

Capital punishment is (apparently) allowed in the Kitab-e Aqdas. But is it as simple as that ...?

The title of this thread came about because the fire in which the firefighters were killed was apparently caused by arson.

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From: Sen McGlinn  
To: talisman9@yahooogroups.com  
Subject: MSNBC.com Article: Fifth firefighter dies after Calif. blaze  
Date sent: Mon, 06 Nov 2006 20:29:32 +0100

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On 6 Nov 2006 at 18:25, XX wrote:

> the context establishes a preference for the more brutal solution,  
> no?

emphatically not: one cannot plausibly take one verse out of the Aqdas in isolation from others, read it literally, and then claim to be working contextually. Contextual reading is just the opposite procedure.

My apologies to those who have heard the arguments below before.

I read the Aqdas not as prescribing capital punishment as a positive law, but as pointing to a principle of justice: that the punishment should satisfy the sense of natural justice, by making the punishment fit the crime. There are generally 3 theories of punishment: that it is deterrent, that it is corrective/educational, and that justice requires balanced retribution. I think Baha'u'llah backs the third of these in K62, where he says:

Should anyone intentionally destroy a house by fire, him also shall ye burn; should anyone deliberately take another's life, him also shall ye put to death. Take ye hold of the precepts of God with all your strength and power, and abandon the ways of the ignorant. Should ye condemn the arsonist and the murderer to life imprisonment, it would be permissible according to the provisions of the Book.

However there are some cases where the punishment cannot fit the crime. The balanced retributions for rape, murder and (fatal) arson would be barbaric, and would involve the executioner (or judicial rapist) in a sin, since it is written:

... let no soul slay another; this, verily, is that which was forbidden you in a Book that hath lain concealed within the Tabernacle of glory. What! Would ye kill him whom God hath quickened, whom He hath endowed with spirit through a breath from Him? Grievous then would be your trespass before His throne! Fear God, and lift not the hand of injustice and oppression to destroy what He hath Himself raised up; (K73)

Therefore (back to k62) there is an alternative where "fitting punishment" cannot be applied in full: life imprisonment.

Murder -- and arson even more so -- is an instance in which the principle could be expressed with maximum rhetorical force, but then protected from a too literal application by common sense, and by forbidding the deliberate taking of life. Arson I take to refer to arson in a city, which under Ottoman law was severely punished for obvious reasons, as a form of murder. The use of burning as a punishment was forbidden in Islamic law, so this verse has a vehemence of expression even greater in the Islamic context than in our own. It tells us, "God's justice would be for the killer to die, and even for the arsonist to burn," but then adds that imprisonment is acceptable, and taking life is forbidden (K73).

Naturally imprisonment is to be preferred, but we should remember that this is still not balancing justice, however long the imprisonment may last. The victims will not need that reminder -- if you have lost a son or daughter to an unrepentant murderer, imprisonment will not feel like full justice. The victims may need our understanding, they may need us to say "we know that this does not satisfy that sense of justice and injustice that we have in us from our childhood, but it is the best that can be done, since taking life is forbidden."

Life imprisonment and compensation for the (surviving) victims is as near as we can come to natural justice, without breaking God's laws ourselves. As often happens in ethics, there are two principles, both valid, which cannot both be followed completely in a given practical situation. Then we have to seek a compromise, or in this case, follow the compromise already provided for us by Baha'u'llah.

The upshot is that the eye-for-an-eye principle remains part of the theology of justice, but the actual implementation of capital punishment is forbidden in the positive law. In this sense -- at the level of actually making and implementing laws for society -- one could say that the Baha'i teachings are opposed to capital punishment in principle, while recognising that the "instruments of security" have been delegated by God to the state, not to religious leaders, so states have a right to define the legitimate use of force, and religions may only express an opinion about the principles involved.

The idea that taking life is wrong should be distinguished from religious pacifism: it does not mean that any use of fatal force is wrong. I do not think that K73 prevents or condemns the use of force to protect society and enforce the law. But it does apply to the question of punishment. Whether the person concerned is a soldier or a criminal, once captured they are no longer a threat (presuming secure detention is possible). So capital punishment is analogous to executing prisoners of war, while the use of deadly force by the police, where necessary, is analogous to the use of military force against an external enemy.

Baha'i law, like Islamic law, is an open and comparative system. It does not provide a coherent code, but a variety of principles and precedents, calling for a process of interpretation and application. One cannot read a single verse from the Aqdas as if it were article 2.3.6b of the Civil Code and say, 'that is Baha'i Law'.

Laws become positive laws not when they are thought up, but when they are implemented through a designated administration and enforcing agent. We can classify 3 types of Bahai law and teachings according to which agent is involved - the individual for him or herself, the Bahai institutions, or a civil government. Religious teachings that become state law, become law because the government has adopted and implemented them, not because they are religious teachings. In every case the form of the law would be the result of political processes, because there is no case of a Bahai law that is sufficiently defined to be adopted as positive law for the state. Bahai political actors of a literalist bent might absolutise a principle in their own minds, thinking that the penalty for arson should be burning or life imprisonment, but they would have to fall back on different opinions to be thrashed out in political processes as soon as they are confronted with practical questions such as how is the punishment implemented, does it apply to minors, how old is a minor, what sorts of arson are involved, does "arson" here really mean crimes of hate (terrorism) and exclude a psychological condition involving fascination with fire ... etc..

Similarly the law "Bind ye the broken with the hands of justice, and crush the oppressor" (K88). It is an important principle, but it requires a political process and a civil agent to implement it.

An example of the way principle passes into law via the action of civil government is this passage by Shoghi Effendi, which envisions a global Bill of enforceable human rights, underwritten by the civil governments, not by the religious order:

The unity of the human race, as envisaged by Baha'u'llah, implies the establishment of a world commonwealth in which all nations, races, creeds and classes are closely and permanently united, and in which the autonomy of its state members and the personal freedom and initiative of the individuals that compose them are definitely and completely safeguarded.

Note that this commonwealth is not the same as the Baha'i Commonwealth with capital C. This is a commonwealth of nations, because it has "state members" and it embraces all creeds -- not just the Bahais. This commonwealth of nations will safeguard "the personal freedom and initiative of .. individuals." This looks like the Universal Declaration of Human Rights but elevated into a positive law of real legal rights that can be enforced, because there is an international political organisation to do so, even against the individual states. The fact that one of the most fundamental Bahai principles entails a religiously plural society in which individual freedoms have real protection tells us a great deal about the possible enforceability of religious law by any state member. We again see that the details of the laws of the commonwealth of nations are not specified, but are to be worked out in political processes.

But to get back to K73 and pacifism. Clearly a judicial execution is taking away a life that God has granted. It is standing in the shoes of God. A Bahai who has understood the Aqdas as a whole, and not just with a cherry-picker approach, could not serve as an executioner, since to do so would presumably result in a terrible punishment in the next life. Neither could a largely Bahai society ask its non-believing and non-Bahai citizens to carry out such a sentence. Even if the executioner did not believe in divine judgement, or did not believe that deliberate killing is a 'grevous trespass', the Baha'is believe that the killer will suffer in the next world, so we cannot ask anyone else to do that thing for us.

As for what is barbaric, it is a question of the times. Abdul-Baha is reported to have said:

In the Taurat there are ten commandments concerning the murderer. Is it possible to carry these out? Can these ten ordinances, concerning the treatment of murderers, be enforced? Modern times are such that even the question of capital punishment - - the one form which some nations have decided to enforce in relation to a murderer - - is a mooted question. Wise men are consulting as to its feasibility or otherwise. (Star of the West, Vol. 3, No. 13, from p. 3, talk of 12 Oct 1912)

Moses lived in the wilderness. There were no prisons for the punishment of criminals. Hence, according to the exigency of the time, the law was an eye for an eye and a tooth for a tooth. Is it possible to follow such a law now? In the Torah there are ten

commandments concerning murder. These ten ordinances, concerning the treatment of murderers, cannot be enforced now. \*\*Even regarding capital punishment, wise men are studying this question, as they maintain that capital punishment should be abolished.\*\* (Persian notes of the same talk, translated in Mahmud's Diary 320)

Apart from the difference in times, which makes capital punishment unacceptable in most societies and most situations today, we also have to be clear that the authority to use force of any kind is not given to the Bahais or any other religious community:

The one true God, exalted be His glory, hath ever regarded, and will continue to regard, the hearts of men as His own, His exclusive possession. ... The instruments which are essential to the immediate protection, the security and assurance of the human race have been entrusted to the hands, and lie in the grasp, of the governors of human society. This is the wish of God and His decree.... (Baha'u'llah, Gleanings from the Writings of Baha'u'llah, p. 206)

But again, we need to distinguish between the use of violence to protect the weak (stop the criminal) and to correct injustice (to destroy tyrants and aggressor governments), and the treatment of the criminal or tyrant once he or she has been captured and can do no more harm. Killing, even the unavoidable death of innocents, is permitted to the state and is justified in the face of aggression or oppression, providing the cure is not worse than the disease, and a 'cure' is probable. Capital punishment could also be justified in a preventative situation, where the possibility of safe detention and trial was not available -- this is the situation Abdu'l-Baha describes above, of a society without prisons. One can even deliberately imprison the innocent for preventive reasons, as in the compulsory isolation of disease carriers. All of these fall under the heading of means that are necessary to achieve a much greater public good. But to deliberately take the life of someone already captured and capable of doing no further harm is in my view barbaric. I'm with the "wise men"

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