

The "Final" Compromise

THE ART OF COMPROMISE includes the skill of exploring the unexamined middle between yes & no. "Are you for or against the death penalty?" Rejoinder: "Surely that doesn't exhaust the options!"

Let's look at my today's CAPE COD TIMES letter to the editor:

1 The title I submitted clearly stated my point:

"Final sentence, not death sentence"

Permanent removal of the condemned from society should be within the powers of the court, & the permanently removed should have the freedom to choose life or death.

Otherwise put:

Courts should not have the power to sentence to death or the power to deny the condemned the choice of death, but should have the power of final sentence.

2 The title's first two words constitute a **new phrase** in the so-called death-penalty debate. In deleting the new phrase (which does not appear in the body of the letter), the hamhanded editor managed to muddy my message. Further, the substitute title pollutes my message by speaking of somebody earning something: in my letter, no mention of anybody earning anything. And further still, the editor shifts from my focus on the court to focus on the condemned. All in all, a classic of bad editorial retitling. But the author-abuse (that's poor me) does illustrate the public's difficulty in grasping a new idea, a difficulty always & everywhere (along with vested interests & emotional inertia) impeding creative compromise in all human relationships.

3 In my 1st ¶, note that the paper had rhetorically expanded the word "murder" to include the death penalty. Since "murder" is a legal term, it's logically inapplicable to the death sentence in jurisdictions in which that sentence is legal. The same applies to abortion in jurisdictions in which abortion is legal: pro-lifers call it "murder" rhetorically, giving the word an inflationary spin. In both cases, the spin hinders clear thinking & prospects for compromise.

I am more than disturbed when words are spun to give the spinners what I consider an illicit leg-up in debate: I am frightened, knowing that violence is humanity's alternative to clear thought & honest decision-making. In a group I led today, a Quaker professor of sociology said "Violence is the language of the unheard." Well, I must add the misheard. And dishonesty to language is an underlying cause of mishearing.

4 Also in the 1st ¶ I announce my conviction that the compromise my letter proposes will be "the next stage in the capital-punishment debate." I hope so! And I hope & pray that "the fallacy of the excluded middle" will not impede further explorations toward the most creative compromise if mine isn't it.

5 My 3rd ¶ challenges the present lodging of the death decision, viz. in juries.

Condemned earn right to choose death

Your Aug. 14 editorial, "Death penalty as murder," does not mention the next stage in the capital-punishment debate.

It is the question as to where the death decision should be lodged: Who should decide?

The jury, as now? Juries agonize over whether to kill the condemned, and the thought of it frequently clouds their judgment.

The judge? While that is the practice in many countries, it is as though a firing squad consisted only of a single rifle.

The condemned? That would honor both the biblical conviction that human freedom is God-given and our American political conviction that government should not unnecessarily deprive persons of freedom of choice. The condemned would be free to choose life or death - life without parole or death - whether or not the further freedom (as among the ancient Greeks and Romans) to choose death by suicide or death by execution.

A solid fact about the public's present attitude toward death is "I want to be in control right up to the last minute." Only the third way respects this desire. Only the third way qualifies as death with dignity.

WILLIS ELLIOTT
Craigville

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309 Lake Elizabeth Drive
Craigville, MA 02632
Phone/Fax 508.775.8008 \$20 per year
e-mail wandell@elliottmediaone.net

Elliott & Thint'sheets

Post-trial interviews with jurors have shown an appalling weight of "I didn't want to vote to kill" over other considerations. My proposal would lift that weight from the hearts of jurors.

ASIDE: My long-dead father is being honored this week as the longest-sitting (33 years) judge in his section of NYState. One of his deep persuasions was that the determination of guilt should be separated from the determination of punishment: juries should have the limited function of determining guilt/innocence.

6 My 4th ¶ puts too much weight on the judge. In countries where punishment is assigned by a panel of judges (sometimes five, more often three), the weight is somewhat distributed--as, in my analogy, on a firing squad. My opinion: one judge would be worse than a jury, a panel of judges would be better either than a jury or a single judge. But at least in peacetime, the weight of death-decision is too great to put on any functionary/functionaries in any juridical system. (The possible exception in wartime, under martial law: courts martial, by a panel of military judges.)

7 My 5th ¶ passes the buck (if you want to put it that way) to the condemned. Many Americans, I think an increasing number (still not including me), believe that God gives life & only He has the right to take it away. The "only" does not appear in the biblical reference behind/within this opinion, viz. Job.1.21 NRSV: "the LORD gave, and the LORD has taken away; blessed be the name of the LORD." Job had lost everything outward, including his children, & had left only his wife (who was, in the ironic sense, a big help) & his faith. It would be a laughable anachronism to read into that ancient sage the modern "pro-life" taboos against suicide (whether or not assisted, & by whom), abortion, or capital punishment. But laugh, & weep: those taboos are widely supported by the divine sanction even though none of them can find any legitimate hermeneutical support in Scripture.

8 This prior letter (12.12.97, nearly four years ago) shows me (as now) favoring the condemned's death-option but (not as now) assuming the death penalty (which now has died into the "final" penalty); & it includes the argument against torture, which is only implicit in the later letter.

9 One of our houseguests at present is a prison educator who trains female murderers to teach other prisoners basic skills (math, etc.). After reading my today's letter, he had two concerns (as a committed Christian long against capital punishment): (1) By "without parole" do you mean what is currently meant, including the possibility of gubernatorial clemency in cases of reformed & socially productive prisoners? My answer: yes. (2) While your proposal greatly reduces the prospect of execution, now a prisoner's third choice, your compromise does not eliminate state killing: it is not anti-capital-punishment, which is my position. But your compromise is "worth considering," going beyond the yes/no stasis.

10 More than a half year ago, Thinksheet #3041 includes a published letter in which I plead for "presenting both sides and encouraging debate": "I can't fault editorial writers for taking a position [in this case, the CAPE COD TIMES' opposition to the death penalty] and adducing such arguments as support it [the editorial had trotted out all the tired, flawed ones]. But the public has a greater need for help in coolly pondering hot-button issues."

Please read #3041 (herewith, in the same mailing as #3074). I do not withdraw what I say there about Gn.9.6 & seriousness vis-a-vis capital punishment; I've now concluded that prudence dictates the shift of the death-or-life decision onto the condemned (to be made at any time during incarceration). "Final" is in quotes for this meaning, not "the 'last' compromise."

Civilized societies should not resort to torture

I was astonished that Allison Picard (Dec. 4) suggests torture instead of the death penalty: "life in prison with no chance of parole. After a few decades in the hellish conditions of a maximum security prison, these men might wish that Massachusetts did have a death penalty."

Her alternative to the death penalty would require that prison conditions be kept "hellish." In the name of God and of human dignity, some of us have worked to make prison conditions less hellish.

Death, if not mandatory, should be optional. Prisoners who "wish" for death should not be denied this option. Forcing them to remain alive violates human dignity, which depends on choice. The denial of choice is passive torture, and torture is unworthy of civilized societies.

WILLIS ELLIOTT
Craigville