

At lunch in Mt.Kisko NY two days ago (13Dec86), Loree & I were playing around with a seriocomic tale remembered-written by the rabbi (Chaim Stern) with whom, and his goodwife Carol, we were in joyful converse. The tale--in the text/problem/solution talmudic style--was of a student so dumb that the teacher, for the only time in his teaching career, returned the tuition....I thought of that story this morning when I came across a deliberately misshapen, lopsided question which was debated on Cape Cod the same day as said lunch....

1....Is the death penalty a brutal anachronism that deters violent crime, or a fair punishment? No, that wasn't the wording. Is the death penalty a brutal anachronism that deters violent crime, or a fair punishment that deters violent crime? No, neither was that the wording. The wording was: "Is the death penalty a brutal anachronism, or a fair punishment that deters violent crime?" The side lost that the question was loaded against. Had I been invited to defend capital punishment in that debate, I hope I'd've been smart enough to refuse unless the question were restated as "Is the death penalty a brutal anachronism or a fair punishment?" or as with "that deters violent crime" modifying both alternatives. As it was, doubtless the debate's sponsors were happy that the "right" side won!...as in the rabbi's tale the teacher would have been happy if Shulem Naar (for that was his name: the tale Chaim had mailed to me he'd called "Shulem Naar learns Talmud") had come up with the "right" solution to each "problem." The melamed (teacher) had the authority-power-right to extend the text into a problem, to choose the angle of vision on the text in such wise as to honor the tradition, affirm the people's vision & truth, and so confirm the student in the tradition & community and thus firm up the community--a legitimate and honorable process--undertaking-vocation. This Thinksheet's title shows my angle of vision-conviction-intention on all this. I am not politicizing the educational process; rather, I am consciousness-raising about the political factor, the power component, in anybody's setting the stage, defining the situation, shaping the question anytime anywhere. Why am I doing this? To strike a blow for the freedom & wisdom of critical consciousness vis-a-vis any "program," discussion-&-decision proposal, public "issue" as word-shaped by any individual or group.

2. This question-shaping business is only secondarily a nudging of the answerer to "discover" the solution the questioner desires to have discovered. It is primarily a pointing to what the questioner wants the answerer to look at; it is, first, a call to attention. For (yes, here I go again) what gets your attention gets you, and what holds your attention is your god. (When, four evenings ago, a student quoted that in Bill Webber's "Introduction to Ministry" class at N.Y. Theological Seminary, Bill told him where I was, and he came in to see me after the session! What pleases this old teacher about that is that Charles Martin hasn't been a student of mine for at least a decade: he's remembered my text that long--or was it the problem? or the solution?)

3. Now for the phrase underlined in section #1. Everybody knows you can't prove that any form of punishment "deters violent crime," so the pro-capital-punishment side of the debate was hobbled by the Establishment with an hypothesized unprovable to-be-proved assumption. But how could that Establishment get away with this unfair stating of the debate proposal? It could for the reason that, in the subculture in which the debate occurred, the burden of proof is with those who favor the death penalty. To point to this fact, I first titled this Think-sheet "The Virgin Birth & the Death Penalty": as the VB serves as shibboleth among fundamentalists, so serves capital punishment among liber-

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als (or humanists or whatever you want to call us--"us," for on most issues this is my chosen crowd and thus those among whom I prophesy, ie raise embarrassing questions). Comments on this curious taboo:

(1) Why are most of those who're AGAINST criminal-killing FOR fetus-killing (ie, pro-choice)--and vice versa? Both groups are forced to mingle clear with byzantine argumentation. Both groups argue for freedom & justice & humanity (humaneness) & "respect for life" & the inviolate worth of "the individual." For clarity's sake, I'd like to see the lines crossed in debates of these proposals: (1) RESOLVED: That both abortion & the death penalty should be outlawed; and (2) RESOLVED: That the good of humanity in general and the nation in particular is furthered by abortion & the death penalty.

(2) Is human life a divine right or a social privilege? Or is it a right "inherent" in humanity without reference to God? Or (as I think) should this whole line of questions on rights/privileges/responsibilities be contexted in life as divine gift, for which God is to be blessed (as in all things--as, upon just now receiving the Nobel Prize for Peace, Elie Wiesel, having asked the permission of the King of Norway, prayed "We thank you, O God, for giving us this day")?

(3) If gift, how shall we view the fact that life on this earth is not a permanent gift? Was Job right that divine action is at both ends (1.21: "The LORD gave, and now he has taken away. May his name be praised!"; cf. 9.12: "He takes what he wants, and no one can stop him.")? Except in two cases (Adam by mud, Eve by rib), God begets us mediately, by human parents, the basal society: in capital punishment, is it God who "takes" us mediately, by the wider society? If not, why not? Why would the paradigm be applicable to our beginning but not to the ending of some of us, viz, those society judges unfit to continue social life (fact: the imprisoned do continue to live "social life," for prisons are institutions within society)?

(4) Is "euthanasia" a concept applicable only to the individual? Why not also to society: Is not capital punishment "good death" (the literal meaning, the exclusive meaning among the ancients who used the word) in the sense of good-for-society, in the sense of garbage removal? if not also in the sense of warning ("that deters violent crime")? if not also in the sense of vengeance (that "satisfies" the public need for psycho-social order-justice-"cosmos")? (In New Haven CN evening before last at dinner, Dr. Robt. Jencks, med. dir. (retired) of Hospice CN, now there a volunteer, précised his unpub. paper aiming to restore this original-etymol. meaning to describe Hospice's work--v. the later negative meaning, viz. "mercy-KILLING"--and, in favor of that, I note in OED the following: 1646, "a quiet & easy death"; 1742, "the means of procuring this"--eg, I add, Cleopatra's asp; & 1869, "the action of inducing" this.)

(5) In an important sense, capital punishment does more than "deter" violent crime, it eliminates it. Almost nobody anymore believes that ghosts can return and commit violent crimes. As for the brutalization argument, it works both ways: (a) Overdoing "mercy-killing" (euthanasia as killing criminals to have mercy on society, which is overburdened with prisons & the pressure for more of them), and (b) Under-removing of the violent from society, with the result of lowgrade, permanent psycho-terrorism in the populace (the old fearing to go out at night, eg).

(6) As in Catholic moral theology (Protestant "Christian ethics") there are three degrees of sin--of ignorance, of passion, & of malice--so in law the parallel three degrees of crime. More than they have been, these ought to be factored into the capital-punishment debate.

(6) Money tends to be a factor in severity of punishment. The poor are more often convicted, and punished more severely. Tough, but a weak argument against capital punishment. So also with race.