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Exchange

The Morality of Capital Punishment: An Exchange*

*Bruce Ledewitz***

During the month of December, I participated in a debate about the death penalty with Dr. Ernest van den Haag. The debate was sponsored by the newly-formed Duquesne Law School chapter of the Federalist Society. During this debate, I expressed the view that secular society lacks "permission" to impose the death penalty. Dr. van den Haag responded at the time that "we give ourselves permission." Later, Dr. van den Haag agreed to a brief, further exploration of this theme in the pages of the *Duquesne Law Review*. What began for me as an exploration of God's permission for the death penalty in a secular state, has evolved into a consideration of the religious assumptions underlying the death penalty in a secular state. In order to identify these assumptions, it is first necessary to examine the secular justifications for the death penalty given by Dr. van den Haag.

Dr. van den Haag divides justifications for the death penalty into two types: moral and utilitarian.¹ The utilitarian justification he proposes is deterrence, that is, the discouraging effect of the threat of execution—made real by the execution of some criminals—on others considering committing homicide. The moral

* Editors Note: The Editorial Staff graciously extends its appreciation to Damien Schorr of the Federalist Society, Duquesne University School of Law chapter, for his help in making this article a reality.

** The author recently served as Secretary to the National Coalition to Abolish the Death Penalty.

1. Ernest van den Haag, *Punishing Criminals* 207 (Basic Books, 1975) [hereinafter cited as *Punishing Criminals*].

justification he relies upon is "justice."

Of the two types of justification, Dr. van den Haag is much more committed to the utilitarian, which he has called, "The main purpose of the threats of punishment and of punishment itself."² I will not focus on deterrence here. I do not reject, in principle, the right of the state to execute criminals in order to prevent homicide. But, given our current knowledge, deterrence cannot serve as a justification for the death penalty. Dr. van den Haag concedes that "one cannot claim that it has been proved statistically in a conclusive manner that the death penalty does deter more than alternative penalties."³ Indeed he goes on to say that the matter is one "perhaps impossible . . . to prove statistically."⁴ He endorses deterrence as the main justification for the death penalty, nevertheless, for two reasons. First, it is for him a matter of logic and experience that men fear death more than anything else and second, that even if a deterrent effect is uncertain, it is better to kill the criminal than to risk the lives of innocent, potential victims.⁵ Even these arguments for deterrence are undermined, however, first by Dr. van den Haag's observation that the death penalty would not be useful in deterring drunk driving, because the drunk driver already "seems willing to risk his life to begin with. . . . The chances that he will be killed by a traffic accident are greater, as of now, than the chances of a murderer being executed."⁶ But the criminal activity that underlies many homicides in the United States—robbery and drug trafficking—is also life-risking, at least as much as is drunk driving. Second, Dr. van den Haag concedes that innocent life is threatened by having the death penalty—in the sense that innocent people "are likely" to be executed⁷—as well as by not having it. If the empirical effect of deterrence is uncertain, and the pervasiveness of mistake is unknown,⁸ deterrence cannot serve to justify the death penalty.

I am concerned here with Dr. van den Haag's moral claim, that

2. Ernest van den Haag, *The Death Penalty: A Debate* 56 (Plenum Press, 1983) [hereinafter cited as *Debate*].

3. van den Haag, *Debate* at 65 (cited in note 2).

4. *Id.* at 67.

5. *Id.* at 68-9.

6. *Id.* at 131.

7. *Id.* at 55.

8. Professor van den Haag believes the instances of executing an innocent person are "rare." *Id.* But he does not consider that executing one who, though guilty, does not deserve to be executed is, in his terms, the "mistake," not simply executing a person who did not commit the crime. The former is not at all rare, for reasons I advert to below.

the death penalty should be used whether or not it deters homicide. Actually, it is not always clear in Dr. van den Haag's writing whether the moral justification for the death penalty *requires* or just *permits* the death penalty to be imposed.⁹ It may be that the moral justification serves the modest role of selecting the group of people subject to execution for purposes of deterrence. We execute the convicted criminal rather than his mother, for example, because he is guilty of a certain crime. If this is all the role that the moral justification serves, then the death penalty rests simply on the claim of deterrence and the justification for deterrence.

Because Dr. van den Haag does, however, write that morality serves as an independent justification for the death penalty, that claim may be evaluated here, and its assumptions examined. Dr. van den Haag believes that, for certain crimes, "justice" may require death as a punishment.¹⁰ Dr. van den Haag's definition of justice, in the context at least of punishment, is that the guilty should be punished "according to what is deserved by the seriousness of the crime and the culpability of the persons guilty of it."¹¹ Death is what certain criminals "deserve" for four reasons that appear sporadically in Dr. van den Haag's writings: (1) in the case at least of the murderer, the criminal has forfeited his right to live by denying that right to his victim,¹² (2) the execution of the criminal "corrects" the wrong of killing the innocent victim,¹³ (3) the death penalty is "demanded by our sense of justice,"¹⁴ and (4) certain criminals are "so irredeemably wicked that [they do] not deserve to live."¹⁵

Of these four justifications of death as deserved, the second and third are not crucial to Dr. van den Haag. In terms of the third, he himself points out that popular feeling is not a moral justifica-

9. van den Haag, *Punishing Criminals* at 207 (cited in note 1).

10. *Id.*

11. van den Haag, *Debate* at 55 (cited in note 2).

12. *Id.* at 35.

13. *Id.* at 62.

14. *Id.* at 247; see also, *id.* at 298.

15. van den Haag, *Punishing Criminals* at 213 (cited in note 1). All of the above may in fact mistake Professor van den Haag's position. Though he plainly asserts all of the above at one point or another—in fact usually at many places—he also denies that he is committed to retributionism. van den Haag, *Debate* at 32 (cited in note 2). Moreover, he denies that there must be "symmetry between rewards and punishments," *id.* at 31, and considers the popular sense of justice behind retribution as "irrelevant to moral justification." *Id.* at 30. But if all these are true, I no longer understand the basis for Dr. van den Haag's moral justification.

tion.¹⁶ In terms of the second, Dr. van den Haag does not believe that the death penalty restores the harmony of a transcendent moral order. Nor does he believe that the execution of the murderer corrects the wrong done in any sense of eliminating the wrong or reducing its magnitude. What the death penalty does is nullify an advantage the criminal enjoys, not over his victim, but over those who do not commit crimes. "He must be deprived of his illicit advantage if others are to continue to play by the rules."¹⁷

The suggestion that the rest of us feel a murderer has gained an advantage by committing murder and that we feel taken advantage of by our self-restraint in not committing murder is a disturbing vision.¹⁸ The truth of this view of human nature, however, is not the issue here. Dr. van den Haag does not argue that the rest of us have a moral right to this envy of the murderer. He would agree that it would be morally wrong for a person to kill even if all other murderers went free altogether. Taking away the criminal's advantage over the rest of us is not an independent moral consideration, but is rather another form of deterrence.¹⁹

The remaining two justifications for why certain criminals deserve death are not independent, though Dr. van den Haag may believe them to be so. All persons who kill are not viewed by Dr. van den Haag as deserving the death penalty on the ground that they have forfeited their right to live. Obviously this is true of those who have committed no crime—who have acted in self-defense or killed in war. But even for those who kill without legal

16. See note 15.

17. van den Haag, *Debate* at 30 (cited in note 2).

18. Professor van den Haag's full statement on this point is as follows:

The desire to see crime punished is felt by noncriminals because they see that the criminal has pursued his interests or gratified his desires by means they, the noncriminals, have restrained themselves from using for the sake of the law and in fear of its punishments. If criminals could break the law with impunity, the self-restraint of noncriminals would have been in vain. They would have been fooled. Thus, the punishment of the criminal is needed to justify the restraint of the noncriminal. To put it another way, the offender, unlike the nonoffender, did not play by the legal rules and took advantage of those who did. He must be deprived of his illicit advantage if others are to continue to play by the rules. His advantage must be nullified in the minds of nonoffenders by the punishment the offender suffers. Punishment is at least psychologically restorative; it returns the advantage to those who play by the legal rules. This nonretributionist explanation of retributionist sentiment does not justify it. It does not warrant retributionism or make it unwarranted. The explanation is irrelevant to moral justification. It merely explains the genesis and the effects of retributionism.

van den Haag, *Debate* at 30 (cited in note 2).

19. See *id.* at 44.

justification—a drunk driver who commits negligent homicide, for example—Dr. van den Haag does not consider the death penalty to be a just sanction. Such persons have not forfeited the right to live despite having wrongfully deprived their victims of life.

Dr. van den Haag writes of premeditation in regard to homicide as an appropriate mental state for deserving the death penalty.²⁰ But this category does not capture the sense of his position. In the first place, premeditated murder is a legal rather than a moral category. Thus, a killer who has positive legal sanction—a Nazi head of state or the leader of an Iraqi execution squad—could never be found deserving of the death penalty. Dr. van den Haag does not endorse the view that the positive legality of killing necessarily precludes the justness of the death penalty. Second, premeditated murder is not the only crime for which, in principle, Dr. van den Haag thinks the death penalty is deserved. He appears to believe it a just penalty for horrible crimes that do not include the taking of human life, such as treason and rape.²¹

For Dr. van den Haag, the mental state that must accompany a criminal act in order to justify the death penalty is whatever such state manifests great moral depravity. By his horrible crime, the defendant has shown that he is “irredeemably wicked.”²² It is the irredeemably wicked who commit wicked crimes and who have forfeited their right to live. From Dr. van den Haag’s perspective, it is not all wrongful killers who should be put to death, nor only killers who should be put to death (though for utilitarian reasons we may choose not to use death in the case of non-homicides), but any person who commits a grave and horrible crime under circumstances that manifest that he is irredeemably wicked.²³

I believe this formulation to be the bedrock of Dr. van den Haag’s thought—that the irredeemably wicked should be put to death. This perspective is not unique to Dr. van den Haag. American Law also seeks out those who commit horrible crimes accompanied by certain personal moral characteristics, by conducting sentencing hearings in which defendants attempt to convince the

20. Id at 297 and 299.

21. For treason, see id at 297. For rape, see id at 203. In the case of rape, however, Dr. van den Haag, though accepting death as deserved, opposes it as an actual sanction because of the incentive the rapist would then have to kill his victim. Id at 204.

22. See note 15.

23. Professor van den Haag uses other phrases to denote the quality he is seeking, such as “too odious to live” or “too loathsome.” van den Haag, *Punishing Criminals* at 212 (cited in note 1).

jury that, despite what they did in this case, they do not deserve to be executed.²⁴ Thus, I believe Dr. van den Haag to be reflective of the wider society in his approach.

Obviously, two issues raised by the formulation I have inferred from Dr. van den Haag are whether there are any people who are "irredeemably wicked" and, if there are, whether the criminal justice system could be relied upon to select them.

As to the second point, Dr. van den Haag would say that this is a problem of miscarriage of justice, though given the grave crime they did commit, the execution of criminals who do not quite deserve the death penalty is not as horrible an error as the execution of the actually innocent.

As to the first point, whether anyone really is irredeemably wicked, it is not clear whether Dr. van den Haag means that the criminal act plus the moral state of the actor at that moment were so wicked that no future change in the actor could redeem him or whether he means that the criminal act plus the moral state at the time show conclusively that this criminal will not redeem himself in the future. In the first formulation, no later changes in the criminal would alter the justice of the death penalty. In the second, future changes in the criminal would alter the justice of the death penalty, but such changes are irrebuttably presumed to be impossible.

When Dr. van den Haag writes that "neither atonement nor reconciliation . . . is a reason to forego [the death penalty],"²⁵ he seems to endorse the view that consideration of desert must be limited to the time of the crime. But, in at least one place, in discussing life imprisonment without parole, Dr. van den Haag introduces the concept that punishment can, over time, cease to be deserved—in other words, that one can, by changing his personality, no longer "deserve" the punishment that he deserved when he committed the crime:

Life imprisonment also becomes undeserved over time. A person who committed a murder when twenty years old and is executed within five years—far too long and cruel a delay in my opinion—is, when executed, still the person who committed the crime for which he is punished. His identity changes little in five years. However, a person who committed a murder when he was twenty years old and is kept in prison when sixty years old, is no longer the same person who committed the crime for which he is still

24. Unlike Dr. van den Haag, American law limits the death penalty to acts of murder. See *Coker v Georgia*, 433 US 485 (1977) (death penalty for rape unconstitutional).

25. van den Haag, *Debate* at 35 (cited in note 2).

being punished. The sexagenarian is unlikely to have much in common with the twenty-year-old for whose act he is being punished; his legal identity no longer reflects reality. Personality and actual identity are not that continuous. In effect, we punish an innocent sexagenarian who does not deserve punishment, instead of a guilty twenty-year-old who did. This spectacle should offend our moral sensibilities more than the deserved execution of the twenty-year-old. Those who deserve the death penalty should be executed while they deserve it, not kept in prison when they no longer deserve any punishment.²⁶

It may be that Dr. van den Haag means here that, in the case of a sixty-year-old, the criminal is no longer the same "person" in reality as the twenty-year-old killer. But there is no reason to limit such a change to time. The person who experiences "atonement or reconciliation" is also not the same person who committed the wicked act. From Dr. van den Haag's perspective, however, even without atonement, time will "redeem" most criminals because, if they committed the crime at age 25, at 60 they no longer will deserve either the death penalty or imprisonment.

It is here that I believe Dr. van den Haag, and society in general, manifest an unconscious religious perspective—and a bogus one. Why would a secular society not desire the highest moral development of which one of its members is capable? Why would civil society kill the criminal, knowing as Dr. van den Haag does, that if only society waited, the criminal would no longer deserve to die? I do not mean to suggest that society should use any and all measures to force such moral improvement, but civil society is not indifferent to the growth and development of its members.

Dr. van den Haag would respond, and has said in fact,²⁷ that the criminal has forfeited his right to change. This is true, though (as I understand Dr. van den Haag's thought), only in two senses, that the criminal cannot logically object to his execution and that it is not unjust to execute the murderer in order to deter other killers. The observation does not necessarily apply to the execution that does not deter. Nor does it explain why society must go ahead with the execution. As Dr. van den Haag says, there does come a point for everyone when the death penalty is no longer necessary. It is not just to execute the sixty-year old for the crime of the twenty-year-old. Nor would it be just to execute anyone who no longer was the same "person." This is the reason that Dr. van den Haag is concerned about delay in executions. He is convinced that deter-

26. Robert Baird, ed, *Philosophy of Punishment* 147 (Prometheus Books, 1988).

27. van den Haag, *Debate* at 35 (cited in note 2).

rence renders the death penalty morally necessary and is actually fearful that because of delay, persons may be executed who at that moment do not deserve the punishment. That is to say, while the criminal has forfeited his right to change, he changes nevertheless. For Dr. van den Haag, this is unfortunate.

In the past, it was not necessary to choose between the criminal's moral development and the death penalty. The strong religious foundations of even civil society enabled society to execute the criminal while assuming that the development of human personality would not end at death. In a more religious era, civil society did not assume that by executing the prisoner it was annihilating him as a moral being. The story of human life was seen as continuing. Dr. van den Haag acknowledges this view, in a related context, in writing that if courts "make mistakes, one can hope that God will correct the courts hereafter . . ." ²⁸

But if we take secular assumptions seriously, which today we must, the death penalty is both arrogant and frivolous. It is arrogant because civil society itself decides to limit human moral development. It is frivolous because civil society does not have a compelling purpose in imposing such a limit. Society has neither the right nor any justification for preventing the criminal's moral development.

Whether Dr. van den Haag links moral desert to the continuous development of moral personality or whether he limits desert to the act and moral qualities manifest at the moment of the crime makes little difference in justifying the death penalty from a secular perspective. In terms of the developing person, the criminal does not turn out to be irredeemably wicked. Indeed, as Dr. van den Haag himself acknowledges, human change over time is inevitable. In terms of the wicked act, though it is not redeemed by subsequent moral development, for the wrong cannot be by any subsequent action, including the death penalty, the wrong is at least as much corrected by the disappearance of the wicked person and his replacement by a more moral person, as it would be by killing the wicked person. In both cases, the malignant personality is no more. But if there is no death penalty, some good may ultimately emerge.

Upon further reflection, the "permission" of God needed for the death penalty has become clearer to me. Originally, I would have said that civil society has no authority over the entirety of human

28. *Id.* at 298.

personality. This still seems to me to be true, but I found it difficult to justify this view from the perspective of secularism itself. Thus, I sought instead to identify the sense in which civil society, without justification, relies unthinkingly upon a religious perspective to render the death penalty acceptable.

I also acknowledge the negative implication of these comments, that the death penalty may be acceptable under certain religious assumptions. I personally do not believe that implication and neither do most religious groups. To argue that the death penalty is unjustifiable given secular assumptions is not necessarily to assume that it is justifiable in religious terms. But religious justification for the death penalty is a topic I must leave for another day.

Ernest van den Haag

Professor Ledewitz wonders whether I am a utilitarian or a retributionist. Sometimes I do too. At any rate, I oppose the punishment of innocents however deterrent. Punishment must be deserved by guilt, although it should deter as well.

Which makes me a retributionist, with regard to the distribution of punishments, and a deterrence theorist (but not a utilitarian—the association of deterrence with utilitarianism is historical, not logical) with respect to their social function. The threat of punishment is meant to deter crime. The threat becomes credible, and the punishment is just, when it is carried out against those who were not deterred; they volunteered to risk punishment. Does the threat of capital punishment deter more than the threat of other punishments? Can capital punishment be morally deserved by any crime?

The statistical evidence on added deterrence is inconclusive. But, as Ludwig Wittgenstein reminds us, we know more than we can prove, let alone prove statistically. It has never been shown that ten years in prison deter more than five. Still, we think harsher sentences are more deterrent. Rightly so: people are generally more deterred from any action by greater disincentives. The threat of death is a greater disincentive than that of prison, because death is feared more. Most convicts on deathrow keep their lawyers busy trying to have their sentences commuted to life imprisonment. It is unlikely that prospective murderers do not share the preference of their sentenced colleagues.

Professor Ledewitz believes that this argument of mine is “undermined” because I doubt that drunk drivers will be deterred by

the death penalty in that they "seem willing to risk their life" anyway by their drunken driving. But the drunk driver is not aware of his risk because he is drunk. (Drunk drivers also lack homicidal *mens rea*, wherefore it would be unjust to punish them as though murderers.) A prospective murderer would not be deterred either if he were drunk. The sober murderer, on the other hand, is aware of his risk. The death penalty concerns nearly exclusively sober murderers; drunk ones are not sentenced to death.

Professor Ledewitz argues that (presumably sober) murderers are willing to risk their life during robberies and, therefore, will be undeterred by the death penalty threat. However, they know that their risk from victims is minor: most victims do not try to defend themselves. The major risk of robbers is legal and is increased by the death penalty for felony murder. Professor Ledewitz's argument is logically flawed as well: if a murderer were undeterred by the risk to his life arising from his victim's possible self defense, it would not follow that he could not be deterred by the added risk of a subsequent death penalty.

In the long run, miscarriages of justice will occur since courts are fallible; they cause some innocents to be incarcerated or executed. Professor Ledewitz argues that the innocent lives that may be saved by deterrence are offset by the lives that may be lost through miscarriages. This argument implies that all deserved punishments may be offset by punishments erroneously imposed on innocents. Should we then give up punishing criminals altogether? Why does Professor Ledewitz assume that there will be enough miscarriages to offset the deterrent effect of capital punishment? This speculation is neither realistic nor substantiated.²⁹

I cannot prove that any specific punishment is morally required for any crime. Capital punishment for parking violations strikes me as excessive, although quite deterrent. Still, I cannot ultimately demonstrate this as a moral proposition. I believe that capital punishment for murder is morally justified, but I have only my sense of justice to support me. I rejoice that my sense of justice is shared

29. Bedau and Radelet found that out of 7,000 persons executed since 1900, 23 were innocent. Others believe this figure overstated. Either way it does not support Professor Ledewitz. Bedau & Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 Stanford L Rev 72-4 (1987).

Markham & Cassell, *Protecting the Innocent: A Response to the Bedau-Radelet Study*, 41 Stanford L Rev 121 (1988).

Id. Bedau & Radelet, *The Myth of Infallibility: a Reply to Markman & Cassell*, 41 Stanford L. Rev. 161 (1988).

by 80% of Americans according to the polls. In a democracy, majority opinion prevails. Consensus does not *ipso facto* demonstrate truth. However, although only what is true can be demonstrated, it does not follow that only what can be demonstrated is true. I believe that capital punishment for murder is just.

Professor Ledewitz attributes a "disturbing vision" to me, because, he claims, I believe that we must punish murderers else we "feel taken advantage of by our self-restraint in not committing murder." This parodies my general explanation of the need for punishment (which does not refer to specific crimes or punishments) and confuses it with a justification of capital punishment. I explained that criminals hope to gain some advantage by their crimes (otherwise they would not commit them) and that the threat of punishment serves as a disincentive sufficient for most, but not for all. I added that if punishments were not inflicted, those who, in view of threatened punishments, resisted the temptation to commit crimes would feel cheated and the effect of the disincentive would be weakened. I did not imply that people envy murderers or lack independent moral restraints. The "disturbing vision" is not in my head.

Professor Ledewitz notes that I oppose the continued incarceration of a sixty-year-old for a murder committed when he was twenty, because I feel that personal identity is not all that continuous; the prisoner may not even remember the crime for which he is still being punished. (On second thought, this is a highly speculative, not quite coherent proposition which I no longer endorse). If this murderer becomes a different person through the passage of time, Professor Ledewitz asks, why shouldn't another murderer be given the chance, denied him by execution, to become a different person through repentance? There is a difference. The first murderer, after 40 years, may no longer be the person who committed the crime. The second murderer could not repent if he were not the same person who committed the murder for which he still deserves punishment. I oppose not executing the murderer because of his repentance (let alone waiting for it); I also opposed keeping him in prison for life, since his imprisonment over time may become meaningless as punishment for what his younger self did.

The death penalty is final. Professor Ledewitz objects that it precludes rehabilitation. He feels that society has no "right" to prevent a possible future moral development of the convict. But punishments are retrospective; they are deserved by the past acts for which we retribute and do not depend on the possible future

acts, or feelings, of the punished person. Unlike Professor Ledewitz, I do not see why society owes a murderer the opportunity for continued life or moral development, which he denied to his victim.

Unfortunately Professor Ledewitz was so preoccupied with my inconsistencies and obscurities—for which I apologize—that he found little time to argue his own position. It seems epitomized, however, in his statement: “Society has neither the right nor any justification for preventing [by execution] the criminal’s moral development” and is “arrogant” and “frivolous” in doing so. We already have discussed retribution (and deterrence) as justification, albeit insufficient for Professor Ledewitz. What leads Professor Ledewitz now to deny the “right” of society to impose the death penalty (or any other)? Where does he think such rights have to come from? He does not tell and for good reason: The source of rights granted not by, but to, society can only be God. Professor Ledewitz wanted to offer a secular argument but could not do it without God’s help. Even with it, he has failed to tell why he believes that God forbids capital punishment when, for the last two thousand years, Christians believed otherwise.

In his epistle to the Romans, St. Paul quotes the Lord as saying “vengeance is mine” (12:19). He does not disparage vengeance but reserves it to Himself. The epistle continues, “[T]he ruler beareth not the sword in vain: for he is . . . to execute wrath upon him that doeth evil” (13:4). Surely “the sword” means the death penalty here endorsed as public (“the ruler”) retribution for evildoers, as justice.

Professor Ledewitz’s attempt to derive moral rights (actually they are claims until they become legal rights) of individuals (to life and moral development?) and obligations of society (to execute or not to?) in a purely secular way has a long history. Aristotle derived obligations from teleological nature and so did St. Thomas, who thought God reveals obligations through nature even to unbelievers. (Incidentally, St. Thomas endorsed capital punishment.) But nature either makes it impossible to do something, in which case there is no problem (*ultra posse nemo obligatur*), or possible, in which case we are left with the (often moral) choice of doing or not doing. Nature does not prescribe which we must choose. Anyway, it has no moral authority to prescribe, unless we believe that there is a God who has given nature prescriptive moral authority. But Professor Ledewitz cannot rely on God if his argument is to remain secular.

A secular society is the highest legal authority for its members. It is not "arrogant" in exercising its authority by sentencing murderers to death. Our society does not recognize an imprescriptible moral right to life, but grants only a contingent right, a right to innocent life. According to the Fifth and Fourteenth Amendments to our Constitution, murderers may forfeit this right if found guilty by due process. Legal rights and obligations in a secular democratic society may well rest upon the moral and religious beliefs of its members. But these beliefs do not themselves create rights or obligations, unless they are recognized and legislated by secular authority. An imprescriptible right to life is not so recognized. Nor is a social obligation to proceed only by divine permission.

Professor Ledewitz has not presented any secular argument to invalidate the right of society to impose capital punishment. Perhaps he meant merely to suggest that it is unwise to exercise this social right, because execution, by cutting off their moral development, prevents murderers from becoming useful citizens. Murderers, Professor Ledewitz thinks, are not irredeemably wicked and ought to have a chance to redeem themselves. Empirically few do, when given the chance. More important, whatever they might do in the future is no reason to spare them punishment for what they actually have done in the past. Murder is an irredeemable crime. In a secular society, it cannot be redeemed by atonement. It is final, irrevocable; and so is the punishment.

God may forgive the repentant murderer. Secular justice must leave that to Him. (Also, it has no way of determining whether repentance will occur, or has occurred.) Society is not in charge of moral redemption but of securing the life, liberty and property of its members by punishing criminals, as deserved and as threatened beforehand. It seems doubtful anyway that moral redemption will be fostered by holding out rewards to candidates, such as prolongation of their lives. By murdering, a person volunteers for the risk of suffering the death penalty threatened by law. He can avoid that risk by not volunteering. He cannot by repenting afterwards. It would be immoral, as well as unwise, for the law to promise the prospective murderer that that which he will do to his victim never will be done to him. The possibility that he will repent of his crime does not justify promising that he can deprive someone of life without losing his own.

