



Retribution Is an Obligation

According to the erroneous “seamless garment” theory, one cannot consistently oppose abortion without also opposing capital punishment. This theory ignores the reality that the right to life can be forfeited by an individual’s voluntary choice.

An aggressor who tries to kill another individual has forfeited his right to life if the only way the intended victim can save himself is to kill the aggressor. An unborn child is not an aggressor, nor can he voluntarily forfeit his right to life. A murderer, however, may properly be held to have forfeited his right to life by subjecting himself to the rightful power of the state to impose the death penalty.

The state has the right to impose the death penalty. But one may reasonably disagree as to whether or not that power should be exercised at a given time or place or for certain crimes. Thus, one may consistently oppose, on prudential grounds, the implementation of the death penalty while also opposing legalized abortion. It is inconsistent, however, to oppose the death penalty for convicted murderers while favoring it by abortion for innocent unborn children.

The three purposes of criminal punishment are rehabilitation, deterrence, and retribution. While civic rehabilitation is irrelevant with respect to the death penalty, that penalty does in fact deter homicide in some cases. The basic justification for capital punishment, however, is retribution.

Professor Walter Berns noted: “Our schedule of punishments reflects what we have been made ashamed to admit now, namely that in addition to the effort to deter crime, we punish in order to pay back, to retribute. Retribution constitutes a justification for punishment, and, I shall argue, it is altogether proper to pay back a murderer in kind. Our schedules of punishment are an effort to make punishment fit the crime; to agree with this principle is to agree that retribution should play a role in punishment.” Professor Berns properly relates retribution to righteous anger:

That anger is not reprehensible. Anger is the sentiment aroused by the sight of injustice, and is therefore, intimately allied with justice — and civil society requires justice. But that anger has to be tamed, and the local police alone cannot do it. I mean, the police protecting the suspect at the police station cannot tame that anger unless they can assure that righteously angry crowd that the murderer will be paid back. But there is more in this than immediately meets the eye: that anger is satisfied when retribution is exacted, yes, but that righteous anger is also rewarded when retribution is exacted. And that righteous anger should be rewarded, for its basis is the sentiment that to murder is wrong. The law blames murder when it punishes the murderer; the law praises those who do not murder when it punishes that murderer, and in this way deters murder.

The execution of Adolf Eichmann is an obvious example of this retributive “pay back” for murder. When society attaches the ultimate penalty to murder, society stigmatizes it as the crime of crimes and promotes respect for innocent life in a way that operates incidentally to deter homicides. Indeed, one consequence of abolishing the death penalty for murder is the development of a public attitude that murder is an offense qualitatively no different from embezzlement, burglary, and other crimes punished by imprisonment. This is especially true when murderers, as other criminals, are generally eligible for parole. In the process, respect for innocent life is lessened.

The common good requires that the punishment fit the crime, whether that crime be a theft of a bicycle or an ax murder. As an exercise in retribution, punishment serves to right the balance of justice that is disturbed by the crime, provided that the punishment is appropriate. Suppose, for example, that the



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assassin (whoever he might be) of President Kennedy were apprehended and properly convicted of that crime. And suppose that, after conviction, he were sentenced only to perform 30 days of community service. The nation would be properly outraged, because that grossly inappropriate sentence would be unjust to the community and contrary to the common good. It would diminish respect for the principle — which is essential to a peaceful and just society — that each person is responsible in appropriate measure for his voluntary acts. Even for a murderer, however, a reasonably lesser penalty might be justified by special circumstances, such as extreme youth of the defendant, provocation, etc. And a criminal penalty might be entirely inappropriate on account of some kinds of insanity. But, apart from special circumstances, there are some crimes, such as deliberate murder or treason, for which death can be the only appropriate penalty.

The death penalty should be supported and imposed only with reluctance and with scrupulous procedural safeguards. Prudential objections may be legitimately made to its use in a particular country or time. Thus, the Catholic bishops of the United States, while recognizing the power of the state in principle to impose the death penalty, have repeatedly opposed its use in this country because of its discriminatory application and because, in their opinion, it leads to “the further erosion of respect for life in our society.” This is not an argument of faith but of prudence. Such prudential objections do not deny the power of the state to impose the death penalty when needed to restore the balance of justice for the good of society.



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