Truth, Passion, and the Death Penalty

Can we be both just and merciful?

D. Brent Laytham

What do you think about the death penalty? For it or against it, most Christians have strong opinions on the matter.

That's where the discussion usually starts: you tell me what you think about capital punishment and I'll tell you what I think. You give your reasons and I'll give mine. One of us might cite God's statement about capital punishment in Genesis 9:6 ("Whoever sheds the blood of a human, by a human shall that person's blood be shed; for in his own image God made humankind"); the other Jesus's refusal to impose capital punishment in John 8:2-11 ("Let anyone among you who is without sin be the first to throw a stone").

As a teacher of Christian ethics, I'm committed to having careful, courteous conversations about matters that matter. And in a Covenant context, conversing well about disputed matters brings to life a key dimension of our freedom in Christ.

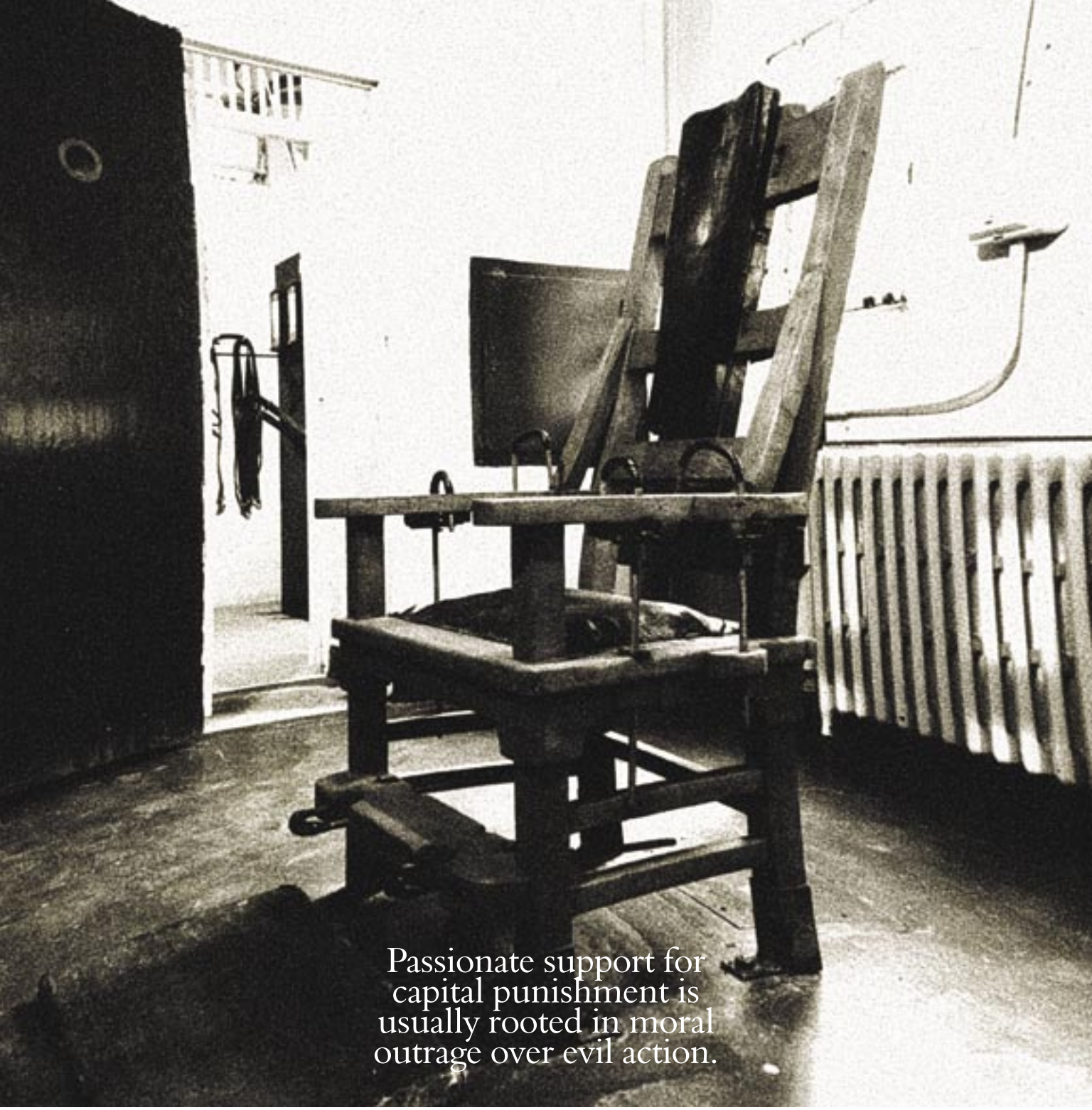
When the conversation goes badly, though, we often end up with more heat than light. We may stop really listening, or begin talking past one another. Before you know it tempers flare, passions surge, and we start throwing slogans like punches: "You're soft on crime," or "You're harsher than Jesus." And so it goes, finally degenerating into name calling: "You're a squishy blue liberal," and "You're a rigid red conservative."

As an ethicist you might expect me to deplore such fighting. I do. But I don't deplore the passion that lies behind it. In fact, our only hope of making progress is to begin not with our reasons but with our passions. There is something true about the emotions that arise on both sides of the question of capital punishment. The first step in a good conversation on capital punishment will be to see the point of the other side's passion.

Passionate support for capital punishment is usually rooted in moral outrage over evil action. When a child is molested, when a woman is raped, when a man is beaten to death, the truly human response is anger. Not a dispassionate assessment of mitigating factors, not an academic discussion of the likelihood of rehabilitation, but genuine wrath against what should not be. Anything less than moral outrage fails to acknowledge the severity of the situation—the violation of the humanity of the victim, the distortion of the humanity of the perpetrator, and the disruption of the fabric of society. The very heart of this passion is not the desire to say "no" to the continued life of the criminal but the desire to shout "No!" to the crime.

For Christians, this passionate "no" flows out of faith in God's revelation of how we should live, and God's rejection of our sin. Passion for the death penalty embodies a profound awareness that some acts are horrible evils.

On the other side, passionate opposition to the death penalty also embodies truth—about how things are intended to be. It is easy to miss the truth embodied in this passion. Its most



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important fuel is not the calculation that capital punishment fails to deter, not the conclusion that executing murderers is illogical, not the understanding that it is racially discriminatory, nor even the fear that we might execute the innocent.

At its core, the drive to oppose the death penalty rests in a passion for reconciliation and wholeness, what the Bible calls *shalom*. Those who oppose the death penalty shouldn't be seen as failures at moral outrage, but as successes at moral imagination. The root of this passion is not its shouted "No!" to the death penalty, but its resolute "yes" to the possibility of a community of reconciled relationships.

In Christians, this passion coheres with God's intention in Christ to reconcile the whole world, including the worst criminals (2 Corinthians 5:19). Passion against the death penalty embodies a profound moral awareness too; that all persons—even the "vilest offenders" as the hymnist put it—are offered a place in a reconciled community.

So we have passions on both sides that reveal important truths. The problem is that seeing one truth may obscure the other. Things get even more confused if we suggest that death penalty supporters are passionate for justice, while death penalty opponents are passionate for mercy. ➤

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Polarizing justice and mercy implies that they compete with each other; if justice wins then mercy loses and vice versa.

Sometimes it does seem like mercy and justice are opposites, but Christians must not accept that perception too easily. For we know that in God, justice and mercy do not wrestle for the upper hand. Rather, without strain or conflict God is always just and always merciful. At the same time, in the same activity, God is able to do justice and love mercy. God asks—indeed requires—the same from us (Micah 6:8).

So how could we both do justice and love mercy at the same time when it comes to the death penalty?

Answering that question requires us to expand our understanding of both justice and mercy. Consider for a moment the story of the prodigal son (Luke 15:11-32). Was the father's response to the prodigal at the end of the story justice or mercy? Remembering that the son got a party rather than punishment, we tend to think the father's response was mercy. After all, the father forgave the son for his original offense, and then gave him something that he did not deserve. Justice, so we think, would have been to pronounce the prodigal guilty and to give him what he deserved.

I want to take up each of these notions in turn. First, forgiving someone is not the opposite of finding them guilty. Rather, saying "I forgive you" implies that the "you" in question has done something that needs forgiving. Miroslav Volf puts it this way: "To forgive is to name the wrongdoing and condemn it." Guilt is implicit in the pardon.

Accepting forgiveness requires that we accept the truth that we have done wrong. So it is not the case that justice and mercy are opposed, that justice tells the truth while mercy pretends a fantasy. God forgives us not by setting justice aside but by justly naming and condemning our sin.

Second, justice is not necessarily "getting what you deserve." This idea has crept perversely into our readings of Scripture, but it is Greco-Roman rather than biblical in origin.

Get-what-you-deserve justice includes two things: a goal of orderly equilibrium where everyone is in the place they deserve, and a strategy of maintaining balance by responding in kind. This Greco-Roman idea conflicts with the Christian conviction that our very existence is an undeserved gift from our creating God. And this strategy is incompatible with our Christian conviction that salvation is available because God refused to respond in kind (Romans 6:23). If creation and redemption are just acts of a just God, then the notion of justice as "just desserts" is incompatible with our faith.

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Let's contrast the Greco-Roman and the biblical ideas of justice when it comes to punishment. The get-what-you-deserve approach to justice translates into a system of retributive punishment that tries to do two things: let the punishment *fit* the crime and let the punishment *fix* the crime. A punishment fits the crime by having severity or pain equal to the original injustice: "He got what he had coming." And if a punishment is fitting, it fixes the crime simply by being carried out. A convict who has completed his jail term says, "I've paid my debt," implying that the moral order of society has been restored and justice has been done.

But Christianity has a God-making-all-things-right approach to justice. This translates into a restorative system that tries to do three things: redress the harm done to the victims of the crime, address the alienation between victim and offender by effecting resolution or even reconciliation, and restore the offender to society so that both are healed. Both the goal and the method are thoroughly relational. (For description and examples of restorative justice, see the website www.restorativejustice.org run by Prison Fellowship International, the organization founded by Chuck Colson.)

I recently heard Christopher Marshall, who teaches New Testament at Victoria University of Wellington, New Zealand, compare retributive and restorative justice in the story of the prodigal son. Injustice has been done: the younger son has shamefully rejected his father and abandoned his elder brother.

The prodigal imagines a fitting penalty: "Treat me like one of your hired hands" (Luke 15:19). We might imagine a more fitting penalty: "Go back to the pigsty and starve!"

But the father's paradigm for justice is restorative rather than retributive. His goal is not to restore balance to the moral order but to restore his son to the family. His strategy is not to repay evil for evil (1 Thessalonians 5:15), but to do good for his guilty son. In this parable, the father reveals to us the characteristic action of God, who rights wrongs by giving and forgiving rather than by condemning and punishing.

So what does any of this have to do with capital punishment? After all, Jesus was telling a parable about the kingdom, not how to run the criminal justice system. Yet his first audience would have known that the prodigal's behavior was worthy of the death penalty according to Deuteronomy 21:18-21: "If someone has a stubborn and rebellious son who will not obey his father and mother, who does not heed them when they discipline him, then his father and his mother shall take hold of him and bring him out to the elders of his town at the gate of that place. They shall say to the elders of his town, 'This son of ours is stubborn and rebellious. He will not obey us. He is a glutton and a drunkard.' Then all the men of the town shall stone him to

death. So you shall purge the evil from your midst; and all Israel will hear, and be afraid."

When the compassionate father chose to restore relation rather than to enact a capital penalty, he was not omitting justice. Instead, he was choosing the largest and hardest form of justice—a restorative activity that requires forgiving offenders and healing victims and mending community.

Where does that leave passionate proponents and passionate opponents of capital punishment? Outside, like the older brother.

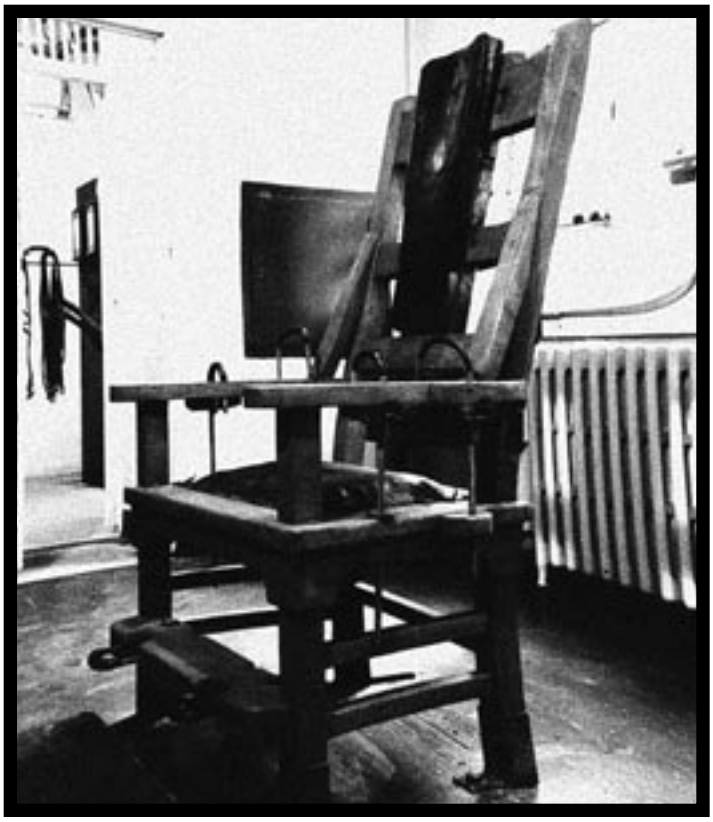
Those who support the death penalty are passionate that crime is an evil that must be rejected. Yet here their passion can morph into a rejection of the criminal as well. They stand outside, angry that a criminal has gotten off the hook. Their truthful passion against evil now prevents them from entering the house, entering a process of reconciliation and restoration. "No" to the crime has become "no" to the criminal, and "no" to relationship (the elder brother says "this son of yours" rather than "this brother of mine").

Those who oppose the death penalty may assume that they are already at the party. But they, too, may be elder brothers who haven't yet gone in. If their passionate "no" to capital punishment has not yet become an active "yes" to a renewed relationship with the perpetrator and victims, then they are just standing outside—doing nothing rather than doing justice.

The point of the parable is to act like the father, who enacts a merciful justice that offers real hope for reconciliation and wholeness.

The one who most clearly imitated the father in the parable is Jesus. As servants of Lord Jesus, we are not free to think what we want or to do what we feel. Instead, we let Christ take every thought captive (2 Corinthians 10:5)—in this case, our secular thinking about justice as balance—so that we can think and speak of God's true justice, which is sweeping into the world.

We offer Christ our passions, and he affirms that it is right to be outraged by evil and that it is also right to be hopeful for reconciliation. But he calls us beyond these passionate but partial truths to a discipleship that is willing to do justice God's way—by carrying crosses, forgiving enemies, and mending the world. Nowhere was that shown more clearly in recent memory than when the Amish community of Nickel Mines, Pennsylvania, forgave Charles Roberts for his merciless slaughter of five of their daughters.



That is how we live as citizens of Christ's kingdom. And living like that gives us hope and courage to ask the world to do the same, even if it doesn't yet know Christ or belong to his kingdom.

Think about some of the places where this invitation has been given and accepted: in New Zealand, generations of oppression of the Malawi people by invading Brits are now being addressed by efforts at restorative justice. In that setting, many of the crimes being adjudicated are crimes of property rather than violence.

Some readers will think this an appropriate response to such non-capital offenses, but still believe that crimes like murder demand nothing less than execution. Their position seems especially compelling when we consider crimes as calculating and heinous as the Oklahoma City bombing, and perpetrators as unrepentant as Timothy McVeigh.

Does such evil suggest that some criminals cannot be likened to the prodigal? No, for "all have sinned and fall short of the glory of God" (Romans 3:23); we have all "traveled to a distant country" and "squandered [God's] property in dissolute living" (Luke 15:13). Does blatant, unrepentant evil suggest that we not treat the parable of the prodigal as good social policy?

Here many will differ with me, but I can offer no better argument than the Truth and Reconciliation process in South Africa (perhaps the greatest miracle of the twentieth century), where bitter enemies gathered to tell the truth about the way they had murdered and tortured one another in order to condemn these evils by giving and receiving forgiveness, so that their society itself might be reconciled.

Why could or should we hope for anything less than that possibility where we live? Where that possibility is refused, we could enact the death penalty. But I think it better to stand like the father in the parable, with arms open wide in offer of restoration, for however long it takes. ❑