



*The Death Penalty: An Historical and Theological Survey*, James J. Megivern, New York/Mahwah, N. J.: Paulist Press 1997, 641 pages.

By Wayne Northey

“In this important study, James Megivern offers readers a comprehensive history of the death penalty in the West. He explores the development of the death penalty chronologically through the early, medieval and modern periods while also providing geographical surveys. He concentrates on the debate over its use by theologians and philosophers, and illustrates the inconsistencies in Western thinking on its merits.” This according to the back cover. There is added on the inside cover a claim that rings true: “*The Death Penalty* includes more information on the history of thinking about capital punishment than is available in any other English work.”

There are twelve sections to the book, each taking us through an historical era since the time of Christ. There is also a “Preface” in which the author explains that he had found it puzzling that no English-language standard church history text asked “How it had come about that churchmen in the High Middle Ages had adopted a position of staunch support of this singular practice of deliberately destroying human life? (p. vii)” Hugo Bedau, noted author/researcher on the death penalty, asks a similar question in the “Foreword”: “How does it come to pass that the religion founded in the legacy of Jesus of Nazareth would for centuries – indeed until a decade or so ago – not merely tolerate but actively defend death deliberately and intentionally inflicted as punishment as a right of the state and as a desirable and necessary institution? (p. xi)”

Megivern indicates that there were clusters of centuries in which particularly important historical developments of Christian attitudes towards and practices of the death penalty occurred. They were:

- The fourth and fifth centuries when the church adjusted to post-Constantinian status as legal then sole “established” religion of the Empire.
- The eighth and ninth centuries when the church aligned with newly ascendant Frankish barbaric powers.
- The eleventh to thirteenth centuries that saw the emergence of the “papal monarchy” and its resort to and support of increasing lethal force.
- The fifteenth to seventeenth centuries that saw the rise of lonely protest movements (Lollard, Anabaptist, Quaker) that resisted by then universal application of torture and the death penalty by the church.
- The eighteenth to twentieth centuries that began with Enlightenment attacks on church practice and endorsement of the death penalty, and continued from secular and Christian sources to the time of the book’s writing.

In the prologue to the early church era (“On Interpreting the Bible”), Megivern indicates that undoubtedly, the presence in the Old Testament law codes of capital punishment for up to thirty-six offences gave rise to “the kind of central position [pro-capital punishment] that it [gained] in Christian history (p. 10).” And “In the history of Christian

theological legitimation of the death penalty, Genesis 9:6 has probably been cited more frequently than any other text as basic proof of the propriety of humans executing fellow human malefactors (p. 15).” That the entire pericope, Genesis 9:1 – 6, and verse 6 in particular, fairly bristles with textual problems if forced to support the death penalty, Megivern rightly indicates. He does so similarly with the Romans 13:1 – 6 text. “This passage vies with Genesis 9:6 as the most popular and frequent proof-text invoked to justify the practice of state executions over the centuries (p. 17).” After again demonstrating the textual difficulties with such a conclusion, he asserts: “There is widespread recognition that texts... must be approached in a broader way than ahistorical proof-texting (p. 18).”

In a collection of essays on the death penalty the reviewer has read, the editor underscores the consistent pro-death penalty voices throughout the Christian era as proof of divine approbation. Megivern indicates the contrary: the pre-Constantinian church (pre-fourth century) was generally anti-death penalty, which dramatically changed during the era of Constantine. The author summarizes: “Once Christianity had become the state religion, the imperial values articulated in Roman law tended to overwhelm gospel values... As a result, the legacy of Constantinian-Theodosian Christianity to subsequent ages was highly ambiguous on the ethics of killing, whether in the case of war or capital punishment. Less and less attention was paid to that most troublesome of the teachings of Christ: the prohibition of the taking of revenge (p. 50).”

What began to bedevil the church, and for centuries, was “The intractable problem of what to do about heretics [that] gradually led churchmen into the quicksand of lethal repression (p. 55).” And with that grew not only massive church-sanctioned exercise of capital punishment, but also its theological justification despite univocal contrary New Testament witness.

The Waldensians of the early 12<sup>th</sup> century first elicited the church’s rejection of a “group” as heretics. Ironically, the issue of their “heresy” was mainly opposition to the death penalty! “It is thereby one of the oddest legacies in Western church history, resulting in a strangely skewed discussion that made preachers of the ‘good news’ diligently elaborate arguments for the state’s right to kill wayward members (p. 103).” This is akin to American Southern preachers’ ubiquitous defence in the 19<sup>th</sup> century of slavery. (“The parallels between approving slavery and approving capital punishment have always been disturbingly close (p. 384).”) As the medieval period wore on, “war” on heretics increased to fever pitch. Otherwise great spiritual leaders like Thomas Aquinas were drawn in. In a comparison of the “body politic” to the human body that was repeated often by Christian theologians, the Nazis, and many other totalitarian leaders, Aquinas wrote: “Therefore, if any man is dangerous to the community and is subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good (p. 117).”

The Protestant Reformation fared no better. “While the major Protestant Reformers called for change in many other things, they had no objection to the death penalty as such (p. 141).” Luther wrote: “Let no one imagine that the world can be governed without the

shedding of blood. The temporal sword should and must be red and bloodstained, for the world is wicked and is bound to be so. Therefore the sword is God's rod and vengeance for it (p. 142)." John Calvin oversaw the execution of heretic Michael Servetus October 27, 1553 in Geneva, with overwhelming Protestant approbation.

With the establishment of the *auto-da-fé* at the 1215 Lateran Council, and the consequent Inquisition, administrators of the Papal States devised ever more exquisitely cruel means of torture to accompany the death penalty. In Catholic and Protestant jurisdictions, a "Gallows-Pietism" developed as well, whereby the condemned went to the gallows as "a special work of God, a providential occasion where proper dispositions for a good Christian death were ideally enacted in a grand public liturgy from which all could learn important lessons in both living and dying as good Christians (p. 162)." Executions had become, throughout Protestant and Catholic Christendom, part of upholding the "sacred order". They were therefore as natural and self-evidently legitimate as all other aspects of God-ordained society.

Megivern points to many minority voices of dissent, a fact that "contradicts the popular idea that initial efforts to get rid of capital punishment came as a relatively unexpected bolt from the blue at the time of the Enlightenment (p. 193)." The first voices against capital punishment during the long ascendancy of the Western death penalty were in fact Christian and biblical. Yet, from the mid-18<sup>th</sup> century "For the next two and a half centuries the secular proponents of a more humane society were, ironically, to be the chief defenders of the dignity of human life over against those who continued to invoke the Bible to justify the gallows... (p. 218)" Megivern details this history of growing rejection of capital punishment, clustered around three considerations:

- Biblical/theological
- Humanitarian
- Pragmatic/operational

In turn, the most compelling Christian arguments became: "(1) a fuller understanding of human rights, especially the right to life; (2) a fuller understanding of the gospel, especially the teaching of Jesus on relating to one's fellow beings and renouncing revenge; and (3) a fuller understanding of the need for consistency (p. 449)." Megivern adds: "That [Christian] message needs to be clarified and amplified in concrete terms: deliberate killing of human beings is not an acceptable option. The magnitude of a crime, its hideous, heinous, gruesome, grotesque circumstances and details, are not and cannot be the issue. Life is the issue, and deliberately destroying human life, all human life, any human life, is wrong, period. Punishment, yes. Death, no. People are not to be killed – not by any 'right' of the state, not in God's name, not for revenge, not to deter another, not at all. That is the nature of the right to life, the dignity of the human person, the law of God, and the teaching of Jesus (p. 459)."

The book is a masterful blend of the scholarly and the prophetic. Megivern charts a sure course through 2,000 years of Western church history. He does not miss the pathos either. Many times the text is punctuated with comments like: "If the legitimacy of deliberately killing people for having different beliefs had not become a Christian cultural

given, how different might Western history have been? (p. 186).” His discourse is erudite, respectful, and unflinching. He might have quoted Jesus with great irony in response to the longstanding majority Christian support for capital punishment and state-sanctioned violence in general: “Why is my language not clear to you? Because you are unable to hear what I say. You belong to your father, the devil, and you want to carry out your father’s desire. He was a murderer from the beginning... (John 8:43 & 44a).” He might also today advise reading *The Nonviolent Atonement* (Eerdmans, 2001) by J. Denny Weaver as theological corrective for this horrendous blot on Christian witness. Megivern says: “As is evident, the problem being addressed extends far beyond the issue of capital punishment as such, since this practice is symptomatic and only one piece of the much larger puzzle, the puzzle of accounting for the oxymoronic phenomenon of ‘Christian violence’ in its many forms (p. 4).” He rightly points to the work of and inspired by Christian anthropologist René Girard. (A masterful discussion of Girard together with Søren Kierkegaard is found in Charles Bellinger’s *The Genealogy of Violence: Reflections on Creation, Freedom, and Evil*. Girard’s most recent book is entitled, *I See Satan Fall Like Lightning*.)

To Megivern belongs the last word: “In the end, as in the beginning, the case for respecting human life prevails: from a Christian perspective, the death penalty has nothing to be said for it, and everything to be said against it (p. 489).”