

*Criminal Code*

On the higher level of atonement, it must be said that punishment only has this moral value in so far as it is accepted; atonement must undoubtedly be reflected in an exterior act whenever possible. But it is above all a spiritual attitude. Why should such an expiation through capital punishment be necessary without another being sufficient?

Will it be suggested that the security of the state requires the death penalty as a protection against the murderer himself? Of course, this is not a decisive reason, since life imprisonment—in spite of possible escapes—still provides theoretically a protection just as effective.

Finally, the exemplarity motive raises problems when considered in itself. Were even the fear of capital punishment more effective than the fear of life imprisonment to dissuade possible criminals from their homicidal designs, what should we think about a procedure directed against someone in order to prevent others from doing wrong? A human being, even guilty, is not only a simple means to an end, however commendable it may be.

● (5:40 p.m.)

We feel that both aspects cannot be considered separately: punishment of the crime and security of the state. Of course, no innocent person should be sacrificed for the common weal, (or to put it more clearly, the true commonweal forbids us to put to death innocent people even though they are involuntarily harmful to the common weal); but, on the other hand, the punishment of any real crime must be based on the common weal. Referring to the principle laid down by Pope Pius XII, we would say that through his crime, the criminal has lost his right to live. But the state can only deprive him of the gift of life if this extreme form of punishment is necessary or at least very beneficial to the public weal.

This raises the question which seems actually most significant: is capital punishment more effective than life imprisonment to protect society by preventing murders? We will talk about it later.

2. The opposite reasons, against the very principle of capital punishment are also open to major objections:

God, it is said, is sole master of life. True. And that is why any legitimation of the death penalty has to be related to God. But He who willed society also willed the requirements for the good of society. If then this good truly

requires the death penalty, then the will of God is to be seen in the right of life and death as a delegation from God to the state of the right to dispose of human life under specific conditions.

Man has a basic right to live. It is true. But how can it be established that the culprit does not, through his crime, jeopardize his right and that the state is not then empowered to deprive him of a right to which he is no longer entitled? Human dignity is an absolute value that must be respected, even in the culprit. But life is not an absolute good.

A penalty must be remedial. Capital punishment cannot be, since the culprit is eliminated. To this the defenders of legalized capital punishment reply: True, a penalty must generally be remedial, first for the culprit (it is the obvious meaning of the statement) but also in a wider sense, for society as a whole. Yet, when the importance of the crime and the requirement of the common weal agree on the need for capital punishment, how can injustice be proven by the single fact that the penalty cannot be remedial in the strictest sense of the word?

Because a miscarriage of justice is always possible, the state has no right to impose an irrevocable penalty. To this, one may reply: Imprisonment is also irrevocable, since no one can alter the fact that the time spent in jail has been an undeserved deprivation of freedom. And one may add: From this not unfounded objection it must be concluded that death penalty must be decreed unless the crime has been proven; and the few mistakes still possible are the ransom of all human justice which cannot have God's omniscience. Let us, however, admit that this may be at least another reason, if not against the right, at least against the advisability of preserving capital punishment.

Finally, some people deny any legitimate basis for capital punishment because, they maintain, all criminals obey some irresistible impulses or are even, for the most part, mentally ill. And of the crimes which public opinion finds most vile, sadistic murder is precisely the one in which the irrational impulse is strongest. To this one must answer: it may and should be admitted that many crimes are committed by psychopaths or people in whom an extremely strong impulse greatly diminishes or even suppresses responsibility. But it cannot be said that a criminal is not responsible for his crime. Again, this may be another reason for the

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