

### Capital Punishment

their works and their sin, and are called to account. God continually causes new creatures to appear. He prevents the total chaos and destruction that proceeds from the corruption of sin, because He is leading the world and humanity on to the consummation of His counsel. In this providential work of preserving and governing, the institution of the office of government is also included. Such an office is indispensable if there is to be a human society where justice and order still prevail and the Church is enabled to "lead a tranquil and quiet life in all godliness and gravity".

So, from these quotations I believe there is a commonality among the writers, and certainly not inconsistent with the principle of the scriptures, that it is the purpose of government to uphold justice and to reinforce the freedoms of man, that is, the freedom generally found in the body politic.

Studies of psychology and sociology have produced increased knowledge of human behaviour, resulting in mitigation of the death penalty. Modern theories of penology have questioned the social utility of capital punishment. The result has been that the death penalty is almost always debated in a judicial and psychosociological sense. However, it is ultimately a moral and theological question. Because it is a moral and theological question, I would discuss the mandate of government from the biblical perspective; that is to say, from the Christian ethic.

Is the Christian perspective relevant today and for this debate? By the mere fact that this is a moral question, the Christian ethic is certainly relevant in light of the basis of our western society, and, in fact, this government and this parliamentary system here in Canada. If God is, and if Christ lived, died and rose again in a redemptive way—and I believe so—then I have to reject Hegel's cyclic history and that postulation that history moves as formation of a thesis and anti-thesis which evolves into a new synthesis which becomes the thesis or accepted ideas, and you have a recurring cycle. I have to reject that, sir, and I have to reject, as well, those naturalists who believe that world history is not directed, that human history simply unfolds as it should and without regard to any exterior force or directed force.

Rather than those two, sir, I accept the lineal history idea, the truth that God is directing the final destination of history. I do not wish to quarrel with either the Calvinists or the Armenians, that those who believe that God works only as the free will exists within mankind, or the other side, the Calvinists who believe that God has preordained and has, in essence, programmed both man and the world. But it is suffice to say that notwithstanding the correctness or the applicability of either of those two schools of thought in theology, it is nevertheless therefore true that theology and God have something to say today, because God in the final analysis is directing the destination of history.

So it is important to look, when we are speaking of Christian ethic, at both the Old Testament and the New Testament, because the teaching of the scriptures, and because capital punishment is a moral issue, is not only relevant but constitutes the centrality of the issue. In times past there have been Christian scholars who have looked and studied and written about the principles of the scriptures and how they apply to human activity. One of those, Thomas Aquinas, in his book "Summa Theologica", along with other early Christian writers such as Tertullian and

[Mr. Whiteway.]

Athenagoras, clearly defends the right of the state in regard to capital punishment. Thomas Aquinas likens the malfactor to a limb of the body filled with gangrene. He suggests that amputation, or execution, is necessary for the good of the whole body, or the whole society. Aquinas says: If a man be dangerous and infectious to the community on account of some sins, it is praiseworthy and advantageous that he be killed in order to safeguard the common good.

I could go on quoting other earlier writers of the Christian church, but probably the test of time and the test of the scriptures is in looking directly at the teachings of the Old Testament and seeing what in fact they have to say in relation to either the functions of government and, more particularly, the duty of government in respect of capital punishment. I refer to the Old Testament judicial procedure. For the most part in this debate, when I have heard other members pontificate on the Old Testament admonitions toward the issues, the principles have been misapplied and misunderstood. There were five characteristics of the Hebrew, Mosaic law in relation to capital punishment. It is important to understand these five principles and how they apply to capital punishment if you are going to at all use the decalogue, and particularly the sixth commandment of the Ten Commandments in basing any of your arguments on capital punishment.

In many cases, Hebrew law was superior to our Canadian criminal law. There were five essential parts and considerations in the Old Testament judicial procedure. One was the standard of proof. In our Canadian system we have to establish beyond a reasonable doubt in the conviction of one accused charged with murder. Not so under the Hebrew law. In Hebrew law you had to establish certainty. In Deuteronomy 17:4 it says: "You shall enquire thoroughly". Secondly, as an integral part of Hebrew law it requires the testimony of more than one witness. In the Canadian system, circumstantial evidence, or one single witness in conjunction with circumstantial evidence, can convict. It was not so with Hebrew law. Deuteronomy 19:15 provided: "On evidence of two or three witnesses a matter shall be confirmed".

The test, however, does not indicate precisely what these witnesses must testify to. That is, must they be eyewitnesses to the crime or merely corroborators of the physical evidence? The internal logic of the passages implies to me that eyewitnesses were intended. First it is difficult to think that circumstantial evidence, even if fully corroborated, could often amount to certainty. Second, the administration of the death penalty by stoning was to be begun by having the witnesses cast the first stones (Deut. 17:7); this would be an excellent form of psychological testing to pressure a lying witness to reveal himself at the last moment, before the irreparable act had been accomplished, but would seem unlikely to influence greatly the behaviour of merely corroborative witnesses. Third, the definitions of some crimes require information that only an eyewitness could supply. For example, Numbers 34:16-24 makes a distinction between murder and manslaughter partially on the basis of whether the victim was killed by an object held in the suspect's hand or by an object thrown or dropped. Other than an eyewitness, who could tell?

● (1240)

Third, under Mosaic law the punishment for perjury was execution. In our Canadian penal system if one is found guilty of perjury there is a fine or a term of imprisonment. In Deuteronomy 19:10-19 we read:

If a malicious witness rises up against a man to accuse him of wrongdoing . . . then you shall do to him just as he had intended to do to his brother.