it is crude or primitive) rather than arguments.

(iii) The third count against retribution was that it is unchristian. Jesus superseded 'An eye for an eye' with 'Turn the other cheek' (Mt. 5: 38, 39), and Paul, as quoted above, wrote 'Avenge not yourselves' (Rom. 12: 19). The short answer to this is that in both places we have a charge to the individual against behaving like a lawcourt — not a charge to the lawcourt to behave like an individual. This can be proved from the immediate context of Paul's saying. In the same verse, he gives the reason for his 'Avenge not yourselves'; and it is hardly the reason we should have expected. Instead of 'Vengeance is wrong', it is 'Vengeance is mine; I will repay, saith the Lord'. And the matter is carried a stage further in the continuation of this passage into chapter 13, where it is shown that this power of temporal retribution is placed in the hands of the state, to be exercised on God's behalf. The ruler, or his agent, is in this respect 'the minister of God, a revenger to execute wrath upon him that doeth evil' (Rom. 13: 4). Throughout these verses the words 'avenge', 'vengeance' and 'revenger' are, in the Greek, derivatives of a root which has a legal rather than an emotional reference: that of exacting punishment or retribution.

This teaching answers the misgiving that is often voiced over society's right to pass judgment on its members. We are sensitive nowadays to the fact that an offender is partly what he is through what the rest of us are. Who are we to punish the guilt that we share? The New Testament joins with the Old in replying that we, or rather those who hold office among us, are agents of God's wrath against evil — and who are we to find fault with our commission?

Who are we, finally, to hold a more refined doctrine of punishment than God's, and to be more Christian than Christ? If there is one constant principle revealed about God's final judgment it is that of retribution. The Law, the Prophets and the Wisdom writers agree that He will 'render vengeance to his adversaries', 'measure their former work into their bosom', 'render to every man according to his works' (Dt. 32: 43; Is. 65: 7; Pr. 24: 12). With this the New Testament agrees; and it is notable that where the gospel of grace is most prominent, the retributive justice which is its background is most clearly affirmed: so that Romans in its earliest chapters is the *locus classicus* of retribution, and Jesus is the most powerful of all preachers of perdition.

To avoid misunderstanding, perhaps it should be said again that the argument of this section is that retribution is the *root* idea in punishment; not that it should be the only idea. If a punishment can be constructive as well as fair, this is sheer gain; and if mercy can be exercised, this is a delight. But first the moral facts must be established: we must know what is owing, and be clear that it *is* owing. Only so can we be safe from over-charging on the one hand, when the fancy takes us, and from making a practical denial on the other hand, through our laxity, that any values are absolute.

## 2. CAPITAL PUNISHMENT IN THE BIBLE

The Old Testament prescribed the death penalty for a number of offences: not only (i) *murder* (Gn. 9: 6; Nu. 35: 16ff.), but (ii) *various sexual offences*

(e.g. pre-marital promiscuity (Dt. 22: 21, 23), adultery (22), the rape of one betrothed (25), incest (Lv. 20: 11-14), bestiality (15, 16), homosexual intercourse (13); (iii) *kidnapping for the slave trade* (Dt. 24: 7); (iv) *defiance of parental authority* (Dt. 21: 18-21); (v) *blasphemy* (Lv. 24: 16) and *incitement to apostasy* (Dt. 13, *passim*).

This is a long list, but its composition is significant. Unlike the English law code as it stood at the beginning of the nineteenth century, whose 200 capital offences included trivial thefts and assaults ('to slit a man's nose was capital'<sup>9</sup>), the Mosaic law decreed death not for any offence at all against property, but only for gross outrages against the human person, against the family and against the theocracy.<sup>1</sup>

The New Testament accepts the justice of this. 'God's decree', says Paul (at the end of a similar but wider catalogue) is 'that those who do such things deserve to die' (Rom. 1: 32, RSV); and Jesus regarded the earthly sentence as a quite pale reflection of the eternal one (Mt. 5: 21, 22). We are encouraged to view the Old Testament penalties not as excessive in principle (at this point we are considering principles, not policies) but as statements of what is strictly just. Any relaxing of them will be a move in the direction of mercy (our Lord demonstrated it in Jn. 8: 1-11), not a step from injustice to justice. For many of the Old Testament's capital offences this exercise of mercy was already in force by the time of Christ (perhaps long before it), as John 8 itself implies. But in this respect the law put murder in a class by itself: here there must be no commutation. 'You shall accept no ransom for the life of a murderer who is guilty of death. . . . No expiation can be made for the land, for the blood that is shed in it, except by the blood of him who shed it' (Nu. 35: 31, 33, RSV).

This is perhaps the place to say that the *lex talionis* ('an eye for an eye') was not, as is so often assumed, a directive to private citizens for the restraint of their vendettas, but a guide to the judges (Ex. 21: 23-25; cf. Lv. 24: 19-21; Dt. 19: 18, 21) in their task of fixing sentences. Nor was it meant literally, any more than the Gospel-saying about plucking out one's own eye: it was interpreted, as soon as stated, in Exodus 21: 26, 27, where an example is given of the kind of fair equivalent that was in mind. That is, a master who caused the loss of his slave's eye or tooth was to 'let him go free for his eye's sake' or 'for his tooth's sake'. It was in this context of flexible interpretation that the penalty for murder was made unalterable.

It is just possible that the rigorous language of Numbers 35 was aimed against the relaxing of the *standard* sentence for murder, and not against the exercise of mercy in exceptional cases. King David reprieved the hypothetical murderer from Tekoa on the ground that the death penalty in this case would have collided with another concern of the law, the maintaining of a family's existence (2 Sa. 14: 7, 11). And the story was couched in terms that were meant to remind the king of the first recorded murder, when God Himself had reprieved the offender. Yet undeniably the whole weight of the Mosaic law was against reprieve for murder (as distinct from manslaughter), and it is worth noting that David was only induced to grant

<sup>9</sup> G. M. Trevelyan, *English Social History*, p. 348.

<sup>1</sup> This sober list refutes those who pretend that until 150 years ago mankind had few scruples about resorting to the death-penalty. The English eighteenth-century code was an aberration.

it by an assurance that his petitioner, and not he himself, would shoulder the guilt of it (2 Sa. 14: 9).

What is the relevance of all this? As a preliminary guide, we can hardly improve on the terms of Article VII of The Thirty-nine Articles: 'Although the Law given from God by Moses, as touching Ceremonies and Rites, do not bind Christian men, nor the Civil precepts thereof ought of necessity to be received in any commonwealth; yet notwithstanding, no Christian man whatever is free from the obedience of the Commandments which are called Moral.' In other words, we are to *learn* from the Old Testament's civil laws, not necessarily enact them. *What* we are to learn may perhaps be summarized as follows:

(a) Certain crimes *deserve* death. We have already quoted Romans 1: 32, which has divine judgment chiefly in mind, but we can add to it two of Paul's sayings about human execution. First, Romans 13:4, RSV: 'he does not bear the sword in vain: he is the servant of God to execute his wrath on the wrongdoer.' Second, Acts 25: 11: 'If then I am a wrongdoer, and have committed anything for which I deserve to die, I do not seek to escape death.' Therefore Article XXXVII is scriptural when it says: 'The Laws of the Realm may punish Christian men with death, for heinous and grievous offences.'

(b) Of these crimes, murder *most* deserves it (Nu. 35: 31-34, as above).

(c) The prime reason for this is a *Godward* one. In Numbers 35, which speaks in the context of Israel, the reason given is that God dwelt in the land, and unrequited blood polluted it (verse 34); in Genesis 9: 4, 6, which speaks in the context of mankind, it is that life, symbolized by blood, belongs to God, and human life is in the image of God.

(d) The moral soundness of *society* must take precedence over the welfare of the criminal. This is expressed in the refrain which accompanies the death-sentence at least eight times in Deuteronomy: 'So you shall purge the evil from the midst of you' (Dt. 13: 5; 17: 7, 12; 19: 13, 19; 21: 21; 22: 21; 24: 7).

(e) The judicial taking of a murderer's life is an affirmation, not a denial, of the *sanctity* of human life (Gn. 9: 6: 'by man shall his blood be shed; for God made man in his own image').

The last reference raises a question of its own, for Genesis 9: 6 is sometimes appealed to as an ordinance that is permanently binding on legislators. Its context is the universal history of mankind, before the emergence of the nations; it belongs to the first explicit covenant; it is based on man's created constitution (as made in God's image). Therefore, the argument runs, it is not superseded, like the Sinai legislation, by the New Covenant.

But this proves too much. The lesson of the passage is that all life belongs to God. Man's 'Amen' to this truth was to be given in two ways, of which the second was the one we have been considering, but the first was that of abstaining from eating animal flesh with its blood (9: 4). If the one law is still binding, so is the other — and binding, *ex hypothesi*, not only on men as Christians but on men as creatures: it should become, alongside capital punishment, the law of the land. It seems enough to state this to dispose of it; if we need more explicit refutation it is, I think, to be found in a comparison of Acts 15: 29 with 1 Corinthians 8: 8, 9; 10: 25; which indicates that the Jerusalem Council's food laws for Gentiles were intended only to spare the feelings of Jews, not to reaffirm the covenant with

Noah. Once again it is the *lesson* that remains in force; we are free to find the best outworking of it for our time and place. This is our next concern.

### 3. THE APPLICATION OF BIBLICAL PRINCIPLES

The biblical teaching which we have studied suggests (if we may summarize it still more briefly) that the punishment of a serious offence should fulfil the following functions, in this order of importance:

- (i) giving a man his deserts;
  - (ii) affirming a fundamental truth (in this case, that human life is sacred);
  - (iii) ridding society of a bad element ('... purge the evil from the midst of you').
- In spite of its consistent concern to reclaim the sinner, the Bible does not seem to include reformation among its ingredients of judicial punishment, although it gives it pride of place in *parental* punishment, and although it tempers justice where possible with mercy.

If these three are really the biblical penal essentials, capital punishment for murder fulfils them in no uncertain manner. Retribution is exact, the sanctity of life is vehemently affirmed, and the enemy of society is seen no more.

Yet there is much that can be said on the other side.

#### Some arguments against capital punishment

First, in the name of *retribution* itself. Murderers, we must remember, are not all of a kind, and guilt is of innumerable gradations. If we base punishment on desert, can we be satisfied with so inflexible a penalty as death? In practice, in countries where death is the sole penalty many murderers are not brought to execution, just because they are not felt to deserve such a fate decisively enough, when it comes to the point. In the first half of this century forty-five per cent of all convicted murderers in England were reprieved.<sup>2</sup> If the justice of a death-sentence can be questioned so often, conceivably it could be questioned in every case; for there are comparable and, some would argue, juster punishments. To lose in prison one's best years and most of one's prospects is to lose something like life itself; and the length and conditions of such a sentence can be matched, with some approach to justice, to the depth of the crime. Retribution, after all, does not consist in dealing out one-for-one equivalents: it is enough that its severity should *approximate* to that of the offence. A specially cruel murder is not considered, by Old Testament or any commonly accepted law, to justify a specially cruel execution; indeed most murderers are despatched far more humanely than their victims; yet their punishment is retributive. Can it not still be adequately retributive when it takes some other form than death?

Second, in the name of *the protection of society*. There is no statistical proof that executions achieve this more surely than other means. If some people are deterred by such spectacular punishments, others are fascinated. And the 'evil' that should be 'purged' is not necessarily buried with the murderer: his dramatic end may win him sympathy or hero-worship, his executioners may be brutalized by their task, and the public regard for human life may be weakened (it is suggested) by the knowledge that human beings are from time to time deliberately and officially destroyed.

<sup>2</sup> Royal Commission Report, p. 13.



Third, in the name of *the offender's reformation*. If a man's life is spared, there is time and opportunity to reclaim him, or at least to make the attempt; and murderers are apparently not found to be an unusually incorrigible class of criminals. Often they are people who, in the course of a law-abiding life, have made havoc of one sector of their relationships: they have not embraced crime as their career. Even if we agree that the Bible does not make reformation part of its essential penal scheme, it is surely desirable in itself, and can be adduced as a supporting consideration, if nothing more.

Strong as I recognize some of these arguments to be, I would nevertheless give my vote on the other side, for the following reasons.

### Some arguments in favour of capital punishment

(a) To take the last objection first (*i.e.* the value of reformation): the weight of even this factor is not all against the death-penalty. Dr Johnson may have had his tongue in his cheek when he spoke of such a crisis concentrating the mind wonderfully, but his words have more than once proved their truth — from the day of the penitent thief onwards. It should also be remembered that the murderers who fail to be reprieved are the hard cases, who would be as likely to spread corruption as to receive re-education, over the years. If the Old Testament regarded this social corruption as something to be purged out with some ruthlessness, we are wise to respect its realism.

(b) We must not *over-value* the doubt cast by statistics on the deterrent effect of capital punishment. The Royal Commission was impressed by the 'virtually unanimous' view of members of the police and prison services that this punishment had a 'uniquely deterrent . . . effect on professional criminals' — including perhaps the 'indirect effect of deterring them from carrying a weapon'. It observed that the available statistics (which are difficult to control) must not lead it to 'treat lightly the considered and unanimous views of these experienced witnesses'.<sup>3</sup> The Commission's 'general conclusion' was that '*prima facie* the penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible'.<sup>4</sup> Accordingly the Commission advised against basing a penal policy on exaggerated estimates of the death penalty's uniquely deterrent force. This is sound advice; but it is far from dismissing the factor as spurious. In this realm too the Old Testament has its comment to make, in a refrain that usually follows the directive to purge out an evil by capital punishment: 'And all the people shall hear, and fear, and not act presumptuously again' (Dt. 17: 13, RSV; *cf.* 19: 20; *et al.*).

(c) The retributive element in punishment (which I have tried to show in the first section of this article to be the basic component), while it is not absent from other kinds of penalty, is most plainly present in the exaction of 'a life for a life'. Yet this clarity is not the enemy of moderation or

<sup>3</sup> *Ibid.*, p. 21.

<sup>4</sup> *Ibid.*, p. 24.

of mercy: moderation, because the execution is less harsh than the crime (as pointed out above); mercy, because reprieve is possible — and mercy is *seen as mercy* against a clearly established norm.

(d) Finally, the teaching function of a punishment is best served by this means. It is not easy to do justice to the scriptural insistence that murder raises unique doctrinal issues, except by a penalty which treats this crime as different in kind from offences against property and public order. As supporting testimony, on the human, pragmatic level, we may quote again from the Royal Commission's Report, paragraph 59, where the Commission thinks it 'reasonable to suppose' that capital punishment builds up 'in the community over a long period of time, a deep feeling of peculiar abhorrence for the crime of murder. "The fact that men are hung for murder is one great reason why murder is considered so dreadful a crime." This widely diffused effect on the moral consciousness of society is impossible to assess. . . . It is likely to be specially potent in this country, where the punishment for lesser offences is much more lenient than in many other countries, and the death penalty stands out in the sharper contrast'.<sup>5</sup>

At the theological level, it must never be forgotten that the state punishes as 'the servant of God to execute his wrath on the wrongdoer' (Rom. 13: 4, RSV), and therefore it exists to express something higher than current public opinion. If its task is to declare, in some fashion, the justice of God, it will do no great service to that cause if it tacitly denies any place in such a system to a sentence of death.

'My judgment', said Christ, 'is just'; and these words followed His pronouncement that in the last day the dead would come forth at His summons to go their irrevocable ways: 'those who have done good, to the resurrection of life, and those who have done evil, to the resurrection of judgment' (Jn. 5: 29, 30, RSV; cf. Mt. 25: 46). In the light of this, the 'sword' of the earthly court (Rom. 13: 4) makes no empty or extravagant gesture, but helps to fulfil the task set out in Isaiah 3: 10, 11, RSV:

'Tell the righteous that it shall be well with them,  
for they shall eat the fruit of their deeds.  
Woe to the wicked! It shall be ill with him,  
for what his hands have done shall be done to him.'

<sup>5</sup> *Ibid.*, p. 20.

### A Short Bibliography

#### Factual and Legal:

Royal Commission on Capital Punishment, 1949-1953: Report. HMSO. 12s. 6d.

#### General Ethics:

A. C. Ewing, *Ethics*. Teach Yourself Books, EUP, 1953. 6s.

#### Christian Ethics:

John Murray, *Principles of Conduct*. Tyndale Press, 1957. 15s.

#### Special Studies:

*Punishment*. Church Information Office, 1963. 3s. 6d.

Tidmarsh, Halloran and Connolly, *Capital Punishment: A Case for Abolition*. Sheed and Ward, 1963. 10s. 6d.