

Kit Kat Club of Columbus
“Our Peculiar Institution”
by David A. Van Dyke, Ph.D.
February 19, 2002

While working on my doctoral dissertation on the antislavery movement of the nineteenth century, I discovered that plantation slavery was a kind of macabre tourist attraction for curious northerners and visiting Europeans, who would often make trips to the south in order to witness slavery first hand. When slave owners and other southerners were asked by their inquisitive visitors about slavery, they would attempt to explain it by referring to it as, “Our peculiar institution.” It meant, I suppose, “Our cherished way of life—our tradition—something perhaps unpleasant but so complex that you’d never understand.”

I can’t stop thinking about that phrase, “Our peculiar institution,” especially in light of what I think is another one of our “peculiar institutions,” namely the death penalty in America. I graduated from seminary without having given much thought to capital punishment. The highly civilized and enlightened state up north, where I grew up, did not and does not have capital punishment. Moving to Ohio I encountered the issue, when after a 35-year moratorium the State of Ohio executed Wilford Berry. To my surprise, I found myself conducting his funeral service one-week later. That experience, as well as my subsequent friendship with another Ohio death row inmate, John Spirko, has marked the beginning of a journey for me in terms of my own thinking regarding the issue of capital punishment.

As the date of the Wilford Berry execution was approaching, and before I had a chance to fully think through and develop my rationale for opposing the death penalty, my basic theological grounding and understanding told me that it was fundamentally wrong. Working through the arguments and learning the facts served to reinforce my original instincts.

When I agreed to present my Kit Kat paper, and randomly selected this date, I did not realize that it was the third anniversary of Wilford Berry’s execution, let alone the date of yet another Ohio execution. Now, I know that Presbyterians believe in predestination and providence, but let’s just say that in speaking to you tonight about our “Peculiar Institution” known as the death penalty, I will attempt to uphold the very tradition of the Kit Kat Club, by examining an important issue for our time, made all the more timely by today’s headlines. I do so not as a lawyer or legislator, but as a citizen who is outraged at what was done today in my name, and as a pastor whose theology has confronted and clashed with the prevailing politics of the day.

Capital punishment has been with us since the beginning of time. It is the basic story of human conduct and touches on almost every aspect of human culture. It also involves religion at practically every turn. At the outset, it must acknowledge that perhaps the single most influential factor in the widespread Christian acceptance of capital punishment comes from the Bible itself. If death had not been so strikingly represented as a divinely ordained penalty for dozens of human misdeeds, the practice of executing

wayward human beings would never have gained the kind of acceptance that it did, from the early Church and its popes to many of the early church fathers down to modern-day preachers with a knack for media exposure.

Without getting sucked into a discussion about biblical interpretation, and the specific passages often cited to support capital punishment, it must be noted that both the Hebrew scripture as well as the New Testament are often cited by proponents of capital punishment. But it must also be noted and simply stated, that the Enlightenment and the introduction of critical methods in biblical interpretation have fundamentally changed the way the Bible is read and understood. The kind of literal proof-texting of scripture, for example, that allowed previous generations to apply directly onto today's culture the Hebrew law codes from the ancient Israelite theocracy—or the attempts at a literal application of the apostle Paul's letters, which were written to specific churches dealing with specific situations—such attempts to use the Bible in this way are no longer valid or credible, and opens up those who try to the legitimate criticism of self-selection and sloppy exegesis.

And while the Bible continues to be used by people on both sides of the argument, I am comfortable knowing that the real burden of proof is on those using the Bible to support capital punishment, and not the other way around. The pre Enlightenment biblical literalism of the past has given way to more sophisticated ways of reading and understanding scripture.

But as clear as the biblical injunction against capital punishment is to me, I am even more disturbed by the mountain of evidence and statistics that clearly seem to support the abolition of the death penalty. Of the roughly 22,000 murders that happen each year in this country, only 250 death sentences are issued. If we were to begin systematically executing everyone in America convicted of murder, we would have to begin executing over 400 people a week, every week of the month, and every month of the year.

The fact is, less than one percent of those sentenced to death is actually put to death. This means that we have become quite adept at arbitrarily selecting a tiny handful among those convicted of murder to actually be executed. And we do not necessarily pick those who have committed the most heinous crimes, the most revolting and destructive atrocities—rather we pick the poor, the black, the friendless, the life's losers, those without competent private attorneys to defend them, we pick the illiterate and the mentally ill.

In fact the system of deciding who dies seems so arbitrary, subjective and unfair, that only the system of judging competitive figure skating seems to have more flaws.

Perhaps most unsettling, is the realization that of the more than 4000 people who were executed in this country between 1930 and 1990, 53% of them were black, while blacks comprise only 12% of the American population.

When one considers that the overwhelming majority of criminal homicides are committed between people who have a connection with one another, either as lovers or as husband and wife, or parents and children, it means that murder is largely an intra-racial event. That, however, does not ring true in sentencing. Of that 53% of blacks who were executed, 85% of them were convicted of killing a white person (Bedau, p.368).

These alarming and undeniable statistics reveal the ugly and racist truth within our system. When was the last time a white millionaire was put to death in this country? Old-fashioned Calvinists might refer to this as a kind of double predestination. Not only are you black, but you had the misfortune of killing a white person.

Examples of this arbitrary and subjective sentencing can be seen here in Ohio. Hamilton County, with a smaller population than Franklin County, and a smaller murder rate, has more people on death row than Franklin and Cuyahoga counties combined. Franklin County, with more murders, has 12 people serving on death row, while Hamilton County, with fewer murders, has 51. And of the 51 on death row from Hamilton County, 10 of those were convicted based on the testimony of jailhouse snitches, a notorious source of unreliable misinformation.

Contrary to popular belief, carrying out the death penalty is not cheaper than an actual life sentence. After all the appeals and court costs, it is three to six times more costly to execute someone than it is to imprison them for life. The burden on the courts is immense. In California and Florida, the state Supreme Court spends half of their time reviewing capital cases. The U.S. Supreme Court is inundated as well.

Of the 5000 death sentences imposed since 1977, 2,000 of them have been overturned because the original defense counsel was deemed incompetent. The growing willingness of judges to impose a death sentence even when juries recommend a life sentence should also be examined. One study found that 350 people convicted of capital crimes in the United States between 1900 and 1985 were actually innocent, and of these, 23 were put to death.

The United States, with its highly refined legal system of checks and balances, seems incapable of imposing the ultimate sanction with any sense of fairness and equality. It's like the *New Yorker* cartoon of the lawyer sitting behind the large mahogany desk, asking his clients, "Now tell me, just how much justice can you afford?"

Perhaps the weakest of the popular arguments is that the death penalty serves as a deterrent to crime. There is simply no credible, scientific evidence to support that statement. For well over 40 years, criminologists have studied the question of deterrence by a variety of methods. They have compared homicide rates in countries and states that did and did not have the death penalty, or that actually executed people more and less frequently. Some of these studies compared large aggregates of abolitionist and retentionist states, others compared states based on geography and socioeconomic factors that might affect homicide rates. Some studies compared homicide rates in states before and after the abolition and reinstatement of the death penalty, as well as homicide rates

following executions. All in all there have been exhaustive studies on the subject of deterrence and without a single exception, none of them has found that the death penalty had any statistically significant effect upon the rate of homicide or murder (Bedau, p.355).

The very real threat of losing ones life serving as a deterrent, should have become invalid as an argument following the outrageous acts of religious and political desperation on September 11. And Christians making the claim that the death penalty serves as a deterrent to crime are forgetting an important piece of their own history. Early Christians in the Roman Empire were members of an illegal religion, that could be punishable by death, and yet Christianity's ranks were not deterred from swelling even under that possible threat.

Around the world, the death penalty is increasingly seen as being inconsistent with the highest standards of human rights, either in international law or in a growing number of national courts. Nearly half of the world's countries have abolished the death penalty in law or in practice. The international tribunals set up to try war criminals in Bosnia and Rwanda cannot impose the death penalty as it is seen as too severe and inhumane.

This makes the United States something of a puzzle. On the one hand, it can be argued that no other country has done more to promote human rights, at least as a topic of international concern than the United States. Our legal protections for accused individuals, have historically been considered among the most stringent and well established in the world.

And while the number of people put to death in the United States lags well behind countries like Iran, which has a annual execution rate of about 110, and well behind China which executes around 3,500 people annually, the United States is particularly severe and open to criticism when it comes to the execution of juveniles. Only four other countries, Iran, Pakistan, Saudi Arabia and Yemen join the United States in executing people who were under the age of 18 at the time of their crimes. Perhaps we need to ask ourselves if we're comfortable with the company we're keeping?

While the evidence against the death penalty seems overwhelming, it continues to lose in the court of American public opinion. Today, around 65% of Americans polled indicate that they favor the death penalty. While that represents a decline from an all-time high of 80% support, those numbers are a mile wide and an inch deep and in many cases stem from a lack of options presented to the one questioned. When people are given the option of life in prison without the possibly of parole, the support actually erodes enough to favor life in prison over death sentences.

Kimberly Cook, author of *Divided Passions*, which studied America attitudes toward both abortion and capital punishment, argues that our attitudes are shaped less from reason than they are from emotion. While the subjects interviewed in her book articulate the traditional arguments of sanctity of life, the freedom of the individual not to err badly, and the morality of retribution, Cook concludes that attitudes on capital punishment, like

abortion, are determined less by reason or argument than they are by a person's basic personality type and general outlook.

Not surprisingly, authoritarians craving order and discipline, or those desiring a return to what they see as "old-fashioned" God-fearing, flag-waving American values—those people want murderers and child-rapists and others executed. On the other hand, squishy, tortured and conflicted liberals, who tend to shy away from making absolute judgments about right and wrong, as well as a small but growing number of people with deeply held religious convictions, naturally they want to resist the taking of human life.

If what Cook says is correct, then it would seem that there is little point in trying to change America's mind regarding the death penalty, through arguments alone. It would also seem to place today's modern-day abolitionists at a distinct disadvantage. But I for one am not willing to concede that point. I sense there is a growing unease over this issue and was shocked to read in last Saturday's *Dispatch* that Governor Taft had received a total of 8,461 letters, petitions and phone calls regarding the Byrd execution. Of those, only 10 supported the execution. I'm even more surprised that the Governor's office would leak that information and can't help wondering what that means.

I tend to believe that education is working. To that end, and to increase awareness and fight the numbing complacency that comes from frequent executions, I am ready to consider that it might be time to go public with our executions rather than continuing them as sterile events happening behind closed doors when no one is paying attention.

While those in high offices often present the death penalty as a solution to the very real issues of crime, it is in actuality a legislative way of avoiding the issues of crime. Championing the death penalty does nothing to solve the problem of crime. Sadly, we do not seem to have elected officials working creatively to solve problems, rather today's politicians work to deflect attention away from their lack of imagination or real solutions, by settling for cheap rhetoric about being tough on crime. The analogy is similar to what biblical scholar Walter Brueggemann argues is the real reason many mainline denominations today are arguing and fighting internally over homosexuality. He says, "If they weren't focused on that, they'd have to figure out what to do about all the poor people."

Because the rational arguments against the death penalty have thus far failed to carry the day, the only explanation for the public's insistence on the death penalty can be understood at an emotional level. It is not about justice but retribution. Certainly as a Presbyterian, one of God's frozen chosen, emotionalism makes me nervous. But our very democracy has been leery of emotionalism and mob rule from the very beginning.

When some argue that those who have murdered have forfeited their right to life itself, it must not be forgotten that civilized societies have instituted systems of justice precisely to overcome private acts of retribution and revenge. What ever the justifiably angry and bitter and vengeful impulses that might come to any of us who suffers a disastrous

tragedy like having someone we love killed, the society's laws should be written not to gratify those impulses but to channel them into helpful, healing, life-sustaining directions.

Will Campbell is a southern preacher and writer. He's also a farmer. In his book, *A Soul Among Lions*, Campbell wonders if we as a nation don't get some depraved gratification from imposing the death penalty. He writes,

"I was once asked to debate the death penalty with a well-known scholar. He gave a lengthy and learned statement on why he favored it. I was embarrassed because I had no prepared remarks. So I said, 'I just think it's tacky,' and sat down. That led to confusion as to just what 'tacky' meant. Well, tacky means ugly, no style, no class. I didn't win the debate, but I do believe America as a nation has too much class, too much character, and too much style to go on sinking to the crude level of death practiced in executions (pp. 10-11).

Gratifying the impulse for revenge is not the business a government that espouses the humane and liberating ideas expressed in our Declaration of Independence and Constitution. Keeping the death penalty as an option reduces society and therefore humankind to its most base instincts. It is granting to the state, and thus to "We the people," the very god-like power of deciding who lives and who dies. Proponents of the death penalty and of the state's right execute, are in reality advocating a kind of idolatry of the state.

In the 1972 Supreme Court decision that struck down capital punishment, Justice Thurgood Marshall wrote the following words as a challenge, but also as an appeal to the highest ideals of the nation and its people. He said,

"At a time in our history when the streets of the Nation's cities inspire fear and despair, rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But the measure of a country's greatness is its ability to retain compassion in a time of crisis. No nation in the recorded history of man has a greater tradition of revering justice and fair treatment for all its citizens in times of turmoil, confusion, and tension than ours. This is a country which stands tallest in times of trouble, a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values that lie at the root of our democratic system. In striking down capital punishment, this Court does not malign our system of government. On the contrary, it pays homage to it. Only in a free society could right triumph in difficult times, and could civilization record its magnificent advancement. In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute. We achieve a major milestone up from barbarism and join the... other jurisdictions in the world which celebrate their regard for civilization and humanity by shunning capital punishment."

During my journey into this issue, I have come to learn two very powerful lessons. First: in this life, we don't go out and find causes and issues to embrace, rather they have a way

of finding and embracing us. And second: I have learned that rarely in life do we think our way into new ways of acting, rather we act our way into new ways of thinking. Perhaps it's time for the State of Ohio to act—to remember its proud history and the role it played in an earlier abolition movement, and to once again take up the cause of abolition, not simply for the sake of those on death row, but for the sake of each us and the civilized society we long for.

Thank you very much.

Bedau, Hugo Adam, *The Death Penalty in America*, Third edition, Oxford University Press.

Campbell, Will D., *Soul Among Lions: Musings of a Bootleg Preacher*, Westminster John Knox Press.

Cook, Kimberly, *Divided Passions: Public Opinions on Abortion and the Death Penalty*, Northeastern University Press.

Megivern, James J., *The Death Penalty: An Historical and Theological Survey*, Paulist Press.

Morris, Norval, & Rothman, David J., eds, *The Oxford History of the Prison: The Practice of Punishment in Western Society*, Oxford University Press.