

**From: “Ask The Clergy,” St. Paul’s Episcopal Church, Fairfield, Connecticut**

**Question:** Is the state-employed executioner who throws the switch that kills a prisoner sentenced to death guilty of murder?

**Answer:** The employee who carries out a lawful order to put someone to death may (may) be guilty of unethical killing, but not of murder. That’s because murder by definition is “unlawful killing,” and at this moment in this discussion I am assuming that the judicial process under which the prisoner was tried and found guilty was itself a lawful, fair, scrupulous, and honest proceeding, and that the laws under which the condemned was tried are themselves free from moral taint (not laws that, intentionally or not, set up or permit to operate some ethically odious principle such as “only non-Caucasian males between the ages of 15 and 45 can be condemned to death for homicide”).

Under an ethically scrupulous and fairly administered legal system (not by any means ideals easy to attain), execution for murder can be considered ethically appropriate retribution for depriving someone else of life. This is an application of the biblical principle of equivalent deprivation, “an eye for an eye, a tooth for a tooth,” a principle that is widely shared also in cultures that are not rooted in the Judeo-Christian-Islamic tradition. The Bible, in fact, clearly approves of this kind of retributive justice, with many Old Testament texts calling for the death penalty for a host of infractions. That is partly why modern translations of the Ten Commandments in Exodus 20 change “Thou shalt not kill,” as older translations had it, to “you shall not commit murder.” The legal system in which the state is the offended victim who prosecutes crimes including murder is a huge improvement over the system of private revenge that preceded it historically, and still obtains in some parts of the world—and in the criminal underworld in societies where law and justice otherwise prevail.

It’s important to note, however, that even under these principles, anyone carrying out an order to execute someone has a moral duty to be sure that the order is “lawful.” The Nazi soldiers’ defense against accusations of genocide after World War II was, “I was just carrying out orders.” That defense was rejected by the Nuremberg court then and that rejection has been affirmed in other international courts since then. Therefore, a legally dubious or otherwise tainted process that condemned someone to death would leave an executioner who carried out the sentence ethically liable to charges of failure to reject an unlawful order—and arguably guilty of murder.

Yet ethical reasoning also permits (some people would say requires) us to propose that there are ethical standards that have an authority higher than the laws of ordinary justice. Such reasoning might claim that life itself is the absolute value for human beings, and that consequently ordinary law and justice can apply to ordinary situations involving goods and property, physical welfare, human rights and freedoms and the like—but not to situations that involve the taking of life itself.

Such reasoning underlies the decision of the Supreme Court a generation ago to outlaw capital punishment in the United States—and it also underlies the scrupulous procedural safeguards that were put in place in the judicial system to permit the return of capital punishment in recent years. Such reasoning also underlies attacks on the application of the death penalty that have increased in intensity in the past few years.

Opponents of the death penalty acknowledge that life has been taken, violating the most basic moral value; but they reject the principle of retributive equivalence—a life for a life—because they believe that 1) no human system of justice can be perfect enough to guarantee either a defendant's guilt or the fair application of the death penalty; 2) the underlying principle that absolutely values life is violated by the state in taking a life for any reason; and 3) because life once taken cannot be restored, the state is irremediably culpable if it takes the life of someone later proved to be innocent—and therefore should avoid such a tremendous risk by refusing to put anyone to death. This line of reasoning led the former governor of Illinois last December to commute the sentences of all state prisoners on death row.

Thus opponents of the death penalty also reject the argument that capital punishment deters potential offenders, on two grounds: there seems to be no empirical evidence that capital punishment in fact is a deterrence; and, following the reasoning of the previous paragraph, the state in fact wrongly encourages the taking of life by doing so itself. This last point speaks also to the situation that occasionally arises, when a confessed murderer proclaims a desire to be put to death; in such a case, the state still errs morally when it endorses the murderer's disregard for life by taking life even then.

So, in sum. Is the executioner guilty of murder? No, with the qualifications noted above. Is the executioner's job morally dubious? Yes. Is the state itself morally implicated in the execution? By the reasoning above, yes—if the absolute value is not law but life. And on balance, I find this valuing of life, over and above law, to be more consistent with the teachings of Jesus.

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