

# THE CRESSSET

*A review of literature, the arts, and public affairs*

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Easter 2006

## ethics

### Death Penalty Walking

*Tobias Winright*

Easter marks the resurrection of Jesus Christ from death and the tomb. It is God's vindication of the Innocent One who suffered, died, and was buried three days earlier. Apparently fearing that the occupying Roman forces might attempt to quell any perceived threats to their rule, Caiaphas, the high priest, demonstrated a bit of consequentialist reasoning: "[I]t is better...to have one man die for the people than to have the whole nation destroyed" (John 11:50; NRSV). Accordingly, the Roman governor of Judea, Pontius Pilate, who wished to avoid a riot and who was led to believe that Jesus was a zealous insurrectionist claiming to be king, ordered Jesus' execution by crucifixion. Considered one of the cruelest, most humiliating methods of capital punishment, crucifixion was reserved for slaves who were thieves and for rebels who were not Roman citizens.

Indeed, Jesus was an innocent victim of capital punishment, but Easter does not let those who executed him on Good Friday have the last word. This most important of all Christian holy days affirms that Jesus' life—his deeds and his teachings—offers an alternative way of life that is the true way that God wills for the world. Indeed, this new life in Christ is what we celebrate and thank God for during worship on Sundays throughout the liturgical year. As the late Methodist liturgical historian, James F. White, put it, "Each Sunday testifies to the resurrection. Every Sunday is a little Easter or rather every Easter is a yearly great Sunday." Thus, for early Christians, as seen in the *Epistle of Barnabas*, Sunday was regarded as "an eighth day, that is the beginning of another world..." The octagonal baptismal font found in many churches symbolizes the genesis of a new way of life. St. Paul wrote, "So if anyone is in Christ, there is a new creation: everything old has passed away; see, everything has become new!" (2 Corinthians 5:17)

Unfortunately, a quick glance at the daily newspaper—with its reports of violent crime, terrorist attacks, preemptive war, and state executions—calls into question this

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theological claim. Over two decades ago, I worked for four years as a corrections officer. During this time, I wrestled with this discrepancy between the ways of the old and the new creations. As one of the youngest officers assigned to the large maximum security jail, I often found myself witnessing human nature at its worst. Indeed, there were occasions when I had to dive for cover from hurled excrement, or when I had to defend myself (or others) against attack and possible harm. I have been spit at, yelled at, verbally abused, bruised, and punched. I recall thinking to myself while talking to some alleged murderers who were especially hostile that this person probably would not hesitate to kill me right now if given the chance. But during those years, I also met several others among the accused who were in anguish and who seemed quite penitent about their deeds.

As a Christian, I struggled with the use of force, the perpetual hostility, and the intense anger that often flared in that loud and smelly jail. I also began slowly to question the practice of capital punishment. Although this job probably contributed to a cynical attitude on my part toward people and the way things are in the world, I could not bring myself to embrace the enmity of some of my coworkers who expressed their desire to work as an executioner at the state prison in Starke, Florida, where “Old Sparky,” the nickname of the electric chair, was located. While I could not articulate it at the time, perhaps I subconsciously anticipated an observation by Glen H. Stassen that I would read years later: “Christians who remember their Lord was unjustly and cruelly given the death penalty have a hard time being enthusiastic about imposing the death penalty on others.” Many Christian ethicists—myself included—are for a number of theological reasons opposed to capital punishment (reasons that I hopefully address will in a future column). Here I wish to focus on the question of how we respond to the reality that capital punishment is continuing to be imposed on innocent persons today, just as it was imposed on the Innocent One on the cross two millennia ago.

According to the Death Penalty Information Center, the number of executions in the United States has waned in recent years, and citizen support for capital punishment also is diminishing. (See their informative website at <http://www.deathpenaltyinfo.org>). One major reason for this trend is increasing concern about the possibility that innocent persons are being sentenced to death. Since 1973, 123 people (at the time I write this) in twenty-five states have been exonerated and released from death row because of evidence of their innocence. As such cases have received media coverage, more Americans have come to question the institution of capital punishment. In contrast to Caiaphas’s method for ethical reasoning, a longstanding saying in American criminal justice is that it is “better that ten guilty men go free than that one innocent man be punished.”

The execution of innocent persons is the focus of Sister Helen Prejean’s latest book, *The Death of Innocents: An Eyewitness Account of Wrongful Executions* (Random House,

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2005). Nominated for the Nobel Peace Prize numerous times, Sr. Prejean is known for her bestselling book, *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* (Random House, 1993), upon which Tim Robbins's successful motion picture, *Dead Man Walking*, with Susan Sarandon playing the part of Sister Helen, was based in 1996. As in the first book, Prejean provides a moving account of her experiences accompanying two men to their deaths at the hand of the state. However, unlike *Dead Man Walking*, in which the two men were guilty of their crimes, *The Death of Innocents* provides disquieting details related to the conviction and execution of two possibly innocent men.

To be sure, this is one of the main reasons why in recent years several states, such as Illinois, have placed a moratorium on the death penalty. These states are putting executions on hold until solid assurance can be given that no mistakes and no injustices are being made. In addition to these concerns about the possibility of executing innocent persons, there are also statistics that call into question the fairness of the practice of capital punishment—such as racial bias, incompetent legal representation, bias against the poor, and geographic disparities. The jury is also out on whether capital punishment truly serves as a deterrent against violent crime. One wonders if the criminal justice system, a human institution, ever can get to the point where it will not make such mistakes or be fraught with such injustices.

After all, as Prejean noted in her initial book, “Anything that human beings do can go wrong.” We and our institutions are finite and often err. I readily admit that I saw and made mistakes when I wore a uniform. Of course, nearly every inmate I met attempted to assure me of his innocence. Most were proven guilty at trial, yet some were found innocent. Mistakes are also made during trials, leading to the conviction of innocent persons. Even more disturbing, as Prejean points out, is that some mistakes may not be quite so accidental or unintentional on the part of law enforcement or prosecutors. As Reinhold Niebuhr was so adept at reminding us, we and our institutions are both finite and prone to sin.

Niebuhr's observation should encourage humility on our part as we pass judgment on the accused. Of course, a capital case is not the occasion for private vengeance by the victims or their loved ones. It is the state's duty to punish justly on behalf of society. However, just as individuals need to “do justice...and to walk humbly” (Micah 6:8), so too ought we to expect societal institutions, such as the criminal justice system, to carry out justice humbly and cautiously. In his *An Interpretation of Christian Ethics*, Niebuhr wrote, “Society must punish criminals, or at least quarantine them, even if the executors of judgment are self-righteous sinners who do not realize to what degree they are involved in the sins they seek to suppress.” I think the “executors of judgment” indeed ought to realize the possibility that “they are involved in the sins they seek to suppress.”

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Such a realization should give us pause when it comes to capital crimes, especially since we live in a society where violence is often glorified in film, in video games, and in everyday conflict situations—in a “culture of death” of which Pope John Paul II warned. Niebuhr himself appears to imply that imprisonment (“quarantine them”) would be the more appropriate response to crime. Indeed, later in the same book he observed that capital punishment is “probably ineffective as a deterrent of murder.” However, it should be noted that Niebuhr refused to invoke the principle of the sanctity of life as a reason for abolishing capital punishment. This, he thought, “would result in an ironical preference of the life of the guilty to that of the innocent.” Here is where Niebuhr and Prejean part ways.

Although, like Niebuhr, Prejean raises concerns about the mistakes and sinfulness of society and its institutions, she nevertheless advocates the abolition of the death penalty based on the principle of the sanctity of life and based on her attempts to answer the question of how to embody God’s love both for perpetrator and victim, as well as the families of both. She regards each person, regardless of their guilt or innocence, as *imago Dei*, the image of God, and as thereby possessing sanctity of life. This is a theological claim not rooted in whether a person deserves or earns God’s favor or our respect. It is a dignity that has been given graciously to each human being by the Creator. This is why the late Pope John Paul II wrote in his 1995 encyclical *Evangelium Vitae* (The Gospel of Life), “[W]hoever attacks human life, in some way attacks God himself.” Echoing Genesis 9:6, the pope views the murder of an innocent human being as a violation of his or her sanctity of life as the image of God. Like Prejean, he also believes, “Not even a murderer loses his personal dignity.”

Although Prejean in her most recent book rightly opposes capital punishment based on the possibility that innocent persons have been executed or remain on death row awaiting execution, her overall stance against the death penalty actually is based on much more than this. This is why she is opposed also to the execution of guilty persons. Of course, this does not mean that Prejean rejects punishment itself as implemented by the state. Indeed, she supports life imprisonment without parole for the worst violent offenders.

Obviously this does not make up for the loss of the innocent victim’s life, but does even the execution of the guilty perpetrator accomplish this? If not, and if the practice of capital punishment continues to remain fraught with possible human mistakes, such as the execution of innocent persons wrongly convicted, then perhaps instead of having more “dead men walking” we should have the “death penalty walking.” †

Tobias Winright teaches Christian ethics at Saint Louis University.