

ISSUES IN PERSPECTIVE

Dr. James P. Eckman, President
Grace University, Omaha, Nebraska
26-27 April 2008

PERSPECTIVE NUMBER ONE

CAPITAL PUNISHMENT: THE UNITED STATES STRUGGLES WITH ITS APPLICATION

Last week the United States Supreme Court handed down its long-anticipated decision on whether lethal injections as a form of capital punishment are unconstitutional. The 7 to 2 decision did little to clarify the debate. Several thoughts:

- First a review of the decision itself. The case (*Baze v. Rees*) originated in Kentucky, which is one of 35 states that use lethal injection as the means for capital punishment. (The injection is actually a three-drug “cocktail” that induces loss of consciousness, causes paralysis and stops the heart.) The primary constitutional question which was asked of the Court was whether this method, which can cause pain and which is often administered by those with inadequate training, violates the 8th Amendment’s ban on cruel and unusual punishment. Chief Justice John Roberts, writing the opinion, found that Kentucky’s procedures do not violate the 8th Amendment’s ban on cruel and unusual punishment. Even if the procedure does inflict pain, the case failed to show that the risk of harm was “objectively intolerable.” In other words, death row inmates must prove not only a demonstrated risk of severe pain but also that the risk is substantial when compared with available alternatives. Six justices concurred with Roberts, to varying degrees. Justices Clarence Thomas and Antonin Scalia argued that an execution is acceptable unless there is one “deliberately designed to inflict pain.” In his concurring opinion, Justice Stevens argued that the death penalty carries such high risks of error and discrimination, that it is unconstitutional. He did vote to uphold Kentucky’s practice because of precedent, but strongly suggested that legislatures and courts take up the constitutional question of capital punishment and declare it a violation of the 8th Amendment.
- Second, how will this decision impact the other states that practice lethal injection? (Nebraska is the only state that still uses the electric chair.) In light of this decision, executions in several states will no doubt resume. For example, in Texas, Alabama and other Southern states with large death row populations, executions will resume using lethal injection. But there will no doubt be a significant number of fresh legal challenges to lethal injection based on the new standard handed down by the Court. In other words, the moratorium on the death penalty will resume in many states, but the legal challenges will continue. In short, in terms of ending the debate, the *Baze* case settled very little.

- Third, does Scripture help in this matter? As with the issue of war, capital punishment is filled with intellectual and theological tension. This point in *Perspective One* does not deal with how capital punishment is practiced in the United States or any other country. Instead, the focus is the issue of capital punishment and whether one can make a biblical defense of it as a responsibility of the state. If humans bear God's image (Genesis 1:26-27), then taking the life of an image-bearer in a premeditated act of murder ethically demands just punishment. Killing a human being is an attack on the creator God. It is a rejection of His sovereignty over human life (see Deuteronomy 32:39). But is it just to make the punishment capital? I will argue yes. There are several key biblical passages that make the case for capital punishment as a just obligation of the state:

1. **Genesis 9:6.** As Noah exits the ark, God establishes a new relationship with the human race and a new code on which to base human relationships. Because of the Flood's destruction of all life, future generations might conclude that life is cheap to God and assume the same now for humans. However, the covenant affirms the sacredness of human life and that murder is punishable by losing one's life. The text, therefore, institutes the principle of talionic justice, or law of like punishment. It is not a harsh principle of justice, for it establishes the premise that the punishment should fit the crime. It is summarized elsewhere in God's Word as "an eye for an eye and a tooth for a tooth" (Exodus 21:23-25). The point of this covenant with Noah, then, is that God took justice out of the hands of the families of the deceased and placed it in the hands of human government, thereby eliminating the personal revenge and emotional anger.
2. **The Mosaic Law.** God's moral law revealed to Moses was not the first time God delegated the authority of capital punishment. It is central to Genesis 9:6 and is clearly implied in Genesis 4 in His dialogue with Cain (see especially verses 10 and 14). What God did with the Mosaic law was broaden the responsibility to include many other offenses: murder (Exodus 21:12; Numbers 35:16-31; working on the Sabbath (Exodus 35:2); cursing father and mother (Leviticus 20:9); adultery (Leviticus 20:10); incest (Leviticus 20:11-12); sodomy (Leviticus 20:13, 15-16); false prophesying (Deuteronomy 13:1-10, 18:20); idolatry (Deuteronomy 21:18-21); rape (Deuteronomy 22:25); keeping an ox that has killed a human being (Exodus 21:29); kidnapping (Exodus 21:16); and intrusion of an alien into a sacred place (Numbers 1:51, 3:10, 38, 17:7). The form of execution was normally stoning or burning.
3. **Romans 13:1-7.** Verse 4 is the key verse in this critical section on the authority of the state in our lives. It gives the state the authority to wield the "sword" in its role as the punisher of evil: "he (the civil ruler) bear not the sword in vain; for he is the minister of God, an avenger to execute wrath upon him that doeth evil." The word used for sword here is *machaira*, which refers not only to a sword used in battle, but also to a sword used in executions, as when Herod killed James, the brother of John, in Acts 12:1-2. Paul's use of this word gives strong support to the state receiving from God the authority to execute. It gives no help in deciding which crimes are punishable by capital punishment.

In summary, the principle of talionic justice, implied in Genesis 4:10 and 16, was clearly instituted in Genesis 9:6 and reaffirmed quite broadly in the Mosaic law. It is likewise power delegated to the state according to Romans 13:4. The New Testament did not negate the Old Testament standard of capital punishment. The continuity of the Testaments is affirmed.

- Is capital punishment a deterrent? Both the criminal justice system and theologians are divided as to whether capital punishment deters criminal behavior. When comparing crime rates in states that use capital punishment with those that do not, it is impossible to argue that capital punishment is a deterrent. It seems that one can make criminal justice statistics say whatever you want them to say. But, from the perspective of Scripture, this is beside the point. The view of capital punishment defended here gives focus to the fundamental biblical reason for capital punishment, namely killing an image bearer of God demands taking the life of the murderer based on the principle of talionic justice. Whether this form of justice deters further murders is almost irrelevant to the issue. Justice demands payment and the universal and binding principle that God instituted in Genesis 9:6 is as applicable today as it was in Noah's day.

See the *New York Times* (17 April 2008) on the case, the accompanying article by Adam Liptack, and the accompanying editorial in the editorial page. Also see James P. Eckman, *Biblical Ethics*, pp. 67-70.

PERSPECTIVE NUMBER TWO

IS THERE A LEGITIMATE WAR ON TERROR?

A recent book by Philip Bobbitt, *Terror and Consent: The Wars for the Twenty-First Century*, offers one of the best and most powerful arguments for a legitimate war on terror. I am reading the book now but believe it is important enough to summarize its major arguments for this *Perspective*. Together with his previous book, *The Shield of Achilles*, Bobbitt presents a compelling need for the US, and indeed all of western civilization, to change its foreign policy assumptions and strategies. Several thoughts:

1. As Niall Ferguson argues in a persuasive review of Bobbitt's work: "His central argument was that, in the aftermath of the cold war, the traditional post-Westphalian ideal [the treaty that ended the Thirty Years War in 1648] of the sovereign nation-state had become obsolescent. In the increasingly borderless world we associate with globalization, something new was emerging, which Bobbitt called . . . the 'market-state.' The state's relationship to its citizens resembles that between a corporation and consumers. Its counterpart—and its enemy—is the terrorist network." The challenge now is how does the market-state defeat the terrorist networks, since they are supported by traditional nation-states.
2. Bobbitt's central thesis is that today's terrorist network is like a "distorted mirror image of the post-Westphalian market-state: decentralized, privatized, outsourced and in some measure divorced from territorial sovereignty. The terrorists are at once

parasitical on, and at the same time hostile toward, the globalized economy, the Internet and the technological revolution in military affairs.”

3. The goal of the terrorist network is to turn the technological achievements of the West against it in a protracted worldwide war. Ultimately, the terrorist network seeks to create a Sharia-based “terror-state” in the form of a new caliphate. Weapons of mass destruction and other horrific tools are all possible weapons in this global war.
4. Bobbitt believes strongly that the West must overhaul its intelligence network in a radical fashion. Ferguson summarizes Bobbitt: “Yes, we really do need something like the abortive Total Information Awareness program, pooling every available piece of data and mining it for clues about the next 9/11. We also need to take large-scale precautions to ensure that constitutional and legal order do not break down in the event of a terrorist attack or natural disaster.”
5. Old foreign policy doctrines like deterrence or containment are obsolete. “The United States and its allies must recognize their common fate as the natural defenders of the society of states of consent. . . .” This new doctrine and new consensus must involve an up-front commitment to pre-emption,” which he actually calls “preclusion.” In short, Bobbitt believes that civil liberties as previously understood may need to be curtailed to win the war on terror. But this cannot violate our civilization’s commitment to rule of law.

As I am reading this book, I am struck by the narrowness and actual selfishness of the candidates currently running for president, especially Obama and Clinton. The US is in a deadly war against terror that threatens every aspect of our way of life. Bobbitt’s book should be read by every candidate and every citizen and his argument should then become the basis for debate and discussion as we choose our next president. We are short-sighted and actually rather stupid if we do not see this threat as Bobbitt sees it—real, prolonged and deadly!

See the book by Philip Bobbitt and the helpful review by Niall Ferguson in *The New York Times Book Review* (13 April 2008).

PERSPECTIVE NUMBER THREE

POSTMODERNISM AND THE 2008 PRESIDENTIAL CAMPAIGN

One of the tenets of the Postmodern worldview is the autonomous individual creating his/her own reality and defining words his/her own way. There is a radical hermeneutic to Postmodernism and it is deadly.

Rooted in the deconstructionist movement of post-World War II Europe, the Postmodern hermeneutic (the science of interpretation; how humans interpret and understand the written word) sees words as power; words can manipulate and control. Therefore, this new hermeneutic argues that in communication, there is no final or true meaning to words. The reader or speaker is sovereign; the reader or speaker determines the meaning of the text; the author is nearly irrelevant. Authorial intent goes out the window and the reader/speaker alone determines the word’s meaning. In the words of Alister McGrath (A

Passion for Truth, Downers Grove: Intervarsity, 1996, p. 186), “All interpretations are thus equally valid, or equally meaningless (depending on your point of view).” In addition to Postmodernism there is the doctrine of the autonomous self. Devoid of all authority, the Postmodern person defines and creates his/her own reality.

Consider how these Postmodern tenets are shaping the current presidential campaign and debate. Few would deny that Hilary Clinton lied about the incident in Bosnia, in which she described landing in a war zone, needing to duck from sniper fire, and running with her head down to avoid danger. This did not happen! As the pilot, news personnel and others challenged her account, CBS then found footage that clearly demonstrated the truth—there was no sniper fire; there was no running for cover; there was no danger. Mrs. Clinton and her daughter walked off the plane and were greeted by a young girl with flowers and a kiss!

But note how Mrs. Clinton responded to her clear lies and distortion of the truth: She said she “misspoke,” that she made a “mistake,” and that she is only “human.” Gene Edward Veith puts it this way: “Mrs. Clinton was following the postmodernist playbook: She constructed a narrative—an entire story, complete with conflict and action—to advance an agenda of power. In this case, using her own jargon, she fashioned her own identity so as to present herself as someone with ‘experience,’ in contrast to her rival Barack Obama.”

Mrs. Clinton is a classic Postmodern leader: Define your own reality in the pursuit of power. Redefine your own words and create something that is not true and make it true. Lying, misrepresentation and distortion are not words in the Postmodern dictionary. And this is a person some want to be president of the United States!

See Veith’s editorial in *World* (19/26 April 2008), p. 35 and James P. Eckman, *The Truth About Worldviews*, pp. 1-9.