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The Death Penalty and Just Peacemaking

Justin Randall Phillips

Wars have winners and losers, casualties, unforeseen consequences of collateral damage, death on top of death. Given this grim reality, perhaps the tools of war, including its rhetoric, should be beaten into ploughshares for the sake of reimagining how to address moral issues like capital punishment. After all, because the death penalty has claimed enough victims already, there is no need to add to the enmity between those still conflicted by the issue. I propose a cessation of hostilities vis-à-vis this theological claim: The war on the death penalty is over, because death and all its means have already been defeated. John Howard Yoder offers a helpful image to illustrate the point:

Christ is now reigning, He is now Lord, yet not all His enemies have been subjected to Him. . . . The enemies of Christ are in the situation of a warring nation whose defeat is sure because of the overwhelming forces brought to bear by the adversary, but which continues to resist for some time before the final surrender.¹

Living within this new reality of Christ's reign, we do not need to wage war on the death penalty, as it is apparent that the death penalty is in its last days. Therefore, those who believe the theological claim that the war is over must consider the practices that make peace and herald the good news of Christ's kingdom. After all, the manner in which Christians approach moral issues matters deeply for seeing even some approximation of positive social change.

Why exactly is the death penalty in its last days?

It is understood by many state legislatures that the death penalty is a radically more expensive system to prop up rather than one that has alternative sentences as its harshest penalty. Numerous cost studies show this to be true.² But perhaps the financial matter should not be a part of the debate, because if this policy could deliver justice and increase public safety, then many will deem the cost to be an irrelevant means toward achieving these priceless societal ends. The fact is, though, that the death penalty does not deliver on what it promises. First, *justice*, biblically understood, emerges not from the retributive punishment of "eye for eye" as mentioned in Levitical law (Lev 24.20), but rather through the terms *tsedeqah* and *mishpat*, which refer to "*delivering justice* (a justice that rescues and releases the oppressed) and *community-restoring justice* (a justice that restores the powerless and the outcasts to their rightful place in covenant community)."³

1. John Howard Yoder, *The Christian Witness to the State* (Eugene, OR: Wipf and Stock Publishers, 1998), 9.

2. Cost studies done in Florida, Kansas, Maryland, New Jersey, and North Carolina all show maintaining the capital punishment system to be vastly more expensive than a system that has life without parole as its harshest punishment.

3. Glen H. Stassen and David P. Gushee, *Kingdom Ethics: Following Jesus in Contemporary Context* (Downers Grove, IL: InterVarsity Press, 2003), 42.

The judicial system in America fails, first and foremost, murder victims' family members, dragging them through a constitutionally-mandated appeal process that often lasts decades. To add insult to grievous injury, many states do not have compensation plans in place for families of victims of violent crime in order to address their lasting financial needs. These families lose not only a loved one but often a financial contributor to the household. Perhaps if we were pure utilitarians, we could accept capital punishment if it at least deterred violent crime, and thus contributed to public safety. Alas, the death penalty fails on that measure, too. For instance, a survey of five hundred police chiefs ranked the death penalty as the least effective tool within the criminal justice system as an effective deterrent to crime.⁴ A public policy that neither delivers justice, nor keeps the public safe, should surely be on its way toward extinction.

Another glaring error with the death penalty is its unfair application: Since the death penalty was reinstated in 1976 there have been over 732,000 murders. Of those cases 1,422 ended in executions, with nearly another 3,000 inmates awaiting execution. The vast disparity begs the questions of precisely *who* is selected for execution and *why*. We know that poor people who are unable to afford their own legal representation are more likely to be sentenced to death. Nationally, death rows are filled with people suffering from severe mental illness. The Death Penalty Information Center's annual report concludes: "Two-thirds of the 28 people executed in 2015 exhibited symptoms of severe mental illness, intellectual disability, the debilitating effects of extreme trauma and abuse, or some combination of the three."⁵ Race also factors into who receives the death penalty, often according to the race of the victim. For example, nearly eighty percent of those who have been executed were convicted for killing a white victim.⁶ In short, so much data shows the death penalty is not truly reserved for the so-called worst of the worst.

However, death penalty supporters maintain the system should be reformed, not repealed. This desire greatly underestimates the manner in which human fallibility infuses such unwieldy bureaucracies already, so much so that repairing the system would be a fool's errand given its minimal return to society. Were these ills to be cured, the existence of the death penalty would still leave the specter of executing the innocent, evidenced by the 156 exonerations since the death penalty was reinstated. This is a staggering level of incompetency and, given that troubling ratio of executions-to-exonerations, we can rest assured that innocent people have been put to death.

Capital punishment is further complicated by whether states actually possess a humane method to carry out executions as the Constitution proscribes. Three botched executions in 2014 (Ohio, Oklahoma, and Arizona) as well as state governments (Nebraska, Texas, and Arizona, to name but a few) scrambling to find *legal* lethal injection drugs have created an atmosphere of legal turmoil surrounding capital punishment. One could claim that there is no need for a war on capital punishment as the sheer dysfunction of the system has yielded secretive and flawed practices that, once uncovered, are leading to its own self-destruction.

Glen Stassen's Just Peacemaking Theory and Capital Punishment

Fuller Theological Seminary Christian ethicist Glen Stassen (b. 1936–d. 2014) was a longtime death penalty opponent in Kentucky and California. Stassen's thoughts are helpful to us because he understood the high cost of war better than most, as his father, Harold Stassen, was a member of Eisenhower's cabinet administration. The elder Stassen routinely challenged extreme ideologies within his political party in favor of more temperate paths. Harold Stassen was also a US signatory of the United Nations charter. His father's witness to make peace during a dangerous time of international nuclear threat made an indelible impression on Glen, leading to his study of theology and ethics and, ultimately, his career change away from nuclear physics.

The work for which Glen Stassen came to be best known, *Just Peacemaking*, emerged from a tired debate at a Society of Christian Ethics meeting over pacifism versus just war theory concerning the first Gulf War in the

4. Death Penalty Information Center (DPIC), "Smart on Crime: Reconsidering the Death Penalty in a Time of National Crisis" (October 2009): 6, accessed January 11, 2016, <http://www.deathpenaltyinfo.org/documents/CostsRptFinal.pdf>.

5. DPIC, "The Death Penalty in 2015: Year End Report" (December 2015): 8, accessed January 7, 2016, <http://deathpenaltyinfo.org/documents/2015YrEnd.pdf>.

6. Of the 1422 who have been executed, 1109 of those had white victims (78 percent). Execution statistics can be found via DPIC Execution database, accessed January 7, 2016, <http://www.deathpenaltyinfo.org/views-executions>.

early 1990s. The frustrating exchange among academics motivated him to develop a third way that offered concrete action steps in response to both poles of the debate. Stassen's method consisted of seven principles that were based on the work and experiences of political scientists, activists, and church leaders. He explains, "They follow from the nature of peacemaking and the nature of human government. They are based on widespread experience, common sense, and reason. . . . The principles of just peace-making theory are logically entailed in seeking to survive morally and physically in a world threatened by mass destruction."⁷ Throughout his life and work, Stassen raised the question "*How do we make peace?*"—recognizing that the failure to act by Christians, even through public policy, would simply lead to one side of the ideological spectrum winning the day. These are lessons we can apply to the death penalty debate.

Stassen held that the Sermon on the Mount (Matt 5–7), the largest public teaching of Jesus, demands serious attention as it details how disciples of Christ are to live in a world of competing kingdoms. Stassen's Christocentric ethic might be summarized by first acknowledging a sad reality of American Christianity: "When Jesus' way of discipleship is thinned down, marginalized or avoided, then churches and Christians lose their antibodies against infection by secular ideologies that manipulate Christians into serving the purposes of some other lord."⁸ For meaningful, lasting transformation to occur disciples must first acknowledge "the processes of destruction, the vicious cycles in which we find ourselves entangled", and then understand God's grace as deliverance.⁹ In other words, disciples should confess that we are not natural peacemakers and acknowledge that the conflict facing us may not be solely the fault of our enemies.

Jesus promotes direct actions—what Stassen calls *transforming initiatives*—to interrupt vicious cycles, the typical tit-for-tat manner of responding to being wronged: Christ gives concrete commands to "go, talk, welcome one another, and be reconciled"(Matt 5.23–24). Even when circumstances put the disciple in a position to respond violently, such as when the follower is struck (Matt 5.39), Jesus says to turn the other cheek, give up your coat, go the second mile, and to give to the one who begs. Disciples are called to love enemies and pray for them (Matt 5.44), which means taking the log out of our own eye (7.5). The process of praying, listening, and forgiving can truly change attitudes, possibly leading to a cessation of hostilities. Even though success is never guaranteed, disciples make the attempt to reconcile with others, because they understand themselves to be forgiven by Christ.

Just Peacemaking Theory as Applicable to Ending the Death Penalty

Any theory worth its salt must be tested, and the just peacemaking theory is a versatile methodology applicable to various settings and policy issues, including capital punishment. Furthermore, Stassen's approach is realistic without sliding toward the seeming hopelessness of a nontheological political realism. By the same token, the just peacemaking theory promotes a form of Christian social engagement, countering political quietism—a sometimes alluring posture, but ultimately an untenable one for those called to love their neighbors. The point for Stassen is to "join in—not only in the debate, but in the practices of healing," which he did in Kentucky and California during his teaching career.¹⁰

The first practice Stassen promotes is to *affirm common security*. One clear aim of all involved in the death penalty discussion is the desire to ensure public safety. Assuming this posture of one's interlocutors creates the atmosphere for respectful exchanges, and perhaps even social change. When I present across Tennessee, I have been pleased to reach a common understanding with individuals or groups who were resistant to considering the death penalty in a new way.

Second, all parties should *take independent initiatives* to end a harmful policy like capital punishment. Michael Westmoreland-White, a Stassen student, suggests that Christians get involved by starting or

7. Glen H. Stassen, *Just Peacemaking: Transforming Initiatives for Justice and Peace* (Louisville: Westminster/John Knox Press, 1992), 111.

8. Stassen, *Kingdom Ethics*, xi.

9. Stassen, *Just Peacemaking*, 59.

10. *Capital Punishment: A Reader*, ed. Glen Stassen (Cleveland: The Pilgrim Press, 1998), 6.

participating in prison ministries, finding ways to provide legal assistance to inmates, and writing op-eds for local papers to help change minds.¹¹ In Tennessee several groups exist to address very specific needs, including helping former inmates find work and housing, political advocacy for victims' families, educational opportunities for inmates, and support for the families of the incarcerated.¹²

Third, *talking with your enemy*—in this context one's political enemy—should be considered a countercultural act given our current political intractability. Members of Tennesseans for Alternatives to the Death Penalty, for example, have found it to be beneficial to meet with those who do not initially share our policy position. Spending time with victims groups (some of whom favor capital punishment), or even prosecutors and politicians, often brings revelations that would otherwise remain unknown to us. Learning other perspectives, even from those with whom you disagree, should not threaten your convictions; in fact, it can enhance one's position.

Fourth, *seeking human rights and justice* are the highest values in a democratic society. While some theologians see appeals to human rights as a watering down of our prophetic witness or a thinning out of our theological language, Stassen held that translation of our faith into a public language to be a gracious act. He writes:

The ethic of human rights can be a universal ethic, not because its *source* is a common philosophy believed by all people but because its *intention and application* affirm the rights of all persons. . . . The language of human rights is not merely ideals, nor merely a demand for "my rights," but a struggle of love and justice for fellow human beings who are oppressed.¹³ (Italics in the original)

Westmoreland-White says Christians do not have to choose sides between victims and the convicted. Instead, Christians should be in "active solidarity" with both parties, as well as their families, "remembering that their criminal actions do not exhaust their human identity."¹⁴ Once while speaking at a church in East Tennessee, a woman revealed to her fellow parishioners that her son was on death row. She had kept this secret, fearing congregational members might judge her for her son's mistakes. She sobbed for minutes as she tried to share her story. Her shame had kept her silent for nearly nine years within this church and thus it had robbed her of the blessing of Christian community. Cultivating an understanding of human rights might be a way to be in solidarity with all people who suffer, and thus provide the means of explaining how capital punishment affects many parties. After all, powerful stories provide the foundation for ending this horrible practice.

Fifth, we must *acknowledge vicious cycles* that impede the way for peace. This requires the vision born of the Holy Spirit to discern perceived threats that present obstacles to good-faith conversations. For example, a major component of ending the death penalty means educating state lawmakers, many of whom ran as populist candidates opposing the Obama presidency. Several of these legislators subscribe to ideologies that have led them to oppose some policies that have broad public support (e.g. healthcare reform). The easy temptation is to assume that all lawmakers within this camp will automatically support the death penalty, and therefore would not be worth our time to build a relationship. The reality is that some state legislatures like Tennessee are comprised of super-majorities (typically two-thirds of one party), so *the only path* to repealing the death penalty means working with the dominant party within one's state. This slow, hard work can also spark reflection about our own theological commitments. Stassen states, "How one understands the threat usually correlates with how one understands human nature, human dignity, and human sin."¹⁵ Simply put, there can be no separation of theological ideals from its implications for conceiving strategies for social change. Peacemakers must routinely practice self-reflection, as well as be members of a community that can identify

11. Michael L. Westmoreland-White, "How Renewal in Church Practices Can Transform the Death Penalty Debate" in *Capital Punishment*, 220, 224–225.

12. For example, in Nashville alone there exists many groups like Project Return (www.projectreturninc.org/) for released inmates; You Have the Power (<http://www.yhnp.org/>); Lipscomb University's Lipscomb Initiative for Education program with the Tennessee Prison for Women (<http://www.lipscomb.edu/salt/life-forum/>); and the No Exceptions Prison Collective (<http://noexceptions.net/>).

13. Stassen, *Just Peacemaking*, 156, 160

14. Westmoreland-White, 222.

and correct theological blind spots. Again, uncomfortable as it may be, hearing from differing perspectives from one's own helps us "remove the log from our eye" (Matt 7.5).

Sixth on Stassen's list, one such practice toward uncovering vicious cycles is to *end judgmental propaganda* or make amends for past transgressions. Return momentarily to our theological claim regarding Christ's lordship and the death of death: Because victory is assured, Christians never need to distort the facts of a situation. Instead, we should bear a truthful witness even when that courtesy is not returned to us. After all, the case *for* capital punishment is rather flimsy, with the overwhelming body of facts condemning the death penalty to be a fallible system, to say nothing of the clear theological arguments one could marshal against it. I confess, there is a near-constant temptation to pick fights—whether in person or via social media—with those who do not share my conviction about the death penalty's brokenness; however, discipleship, as well as being an effective change agent, often requires a rhetorical cease-fire.

Closely related to this point is Stassen's final practice: *work with other groups* for the truth. Building broad coalitions among unlikely partners is paramount for accomplishing social reforms. Obviously, following the practices of just peacemaking theory does not ensure success; to conceive of the theory in those terms would be to miss the point. Stassen's hope was to find workable solutions to address society's deepest needs, particularly where intractability and political stalemates reigned. The changing landscape of the national capital punishment debate is ripe for a new kind of engagement by Christ's followers.

Conclusion

Glen Stassen did not succumb to political activism as a zero-sum game, where one side would threaten the other with irrelevancy; he believed in engaging everyone, regardless of position, with respect. He also held that no one was beyond the reach of God's grace, not even those convicted of terrible, violent crimes. Above all, Stassen wanted to see transformation—whether in individuals, systems, or politics—as those mustard seeds signaled the in-breaking of God's kingdom. Keeping men and women from the death chamber through direct actions and unlikely partnerships was one such way to the witness a glimpse of the kingdom through the defeat of death.

The final defeat of the death penalty is coming. While capital punishment is becoming increasingly rare—both in executions and new death sentences—much work remains to be done, yet there is reason for optimism. Many new, diverse partnerships are leading to exciting developments, such as the death penalty's repeal in Nebraska, a movement led by political conservatives. Abolition legislation continues to be filed in numerous state legislatures each year with increasing bipartisan support. The death penalty is no longer the politically divisive issue it once was, opening the way for partners in peacemaking to offer concrete solutions that honor victims, protect the wrongfully convicted, save state budgets, and leave open the possibility for restorative and rehabilitative options for those convicted.

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15. Stassen, *Capital Punishment*, 4.