

Taking back what Saddam took

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Many around the world have spent many years waiting for the verdict handed down on November 7 2006. Saddam Hussein had been tried and convicted of ordering the execution of 148 villagers in 1982 after an assassination attempt on him. He has therefore been sentenced to death by hanging.

Newspaper reports carried stories of families and individuals who had been terrorised by Hussein's regime, and who could now begin the long slow process of healing deep wounds. Political leaders around the world responded to the news with mixed sentiments.

- US President George W Bush commented that 'There is still a lot of work to do in Iraq, but this is an important achievement on the path to a free and just and unified society. Saddam Hussein's trial is a milestone in the Iraqi people's effort to replace the rule of a tyrant with the rule of law.'
- Australian Prime Minister, John Howard, welcomed the verdict, saying that it was a 'triumph for the Iraqi people' and that 'the whole process of the trial is a sign of democratic hope.'
- British Foreign Secretary, Margaret Beckett, said that 'it is right that those accused of such crimes against the Iraqi people should face Iraqi justice.'

Yet other leaders, while welcoming the end of the trial, have expressed concern about the death sentence.

- The Vatican appealed against the sentence, while Finland, which holds the EU presidency, demanded that the hanging not be carried out. Both Amnesty International and the UN High Commission for Human Rights condemned the sentence.
- QC Geoffrey Robertson agreed it had been 'right to bring the former dictator to trial for genocidal attacks' but said the 'judiciary was not independent and Saddam should have been tried in a UN court.'
- While many groups and individuals do not deny the barbaric acts that Hussein carried out, some have questioned whether the sentence goes against the very heart of what the new Iraqi regime is about. As one commentator wrote, 'It's about the flawed logic of trying to usher in a new era of humanitarianism by engaging in acts that further dehumanize people.'
- John Howard responded that 'My views on capital punishment are known. I'm against it. I don't believe in it in Australia and I will always oppose it in Australia.'
- However for Alexander Downer, it is up to Iraqis 'whether they have the death penalty or not'; and some wonder if it is inconsistent for Downer to leave open the question of an Iraqi death sentence while also calling for clemency in the cases of Australians who are found guilty of crimes overseas and sentenced to death (such as in the recent case of Nguyen Tuong Van, or the ongoing cases of the 'Bali Nine').

What should we make of the sentence of death? (Some of what follows repeats our comments made at the time of Nguyen Tuong Van's execution.)

There is a paradox that springs from humanity's being in the image of God. People matter so much that to kill one of us seems to demand no less than that the life of the killer be forfeited. Yet to take the life of the killer seems to undermine the very preciousness of humanity that we seek to protect.

Christians reflect this paradox in their deep division over capital punishment:

- For some, the need of a life for a life is stitched deeply into the ‘justice-fabric’ of the universe. Old Testament law repeatedly invokes the death penalty, and so bears witness to this weave in the moral order. Therefore true justice still includes this weightiest of punishments.
- But for others, the death of Christ is the life taken finally to requite the world’s horrible evils. His death also reminds us of the final accounting before his throne. Whatever the OT laws may have been, now is the time for mercy.

How do we decide between these two views? Rather than deciding between them, perhaps a better way is to make sense of them both. After all, that is what judges and governments always have to do, whether or not they are aware of this biblical backdrop.

Old Testament law

Controversy over capital punishment is part of a wider dispute about the degree to which OT law is binding upon people today. To cut a long story short, two positions are wrong.

- It is wrong to think that OT law is ‘the law’ for Christians and others today. OT law was a body of law to govern the life of a community called Israel at a specific time and place. It cannot simply be placed upon any other community in any other time and place.
- It is also wrong to think that it is flawed and defective, or obsolete and irrelevant. OT law is an expression (in its time and place) of how God thinks about human social life in his world.

At least at this one time and place, the death sentence was considered a just judgment against those who had taken a life, and its logic was straightforward. Justice requires that wrongs be righted; righting of wrongs requires restitution; and punishment by death says ‘you cannot keep what you have taken from another’. (There are philosophical arguments about this logic that we can’t go into here.)

Therefore Christians who think OT law was not mistaken, usually cannot reject capital punishment entirely. But it does not follow that all communities should use it now.

For consider the specific context of OT Israel. What was to be done with a criminal? The only options were not to punish them, or to punish them with a fine, or corporally (e.g. by flogging), or capitally. There were no prisons, since a nomadic and agrarian people could not support such an institution. They used the death sentence in precisely the same way we used life imprisonment: as a ‘just’ sentence that also had the effect of removing the offender from the community. (Perhaps even today, societies that cannot afford a prison infrastructure may, for similar reasons, need to consider a death penalty.)

Also, the Bible itself never envisaged its OT laws as a simple system of mandatory sentences. Even from its earliest days it needed to be applied wisely. Also, an important principle of respect for the offender is introduced when in corporal punishment, judges must not give more than forty lashes, because if the offender is flogged more than that ‘your brother (!) will be degraded in your eyes.’ (Deuteronomy 25:3)

Judgments after Christ

Consider too the effect of the ministry and death of Christ. In his ministry, we see OT law being mercifully applied (John 8:3-11, although this text is not in the earliest manuscripts of the Bible); and after his death, we learn what it is to be judged in mercy.

For merciful judgment is the way of the cross. Although all deserved death, God graciously acted in mercy to forgive all who trust and rely upon Christ. Judges in ancient and medieval ‘Christendom’ therefore saw themselves as under a commuted death-sentence, and so learnt to temper their own judgments with mercy. The same is true today: each politician, policeman, judge and prison officer will one day face the judgement of God, as will each criminal.

We therefore now know ourselves as a kind of 'equal' to the one we judge. Just as in the OT law, no one may judge in a way that demeans or cheapens or forgets the image of God that the offender still retains, and the humanity that we share. We now call this attitude being 'humane', and humanitarian Westerners who oppose Saddam's death sentence have their deepest roots in Judaic and Christian soil, whether they realise it or not.

Therefore those to whom God entrusts 'the sword' (Romans 13:4), with the mention of this weapon reminding us of the way judges and governments use force, have to do two things:

- They have to pay attention to the justice-fabric of society. They have to take the thirst for revenge away from victims, and do public justice. People argue over whether this justice is for 'retribution', 'rehabilitation' or 'deterrence'. It is really a mixture of all three, except that it would be evil to do 'rehabilitation' and 'deterrence' if 'retribution' were not also happening. 'Retribution' is about someone who has made someone else to suffer also being caused to suffer in some public way. (Even though this suffering should be 'humane', many recoil simply at the thought of someone being deliberately made to suffer. But those who recoil need to explain what should be done instead for justice to be seen to be done.) The government also has to be *consistent* in its application of retribution, or else justice is not seen to be done.
- They cannot pretend to replace God. Their judgments are provisional, and in a sense, incomplete, because only God can judge in a way that finally satisfies us. They cannot, for example, make a criminal repent and weep for his sins: if only they could. And in addition, they have to remain aware of their basic equality with the condemned, and judge with mercy.

So we return to that paradox: people are precious enough to need serious judgments against criminals, but also precious enough that we have to think carefully about the fate of the criminal. Judges wield their governments' 'sword' in line with the need for justice that is woven into the fabric of human social life in this world, but also with that final justice that is coming in God's future kingdom on the horizon.

Should they wield it to kill Saddam?

Since Iraq does not share our historic cultural movement from the logic of the death sentence, through the cross, to a system when lifetime imprisonment is preferred as being at least a little more merciful than death, then it is hard to know whether justice will be seen to be done if Saddam lives.

Here is where these writers' knowledge runs out. From this distance, we cannot offer a meaningful opinion, because we don't know what justice looks like in that culture. But it is certainly clear that for that society to function well, justice for Saddam's crimes must be seen to be done. What that judgment will entail cannot easily be judged from this distance—which is why judges there are tasked to make that call.

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Sources/Further Reading:

Oliver O'Donovan, *The Ways of Judgment: the Bampton lectures, 2003*. Grand Rapids: Eerdmans, 2005

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