"On The Peculiar And Paradoxical Nature Of The Death Penalty" or "Why We Pacifists Should Think Twice Before Opposing Capital Punishment"

I did not say *cease our opposition to it*, just think twice about it.
An unconcluding essay on a philosophical postscript, by K. D. Kragen (c. 1989)

Just-Life

What is the consistent-life-ethics? Who is the seamless garment network? Are there really a growing number of people out there who are both "pro-life" (anti-abortion) and "pro-peace" (peace and justice, eco-justice pacifist)? As far as the media is concerned no such constituency exists. Unbiased and balanced as the legitimate public media seeks to be, on this particular point – whether National Public Radio, BBC, TV, newspapers, magazines – you are either part of the anti-abortion, conservative, Christian Right (some Catholics are lumped in here), or pro-choice, pro-women's reproductive rights, liberal left ("liberal" Christians and Catholics get slotted in here). As far as most of the media is concerned there just are no alternatives, radical or otherwise.

It's been some two decades since the rise of the modern pro-peace/pro-life movement and what has come to be called *consistent-life-ethics*. And I believe the issue of capital punishment, a perennial sticking point among us consistent-life-ethic people, affords an exceptional means of retrospect and reevaluation of this growing Third Force in American socio-political reality.

For those unfamiliar with the notion of consistent-life-ethics, a brief historical overview might help. Adherents of consistent-life-ethics have tended to emerge from two widely divergent back-grounds; some came to the movement out of a moral dissatisfaction with the "traditional conservative right" while others came to it out of a dissatisfaction with the "traditional liberal left." Thus from both sides of the political spectrum has grown a politically non-aligned consensus. These individuals are often referred to as "consistently pro-life" (on the evangelical side), and "the seamless garment network" or "the radical center" (on the Catholic and peace-&-justice side).

Since the early 1970s, many theologically conservative pro-life evangelicals have worked to regain a vision for peacemaking and justice keeping, asserting that pro-life issues do not end at birth, but apply to all human beings, especially the oppressed. This kind of thinking emerged out of such Christian institutions or organizations as Fuller Seminary, Westmont College, Wheaton College, Azusa Pacific College, Denver Seminary, Gordon-Conwell, InterVarsity Christian Fellowship, Evangelicals for Social Action, The World Evangelical Fellowship, Prolifers For Survival (now called Feminists for Life), and JustLife Political Action Committee.

Then, in 1981, one of the most respected, politically non-aligned Christian peace-&-justice groups, *Sojourners*, added to its agenda opposition to abortion. The people at *Sojourners*, quite individually and intuitively, came to the realization that the protection of the oppressed against violence must extend to pre-natal human life. Other groups from the disillusioned left have since joined them forming The Seamless Garment Network (with its publication *Harmony*) and Feminists For Life of America (previously, Prolifers For Survival).

There are also myriad local and state groups developing a grass-roots consistent-life-ethic witness, including Buddhist and wholly secular groups. It is important to note that individuals and groups within the consistent-life-ethic movement need not be actively involved in all aspects or issues of the movement, but only philosophically supportive of the notion of consistent-life-ethics as an underlying value and approach to all faith and action.

Among major groups of the consistent-life-ethic movement there exists a growing consensus of opinion if not on the strategic details at least on the principles and undergirding philosophy of consistent-life-ethic thinking and action: concerning, for example, non-violence/ non-retaliation, alternatives to (not just opposition to) abortion, support and economic justice for the poor, homeless,

and marginalized, ecological justice, nuclear or general pacifism, a just and moral foreign policy, and *responsibility in investment* (economic, corporate justice). One issue however has continued to thwart the movement's surprisingly substantial unity: *the death penalty.*

The Pro-Peace/Pro-Life Divide

What is it about the death penalty that makes it so controversial? Is its controversial nature a function of some unfortunate pro-capital punishment baggage brought into consistent-life-ethic thinking from past socio-political biases on the part of many "progressive evangelicals?" (Those from a more liberal political and theological traditions might think this is precisely the problem.) Or is there something philosophically intrinsic to the nature of the death penalty which sets it apart from other peace, justice, and pro-life issues generally agreed upon by those in the consistent-life-ethic community?

On the part of many in the consistent-life-ethic movement, opposition to the death penalty is taken for granted as an obvious central tenet of the movement. For other consist-life ethic people (myself included), it is just not that simple. For those who are more theologically conservative (or aligned with historic Christianity/Judaism) – even if they are inclined to oppose the death penalty – taking a stand against capital punishment is not an obvious or straightforward matter. Rather, for some of us, the death penalty is an oddly unique case, with special philosophical and theological problems and implications which *must* be addressed before accepting opposition to it as a central part of a consistent-life-ethic creed.

It is therefore necessary to examine the nature of the death penalty in terms of (1) why it is the single major issue which does not enjoy a consensus of opinion within the consistent-life-ethic movement, and (2) what it is about the death penalty in virtue of which many consistent-life-ethic thinkers and activists exhibit a special caution or concern.

In speaking of the death penalty, I refer to a sentence of death handed down to persons who have consciously, with malicious purpose and forethought, taken the life of another person. The Bible itself distinguishes between premeditated murder and accidental or involuntary homicide (Exodus 21:13-14; Numbers 35:11; Deuteronomy 19:14-13). The 6th Commandment is concerned only with first degree murder. I exclude from the discussion those more questionable sentences of death given in cases such as what some call *treason*, political sedition, or a threat to national security (these politicized uses of the death penalty have absolutely no biblical sanction or precedence, and thus have no immediate bearing on Judeo-Christian traditions and attitudes about capital punishment).

As we will see, the two major consistent-life-ethic camps do have similar position statements. First, there are those of the *Seamless Garment Network* and traditional peace and justice groups, who are generally old-timers in the peacemaking business. The Seamless Garment Network's statement reads: "We the undersigned are committed to the protection of life, which is threatened in today's world by war, abortion, poverty, the arms race, the death penalty, and euthanasia. We believe these issues are linked under a consistent ethic of life. We challenge those working on all or some of these issues to maintain a cooperative spirit of peace, reconciliation, and respect in protecting the unprotected" (*Harmony*, v.1, n.6, July & August 1988, p. 10; recently, racism has been added to the above list of threats to peace & life).

Second, the *JustLife* consistent-life-ethics statement reads: to "Work for an end to the nuclear arms race, promote just policies for the poor, protect the lives of the unborn" (JustLife pamphlet, "When you don't what to Choose Between Justice and Life, Choose JustLife"). This pamphlet goes on to say, "JustLife's consistent prolife stance is rooted in the belief that every person has been created in God's image. This fact forever stamps all persons as being of immeasurable worth.... JustLife supports governmental programs that empower the poor to become self-sufficient...[and] provide appropriate assistance for those unable to meet basic needs.... JustLife opposes all abortions, except when

necessary to save the life of the mother.... JustLife demands that society provide other options than either the trauma of abortion or motherhood without adequate support. A consistent prolife stance will insist that government should promote programs that offer adequate health care, needed child care, economic support, assistance for families of disabled children and adoption alternatives. [JustLife seeks] to work on these three concerns with a sensitivity to all the areas where life is threatened today." (Note: as of July 1993 the work of *JustLife* has been taken over by *Evangelicals for Social Action*.)

Similarly, the statement of Evangelicals for Social Action reads as follows: "Nurtured by the Chicago Declaration of Evangelical Social Concern (a statement made by 40 Evangelical leaders in 1973), our agenda includes not only an adherence to the NAE [National Association of Evangelicals] statement of faith, but also to a pro-life stance on several timely issues: peace and nuclear disarmament, the rights of the unborn, wealth and poverty, the sacredness of the family, the elimination of racial and sex discrimination, human rights at home and abroad, the protection of the environment" (ESA form-letter). Both JustLife and ESA have supported the "Inclusive Equal Rights Amendment to the Constitution" which combines the ERA (Equal Rights Amendment) and the HLA (Human Life Amendment) sponsored by Feminists for Life.

Without doubt many from the "traditional liberal-left" are learning that being a consistently non-violent, peace and justice activist includes being consistently pro-life. Reciprocally, many "conservative evangelicals" are recapturing the fact that being consistently pro-life incudes peacemaking, justice-keeping, and ecological stewardship. Yet, the absence of any mention of capital punishment in the statements of JustLife and ESA is indicative of this one major disagreement or sticking-point between the two consistent-life-ethic camps.

Why this disparity? An exposition and analysis of Evangelical thinking on the death penalty will help answer that question, and a discussion of the *imago dei* (the image of God) is the place to begin.

The Death Penalty

In *Genesis* 1-9 we find the germinal ideas of the creation ordinances and the stewardship mandate to all humankind. Human beings, created male and female, bear the marks of their origin as described in *Genesis* 1:26-28 and spoken of in the New Testament: e.g., righteousness and holiness of truth (*Ephesians* 4:24); compassion, kindness, humility, gentleness, patience (*Colossians* 3:10 +12); human worth, all people being made in the likeness of God (*James* 3:9). One theme throughout the *Torah* is that we are moral and responsible creatures as bearers of the *imago dei*, "Ye shall be holy as I am holy" (*Leviticus* 20:7). We are responsible to reflect (live out) the moral and spiritual nature/image of God, to reflect and in this way testify to God's righteousness.

Whatever we believe concerning the details of the death penalty, such key passages as *Genesis* 9:6 testify clearly to the seriousness with which the God views human life. Whether we are for or against the death penalty, Christian theists ought to agree on the underlying universal principle, and it is precisely here where the paradoxical nature of the death penalty arises.

As part of the "Noahic covenant" it is written, "Whoever sheds [another person's] blood, by [us] their blood shall be shed, for in the image of God the God made [us]" (*Genesis* 9:6, NASB, gender accurate). In the final analysis, of course, we are all murders! Especially, is not the very blood of Jesus Christ on all of our hands? Nonetheless, the Lamb of God (Jesus) has condescended to pay the penalty in our place. It is thus divine blood which is shed – a life for a life – it is Jesus Christ's blood which covers our guilt forever.

Note that the death penalty injunction in *Genesis* 9:6 comes well before the Ten Commandments and the Levitical Laws. This injunction or principle makes direct allusion to the creation doctrine of humankind as bearing the image of God. "Furthermore," explains Walter Kaiser, "in no other instance of biblical jurisprudence is the reason for the infliction of a penalty stated to be

that man is made in the image of God.... [In terms of the 6th commandment, this does not mean], however, that the life of the accused is not also sacred. That is why the text insists on establishing intentionality as its criterion before deciding whether a person has deliberately plotted against the divinely esteemed and prized life of another person" (Walter Kaiser, Jr., *Toward Old Testament Ethics*, Academe Books, Grand Rapids, Michigan, 1983, p. 100+167).

Those who accept seriously the authority and veracity of the Judeo-Christian scriptures and worldview are admittedly stuck with this principle of a penalty of death for premeditated murder. This principle is inexorably tied to the very divinely fashioned nature of human beings! And, it is given in a context which does not relativize it to the specific period of the theocratic kingdom of Israel. Therefore, the death penalty must be taken as a *transcultural*, universally applicable moral principle of Scripture.

But, along with this judgment against the murderer, we should however recall that Cain, the very first murderer, was given by God a sentence utterly contrary to that demanded by the principle of capital punishment!

> And [God] said, "What have you done? The voice of your brother's blood [Abel] is crying to me from the ground. And now you are cursed from the ground, which has opened its mouth to receive your brother's blood from your hand. When you cultivate the ground, it shall no longer yield its strength to you; you shall be a vagrant and a wanderer on the earth." And Cain said to the Lord, "My punishment is too great to bear! Behold, thou hast driven me this day from the face of the ground; and from thy face I shall be hidden, and I shall be a vagrant and a wanderer on the earth, and it will come about that whoever finds me will kill me." So the Lord said to him, "Therefore whoever kills Cain, vengeance will be taken on [them] sevenfold." [Gen. 4:10-15, NASB, Gender accurate]

Thus, in Cain's case, God not only explicitly made exception to the principle of "a life for a life," but God went to great lengths to set up the situation in such a way that no others should take it upon themselves to carry out the judgment of death against this infamous murderer. We can go two ways with this passage. We can write it off as a special case having no bearing on the question of the legitimacy of the principle of capital punishment, or we can accept its relevance to the whole issue and see what can be made of it.

I am not sure how one could support the first move, while taking serious the authority of Scripture. The biblical text itself leaves no options but to take both *Genesis* 4:10-15 and 9:6 as relevant parts of the big picture concerning the sanctity and intrinsic worth of human life. And, even though the Old Testament text sets out a number of crimes as punishable by death, it still held deliberate murder to be the primary, paradigm case for use of the death penalty. "While there apparently was a 'ransom' or 'substitute' payment available for all other crimes that demanded a capital punishment in the Old Testament, *Numbers* 35:31 explicitly denies this option in the case of first degree murder" (Walter Kaiser, Jr., *Toward Old Testament Ethics*, Academe Books, Grand Rapids, Michigan, 1983, p. 165).

Based on *Genesis* 4:10-15 and 9:6, we see that God puts at least as much if not more weight on the expression of the infinite worth of human life created in the divine image – *vis-a-vis* the principle of capital punishment – as on the actual practice of capital punishment. For alongside the law is also the Biblical emphasis upon grace and mercy. Justice may be met in the application of either law or grace, and while the law on the one hand and grace-mercy on the other may be considered mutually exclusive, I do not see why the same mutual exclusivity should hold between justice and grace-mercy. (Think about this correlation for a minute before going on.)

Now, Walter Kaiser concludes that the Cain murder case does not bear on the present-day applicability of capital punishment, though I am unconvinced by his reasoning. Other theologians likewise disagree with Kaiser's conclusions concerning the applicability of the death penalty since the close of the Old Testament (e.g., cf. Derek Kidner *in Genesis: An Introduction and Commentary*, Tyndale, London, 1987; and Norman Anderson in *Issues of Life and Death*, InterVarsity Press,

Downers Grove, 1978). Consider also the fact that God did not require the lives of either David or St. Paul for their premeditated murderous deeds – David's out of lust, and Paul's out of religious-political zealotry.

The Paradox

Capital punishment is a strangely paradoxical expression of the infinite worth of human life. The facts of the fall, God's concern for human life, the tensions between law and grace, all leave us with a Kierkegaardian conundrum or tension. On the one hand, we have the infinite, intrinsic, and objective value placed on every single human individual—as bearing the image of God. On the other hand, we have the explicit expression of that normative, objective value in the principle of capital punishment: the forfeiting of one's life for the taking of another's, a life for a life, death for death. Then, to cap it all off, not only did God make exceptions, but God made the ultimate exception for all of us in the vicarious, propitious, substitutionary death and atonement of Jesus Christ. (Is it not ironic that Jesus was sentenced to death by the Roman Government not for murder at all, but for "treason against the state"?)

I am not primarily concerned here with whether capital punishment should or should not be supported. My point is that capital punishment is inherently more problematic than *all* the other major issues agreed upon by consistent-life-ethic proponents. One can be an unmitigated pacifist (as I am) and still appreciate the special and difficult nature of the Biblical injunction for capital punishment in cases of first degree murder. Personally, however, I see two problems which make the practice of capital punishment by the state if not morally wrong at least realistically untenable and mostly insupportable.

First, there is the problem of "just who is the state" which is to wield this sword of capital punishment? At any particular point in time, there is the problem of pointing out such an abstract entity as "the state." (For a classic discussion of this problem, see John Howard Yoder's *The Politics of Jesus*.) Deciding who the state is may be easier in some cases than in others. In situations where the governing body or ruling authority is based on a political document, then the question arises whether the state is the body of propositions and ideals expressed in such a document, or whether the state is the particular ruling person or party.

Then there are problem cases were various political groups are vying for power. In such cases, is the state constituted by the group that occupies certain designated government buildings, or the group the has the most military might or that gets more things done or that has recognized diplomatic relations with other states (and how many other states and which ones)? Such cases abound. During WWII was the French state ruled from Paris or Vichy or Berlin? Or was the French state constituted by those ruling from a place in exile, only temporally displaced by fascist "pretenders to the throne"?

There have been many societies and countries in recent years where one has been hard pressed at any point in time to pick out a single ruling authority: Burma, South Africa, Nepal, Cambodia, Rwanda, Haiti. Because of this fact alone, I would tend to take a stand not against *the principle of capital punishment in abstraction*, but against *the practice of capital punishment*.

The second problem I have with supporting the practice of capital punishment is that I believe mercy should be a visibly overriding principle in life and death matters, even on the national level. (A stand by no means easy!) This idea may not be too politically viable in the real world, but it is clearly and characteristically Christian. Of course, I am less able to demand of others, especially the "governing powers that be," to agree with me on this level of conviction.

Concluding Considerations

I believe that the above discussion at least helps to clarify why, of all the consistent-life-ethic issues, the death penalty is a special and often divisive issue, and one which is not so easily lumped in with other peace and justice, seamless garment, consistently-pro-life positions.

On the one hand, how we work out the details of being anti-nuke, pro-life/anti-abortion, pro-women's rights, pro-poor, eco-sensitive, non-violent justice-seekers will differ from organization to organization, even from individual to individual, as we each are lead by the God and by conscience. On the other hand, with capital punishment it is not just the details or means of implementing our views wherein we differ, but rather it is the very nature of the issue itself that is cause for disagreement, that is, whether capital punishment in cases of first degree murder can be ever justified or not, and whether such justification is purely theoretical or practical or both.

I would like to offer the following suggestions to my sisters and brothers in the pro-peace/pro-life movement. For the Seamless Garment Network side of the movement, you might be willing to reconsider the automatic and unqualified inclusion of "opposition to the death penalty" in your consistent-life-ethic statements. Or at least there ought to be an acknowledgment of its singularly problematic character. It might be helpful simply to add some sort of *proviso* or clarification to anti-death penalty statements. Consider the following: "We oppose capital punishment in practice while acknowledging its conceptually divine intent as, in abstraction, a major exemplification of the sanctity of all human life." (There are likely less philosophically obtuse ways of expressing this somewhat ineloquent locution.)

To the Evangelical, ESA-camp, we should be more careful not to simply maintain the old pro-death penalty, conservative party-line on this issue. We should continue in-depth study and analysis of capital punishment in order to better develop a thoughtful and publicly articulate position on the issue in light of consistent pro-life values, acknowledging the importance of such public clarity to the overall unity of the consistent-life-ethic movement.

The moral Third Force, the consistent-life movement, has come far in the last two decades and will no doubt continue to affect change in national domestic life and foreign policy in the coming, third millennium. Hopefully, soon, the American press will face up to the existence and articulate voice of the consistent life ethic movement.

May the Lord lead all of us in humility and faithfulness as we seek to incarnate God's kingdom in a seamless garment of consistent non-violence and pro-life activism, and as we "work out our salvation" in fear and trembling and joy, worshipping the Prince of Peace and looking for the blessed hope.

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