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Religion and the Death Penalty: A Call for Reckoning
(review)

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culture, can only raise questions about human existence; with an eye to the kerygma Christian theology articulates the “answers” to literature’s—and culture’s—questions. Kort’s method is happily much messier. He finds in literature and other cultural expressions both questions and answers, and culture to him is always cultures. The book keeps good company with Kathryn Tanner’s *Theories of Culture: A New Agenda for Theology*.

What remains unclear to me is how Kort can privilege narrative as the form of discourse that is able to articulate place-relations most fully. Although I can see how fit storytelling is for this task, by excluding other literary genre Kort seems to violate the idea of “hybridity” he also embraces.

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Religion and the Death Penalty: A Call for Reckoning. Edited by Erik C. Owens, John D. Carlson, and Eric P. Elshtain. William B. Eerdmans, 2004. 294 pages. \$28.00.

In his essay on Christian witness, Richard Garnett rightly protests that, all too often, religious believers are viewed as unwelcome participants in public policy discussions. In a manner ironically analogous to advocates of the military’s “Don’t Ask, Don’t Tell” policy, critics of religious voices in the public square attempt to marginalize and silence those whose religious views are considered an embarrassing private practice (148). Yet, religious faith not only transforms individuals; it also challenges the mores of civil society.

Religion and the Death Penalty: A Call for Reckoning is therefore a welcome chorus of voices informed by religious faith on one of the most important questions of our time. The intensity of the debate over capital punishment has been heightened in the past few years due to the moratoriums on execution by the governors of Illinois and Maryland and the reversal of long-held, pro-death penalty views of prominent evangelicals and fundamentalists. Pat Robertson and Jerry Falwell, for example, opposed the execution of Karla Faye Tucker who had become a born-again Christian on Texas’s death row, yet failed to obtain clemency for her from the then governor George W. Bush. For these reasons, much is anticipated from this volume of essays by prominent politicians, judges, lawyers, theologians, and religious studies scholars, drawn in part from a conference on capital punishment held in 2002 at the University of Chicago Divinity School and sponsored by the Pew Forum on Religion and Public Life.

For some inexplicable reason, however, the editors chose to begin with a rather disappointing essay by Avery Cardinal Dulles, whose article focuses on defending the consistency of the magisterial teachings of the Roman Catholic Church on the death penalty. Arguments about the death penalty itself seem secondary, and deflect readers, particularly non-Catholics, away from the volume’s

underlying purposes of ecumenical conversation and dialogue with the broader public.

David Novak's essay on capital punishment and the Jewish tradition disavows such descriptive approaches and puts the volume back on track. Novak's argument focuses on two unique perspectives drawn from Rabbinic sources and their import for the role of capital punishment in society-at-large: the requirement of forewarning and the existence of "public" crimes. Novak argues that the death penalty can only be contemplated where the perpetrator is forewarned and understands that the impending act violates *halachah*. In a public crime, where the perpetrator acts as an agent of an instigator, the requisite forewarning is satisfied by the instigator's premeditation. Novak concludes that in such cases, e.g., where a Hitler or a bin Laden acts as an instigator of premeditated mass murder, the death penalty is necessary, but nonetheless tragic (since each human being is made in the image of God). However, Novak never explains why it is necessary.

The essay by Michael Westmoreland-White and Glen Stassen regarding Biblical perspectives is a welcome analysis of Hebrew and New Testament scriptures that carefully exposes the weaknesses of proof-texting common to many Christian supporters of capital punishment, as exemplified by J. Budziszewski's essay against categorical pardons, and persuasively argues against the death penalty in Christian exegetical terms. Likewise, Khaled Abou El Fahd explains that, in light of the Qur'anic principle of the sanctity of human life, the concept of *shubha* in Islamic theology casts doubt about whether the state, as the agent of divine justice, can ever have the requisite certainty to execute the accused.

Stanley Hauerwas refreshingly challenges theological colleagues to abjure the tired models of deterrence and retribution and to focus on what is distinctly Christian about a theory of punishment. He criticizes Oliver O'Donovan and Avery Cardinal Dulles for allowing the state's alleged need for retributive justice to trump a Christian critique of the state's role in society. Citing John Howard Yoder's work, Hauerwas suggests that, in place of a policy of execution, the reform of contemporary penitentiaries would encourage the criminal's genuine repentance.

But perhaps the most powerful essays regarding capital punishment come from the politicians who have faced the decisions of life-and-death on an everyday basis. George H. Ryan, the ex-governor of Illinois, who emptied his state's death row of 167 inmates on January 11, 2003, explained that in a state where thirteen of the condemned had been exonerated since 1977 and over half of its capital convictions had been reversed, he had no choice but to suspend a system of capital punishment riddled "with errors and omissions from top to bottom" (227). Mario Cuomo, the charismatic ex-governor of New York, testified to his moral courage when he recounted his conscientious opposition to the death penalty in his 1994 gubernatorial campaign, even though he knew it would likely cost him his re-election. On the other hand, Frank Keating, former governor of Oklahoma and an ex-federal prosecutor, explained why he still supports execution in certain cases (e.g., Timothy McVeigh for the bombing of the Oklahoma City federal building), although he would raise the threshold in capital cases

from “proof beyond a reasonable doubt” to a “moral certainty standard.” At the same time, Governor Keating reasoned that he would have done the same as Governor Ryan had he been faced with the troubling, systemic flaws of Illinois’s death penalty convictions (218).

The most unsatisfactory essay proved to be the transcription of a talk by Justice Antonin Scalia who declared that his religious convictions have “nothing to do with how I vote as a judge” (232), although, flippantly, he claimed that “for the believing Christian, death is no big deal” (235). To Justice Scalia, the judicial standards for punishment under the Eighth Amendment in the twenty-first century ought to be the same as those followed in the eighteenth century. The Justice repudiates the “living Constitution” of dynamic legal interpretation, opting instead for what he calls the “dead” Constitution, an irony in this context to which he seems oblivious. But I, for one, cannot imagine how Justice Scalia can divine what the Founding Fathers would have thought about the electric chair and whether they would have considered this allegedly “painless” method of execution to be “cruel and unusual punishment.” (See, for example, Justice William Brennan’s chilling description of death by electrocution in *Glass v. Louisiana*, 471 U.S. 1080 (1985) at 1086-1088.) Justice Scalia’s “original intent” hermeneutics, a naïve and specious textual approach, all too often collapses historical and cultural distance, superimposes a univocal intentionality on a document authored by dozens of individuals, and inscribes the interpreter’s own views on the meaning of Constitutional passages. He is no different in reading the New Testament, which, he claims, legitimizes capital punishment by the state, including, apparently, Roman methods of execution, and “represent[s] the consensus of Western thought until recent times” (235). Surprisingly, Justice Scalia, a Catholic jurist, upbraids Avery Cardinal Dulles, claiming that the Vatican’s contemporary emphasis on the protection of society rather than retribution does not represent anything other than a radical shift in the Roman Catholic Church’s magisterial teachings.

In stark contrast to Justice Scalia’s effort, the remarks of Beth Wilkinson and Jeanne Bishop exhibit the type of thoughtful and emotional engagement which befits serious reflection on this troubling practice. Wilkinson, a former federal prosecutor who led the government’s case against Timothy McVeigh, speaks of herself as a “struggling supporter of the death penalty,” torn by contradictory parental influences—her mother, a pacifist, and her father, a naval officer (255). In light of the agony wrought by McVeigh’s actions, she cannot bring herself to countenance mercy or to absent herself from participation in what Sister Helen Prejean called the “death machine” (254). “Even as a Christian,” says Ms. Wilkinson, “I felt nothing for Mr. McVeigh” (260). Jeanne Bishop, on the other hand, recounts the disturbing details of her sister and brother-in-law’s gruesome murders, and describes her fascinating metanoia from corporate lawyer to criminal defense attorney in capital cases. Relying on her Christian faith, Bishop challenges Justice Scalia’s interpretation of Paul as a justification for capital punishment. She debunks the death penalty’s “false promises” of closure for victims’ families and movingly testifies about the power of forgiveness to effect healing (267).

Although these essays seek to move the death penalty debate away from the models of retribution and deterrence which endlessly and unproductively dominate secular discourse on the death penalty, the religious viewpoints expressed in the volume will have limited effect on the public policy debate, in part because they are expressions of private experiences, not fully understood by the authors, and in part because they are sectarian theological views. Far more significant is something that Gilbert Meilaender hints at: that execution itself unconsciously and perversely reflects “something religious” that captures and excites the imagination of the American public (55). In this respect, exposing the dynamics that underlie support of capital punishment has only just begun.

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Seeing through Zen: Encounter, Transformation, and Genealogy in Chinese Chan Buddhism. By John R. McRae. University of California Press, 2003. 204 pages. \$19.95.

The title of this book suggests an intriguing question posed by one of the leading American scholars of Chan/Zen Buddhism to students, scholars, and practitioners: how should one go about researching and understanding Zen? McRae's answer is straightforward: follow “McRae's Rules of Zen Studies” (xix–xx), of course.

1. It's not true, and therefore it's more important.
2. Lineage assertions are as wrong as they are strong.
3. Precision implies inaccuracy.
4. Romanticism breeds cynicism.

McRae's rules appear to emulate the famous four-part slogan, attributed to Bodhidharma by Muan Shanqing in the *Zuting shiyuan* (Chrestomathy from the Patriarchs' Hall, 1108), which characterized the mature Chan school for its Song dynasty (960–1279) participants:

A separate transmission outside the Teachings (*jiaowai biechuan*); That is not established by means of language (*buli wenzi*); It points directly to the human mind (*zhizhi renxin*); And causes one to see their nature and become a Buddha (*jianxing chengfo*).

This correlation is more appropriate than one might expect; *Seeing through Zen* seeks to reexamine—and correct preconceived notions about—how the Chan lineage (*chanzong*, *J. zenshū*) should be understood not in terms of “palpable circularity at work, with historians of China building comprehensive theories based in part on a romanticized image of Chan, and apologists for Chan buying into those theories because they served the missionary agenda” (103), but by