

## **Punishment as Public Spectacle**

by Theodore Plantinga

Arguments against capital punishment usually include two lines of thought. One is an appeal to skepticism: we can never really be sure who committed such-and-such a murder, and so we must leave open the possibility that we might later reverse a conviction and thus need to apologize to the person who was wrongly convicted and imprisoned. In recent Canadian history, we have a couple of such cases. The other standard argument against capital punishment is the fear that if we used it, we would degrade ourselves by making the execution itself into a spectacle. It is this second argument that will concern me mainly in this essay.

The first, however, also deserves commentary. In its positive aspect, it underscores the significance of judicial proceedings: it is indeed a very sad occasion when someone is *wrongly* convicted of a criminal act. The trouble with this line of reasoning is that it is in effect an argument against punishment in general. The argument may well give people pause as they consider the ultimate punishment known to man, but we should also ponder it when we engage in lesser forms of punishment for lesser offenses. During my schooldays, I, too, was occasionally judged guilty of a misdeed I had not performed and then punished unjustly. Of course there were also some misdeeds of mine that went unpunished. I have paid parking fines in cases when I did not believe myself guilty of a parking offense. People are even sent to prison for offenses they did not commit. Justice is not perfect.

Anyone who defends the death penalty -- as I do -- should ponder the argument from skepticism and ask himself whether he is truly willing to countenance the risk of being party to a system that might inflict wrongful death on someone. Now, if wrongful death came about only through errors made by the authorities, this might be an exceedingly weighty consideration. But, sad to say, wrongful death also results from the negligence of people in so-called "accident" situations, and also from criminal behavior, and even from risky medical procedures. In the latter case, malpractice suits are sometimes brought in the courts.

I suspect that the number of people wrongly executed in the twentieth century in democratic countries is very, very small compared to the cases of wrongful death resulting from various circumstances such as I have mentioned above. We must recognize that the death penalty is indeed risky, as are all forms of punishment. In advocating the death penalty, I am accepting the risk that I myself might be executed because of a wrongful conviction for murder. I am willing to run the risk, just as everyday I run the risk of being murdered. I could minimize the risk of being murdered by never leaving my home, but for the sake of a fuller life I accept the risk.

And then there is the deterrence issue, on which much has already been written. I have no new statistics or research studies to report, but it does seem hard to believe that a punishment so severe as execution has absolutely no deterrent effect on people. Why should I believe such a thing?

Let's broaden the question for a moment. Does punishment *ever* deter bad conduct? Perhaps there are social scientists willing to argue that it *never* does, but when I survey my own experience I see that it certainly has an effect on me. Take the business of library fines. There are three libraries from which I regularly borrow books. Only one imposes fines for overdue books, and it began to do so only in the last year. The fine is 25 cents per book per day. The sanction has had an effect on my book-borrowing behavior. I am also known to overstay my welcome at a parking meter on occasion and have had to pay a fine for that offense every now and then. The prospect of such a fine has a deterrent effect; it is a factor in my planning. What if the authorities in a neighborhood I visit on occasion would impose the *death penalty* for exceeding the time permitted by the meter? It sounds ludicrous, I admit, but just suppose they did. Totalitarian regimes in our century have imposed the death penalty for seemingly minor offenses.

I don't think I would ever dare park at meters where death was the penalty for exceeding the allotted time. Therefore I ask again: does the death penalty have the capacity to deter people's bad conduct or to influence what they do? Of course it does! I know this from personal experience.

Opponents of the death penalty usually argue that some hardened criminals pay no attention to the consequences of their behavior and are not deterred by the prospect of execution. As proof they point to the fact that these criminals have in fact committed murders in territories where the death penalty is in effect. I do not take issue with their claim. Let's remember, however, that the important question is not whether *some* human beings are singularly unimpressed by the death penalty, but whether *all* are of such a mind. Well, I for one, am not.

But even the deterrence question is not the most important one for me. I would like to reflect on the notion that to resort to capital punishment would amount to turning punishment into a spectacle that would demean us as individuals and also the society in which we live.

When I survey the defenders of capital punishment with whom I am personally acquainted, I do not encounter people who would like to return to the old days of public hangings. But if a hanging (or an execution in some other mode) is not public, what is it, or what ought it to be? How should it be described? The word "private" springs to mind. We are led to think that if someone must indeed be executed, he should be allowed privacy, so that he can die with dignity. If the defender of capital punishment is in tune with such sentiments, he is inclined to argue that we should not be brutes who demand public execution for the entertainment of mean-spirited people; rather, we should carry out the business discretely, in private.

Yet those democratic territories that still practice capital punishment do not operate in the modern spirit of removing punishment from the sphere of entertainment and spectacle by making it "private." They certainly could do so if they chose. Let's think about it for a moment. Suppose we were thoroughly convinced by arguments about the need for "privacy" and were determined to make all future executions "private." How would we go about it? Here are my suggestions.

The trial and courtroom drama would remain public. When a criminal was convicted of murder and sentenced to death, he would disappear from public view into the custody of the prison authorities. He would be "finished," so to speak. His only other public appearance would be in connection with whatever appeals to higher courts might be possible. When the last appeal was exhausted without the conviction or sentence being overturned, he would really disappear for good. Let's say that to make such a system work, the prison authorities would be instructed to pick a secret date of their own choosing within the next three months and to put the prisoner to death in the most private and humane way possible -- no witnesses, no reporters, no announcement to the world. Rather, the Bureau of Prisons would issue a report every three months in which its various activities would be listed. Included in the report would be mention of the fact that Prisoner X was put to death and cremated, with his ashes being offered to next of kin some months later. Thus there would be no further humiliation of the prisoner when the time of death came (only the prison authorities would know the exact day), and no ghoulish taking of delight in the process of execution.

I know of no territory that proceeds in such a manner. Why are such procedures not followed? Two main reasons come to mind. The first is that all state-sponsored activities (including execution) need a degree of public scrutiny. It would be a dangerous precedent to allow any government agency to operate in a totally secret manner. The second reason is that democratic societies still know, deep in their hearts, that public spectacle is an important aspect of punishment. And that's why they do, in some sense, televise executions and make a show of them.

Punishment as administered in our society is, among other things, public spectacle. Society responds to a horrible crime by rendering a verdict concerning the crime. (The word "verdict" stems from Latin terms for true and say: something true and weighty is said officially about the crime.) Society then reinforces its statement regarding the crime by the punishment it imposes. The punishment is *the public's business*; the convicted prisoner does not have the right to keep the punishment a secret, lest his relatives find out and feel embarrassed and ashamed of him.

Now, some people might be inclined to think that it would suffice to say, once and for all, that murder is a horrible misdeed that stands condemned by all decent and civilized people. In practice, however, we reinforce this message by making the statement all over again each time there is a conviction for murder. It seems that "once and for all" is not enough. Important truths need to be reinforced through repetition, with some variation in each particular situation, just as Christian worship services involve repetition of eternal truths but yet are conducted in such a manner that there is some variation from week to week.

In places where the death penalty has been abolished, such as Canada, we reinforce the message concerning murder by imposing a prison sentence. The imposition of a prison term is also symbolic action through which society makes a statement concerning what has taken place. But it does not speak loudly. Remember that the incarceration following the conviction in a court of law is nothing new in relation to the accused. When the condemned man was arrested, he was already imprisoned. He may later have been released on bail, but in the case of particularly brutal murders, it is not unusual for the accused to remain imprisoned throughout the entire investigation and trial process. And so imprisonment is essentially a *continuation* of a pattern of treatment that has already been in effect for some time.

The notion of punishment as a dramatic symbolic action is also recognized in the Bible. The house of Eli was well known for its waywardness; think especially of the misconduct of his sons. The Lord did not put up with the

misconduct forever but embarked on a plan of action to set matters right. Part of the plan was an announcement to the young Samuel of what punishment would befall the house of Eli. He told the boy: "Behold, I am about to do a thing in Israel, at which the two ears of every one who hears it will tingle." Then follow some particulars (see I Samuel 3).

In Canada, and also in many states of the USA, we incarcerate murderers. We tell them, in effect, "We will not release you -- not for a long time." Do ears tingle at this pronouncement? Mine don't. We sense that the decision regarding the convicted murderer is basically an application of a *prevention* approach: as long as the killer is locked up, he will not be carrying out further crimes against law-abiding folks. (Of course he may commit some crimes within the prison itself.)

Justice must be done where crimes are committed, and it must be *seen* to be done. When the system appears to grind to a halt, citizens may feel the need to step in and do something dramatic, something that will make people's ears tingle. One illustration of this pattern that comes to mind is a series of crimes committed some years ago in a rural area of Missouri. There was no mystery as to who the perpetrator was: because he terrorized the local population -- especially any potential witness against him -- no charge could ever be made to stick. His crimes left the police looking powerless and the local citizenry frustrated and demoralized. Eventually the perpetrator was gunned down in broad daylight on the main street of the town by local citizens. The resolution of the situation was itself an act of lawlessness and therefore something to be deplored. But the situation cried out for a dramatic action or word. Harry MacLean has written a fine account of this case in a book entitled *In Broad Daylight* (New York: Harper & Row, 1988).

Do people's ears today need to tingle? I believe they do. For many of us, murder has become routine: we see far too much of it on television. But sometimes there is a spectacular crime or set of crimes that calls for a stronger penalty, such as the Paul Bernardo murders in Ontario in recent years. (He not only murdered teenage girls but also raped and terrorized them over a period of many days before disposing of them.) People in my part of the country had very strong feelings about the Bernardo case. Many rejoiced at the conviction. But some of those who rejoiced also felt that our local laws and procedures have the effect -- albeit unintended -- of making life look cheap. What was called for, I believe, was a stronger symbolic action statement regarding the value of the young lives which Bernardo destroyed.

Fifty years ago virtually all democratic societies used the death penalty as a form of symbolic speech through action. The execution was, in some significant sense, a public affair which sent out a message. The message was not only intended to deter other potential murderers but also to reaffirm how highly society regards human life and how outraged it is when human life is wantonly snatched away.

The executions that were carried out were indeed public spectacles. They did not take place in some park, nor were they televised live, but neither were they private. The executions themselves were public shared experiences. There were live witnesses, who might well include friends or family of the murder victim.

I still remember being glued to the radio when I was a schoolboy more than three decades ago when Caryl Chessman, a California murderer whose case occasioned great public interest, was executed in 1962. (I was among those who believed his life should be spared.) The event was covered on the radio in the sense that the news broadcasts were full of it. Those who were interested, as I was, could follow just what was going on, without seeing anything with the naked eye (the old idea of execution in the public square) or with the camera-assisted eye (the idea of live television coverage). Was such coverage appropriate? I believe it was.

When the President of the United States undergoes surgery, should the event be covered live on television? It certainly could be. Of course some would argue that such coverage would be tasteless; presumably they would also maintain that the President deserves privacy. The last significant surgery I can recall on a US president took place in 1981, after President Reagan was struck by an assassin's bullet. The cameras were not in the surgical chamber, but the press was all around the hospital, and news reports were fed out to the waiting world minute by minute. In this regard the President's surgery was being covered as a newsworthy event which people wished to share as it was underway.

Radio gives us only sound, but it can still imbue us with a sense of being there when something significant is happening. Much television coverage is essentially like radio in this regard. Radio-like coverage via television is what we get nowadays in the case of executions of important murderers. And this is as it should be, for by covering such an execution we are underscoring the gravity of what has taken place, namely, the murder itself. The execution is the public's business.

Television cameras are sometimes allowed into courtrooms for live coverage. Perhaps the most famous example is the O.J. Simpson murder trial. I do not

favor this practice, but I do believe the system of coverage that was long in place is entirely appropriate and ought to continue as part of our commitment to the notion of punishment as public spectacle. Radio and television broadcasts can be made live from outside a courtroom. Artist's drawings of people involved in the trial can be sent out as well to add a visual impression to a televised broadcast. Such drawings are also reproduced in newspapers and magazines. Through such means we participate in the trial while it is going on; the trial becomes public in a broad sense.

The courtroom practice is much like what is done in an execution situation. Executions do have witnesses. And it is permitted to make radio and television broadcasts from the general vicinity of the prison where the execution is carried out. Details of what it was like can soon reach the general public. Thereby the notion of the ultimate punishment becoming a public spectacle is preserved. And so the issue is not *whether* executions should be broadcast and televised in certain cases. The question is *how* it can best be done.