

## THE ADULTERESS AND THE DEATH PENALTY

Stephen A. James\*

Several articles have been written by opponents of the death penalty who cite the pericope of the adulteress (John 7:53-8:11) as evidence that the death penalty has been revoked by the authority of Jesus. Examples include Lewis B. Smedes, who believes that readers of the passage "will understand that Jesus refuses to be part of the hangman's plot not because he is easy on adultery but because he infuses the guilty situation with the law of love for the guilty";<sup>1</sup> Dwight Ericsson, who considers that this incident "actually denies the right to use capital punishment in a particular instance";<sup>2</sup> John Howard Yoder, who writes that this incident

raises two other considerations which profoundly modify the significance of that Code for his day and for ours. First, he raises the issue of the moral authority of the judge and executioner: "Let him that is without sin cast the first stone." Secondly, he applies to this woman's offense, which is a civil offense, his authority to forgive sin. There is no differentiation between the religious and the civil which says that God may forgive the sinner but justice must still be done;<sup>3</sup>

and Charles S. Milligan, who regards the death penalty abrogated because of this incident and questions why it is that proponents of capital punishment "ignore this one specific case where Jesus spoke on its applicability."<sup>4</sup>

While proponents of capital punishment have not really ignored this passage concerning the adulteress, one must agree with those opponents who charge that proponents have failed to interact significantly and dynamically with the implications of the text for application to the modern controversy concerning capital punishment. Richard H. Bube, for instance, in arguing in favor of capital punishment for murder accepts that "Jesus Himself in His treatment of the woman taken in adultery indicated the negation of the death penalty for that offense,"<sup>5</sup> and Charles C. Ryrie similarly argues that while the incident may be used to teach that adultery should not be punished with death, abrogation of the death penalty cannot fairly be extended to the crime of murder.<sup>6</sup>

### I. HISTORY OF INTERPRETATION

A survey of prominent interpreters throughout the history of the Christian Church, such as Augustine, Chrysostom, Theodoret, Tertullian, Luther and Cal-

\*Stephen James is a recent graduate of Trinity Evangelical Divinity School, Deerfield, Illinois.

<sup>1</sup>L. B. Smedes, "Is the Death Penalty Necessary?", *United Evangelical Action*, December 10, 1964, p. 19.

<sup>2</sup>D. Ericsson, "New Testament Christianity and the Morality of Capital Punishment: A Rebuttal," *Journal of the American Scientific Affiliation* 14 (September 1962) 78.

<sup>3</sup>J. H. Yoder, C. S. Milligan and G. H. Clark, "Capital Punishment and the Bible," *Christianity Today* 4 (1959-1960) 349.

<sup>4</sup>*Ibid.*, p. 351.

vin, as well as a number of important modern commentators, reveals the following:

The Church fathers are unanimous in interpreting the pericope of the adulteress as being indicative of Jesus' forgiving grace applied to the woman.<sup>7</sup>

Luther interprets the passage as representing the conflict between law and gospel, for "in Christ's realm no punishment is to be found, but only mercy and forgiveness of sins, whereas in the realm of Moses and the world there is no forgiveness of sins, but only wrath and punishment," and asserts that the woman was forgiven;<sup>8</sup> while Calvin, who also sees a conflict between the kingdom of law and the kingdom of grace, notes that the text does not specify her forgiveness.<sup>9</sup>

Modern commentators, such as Bernard, Godet, Hoskyns, Morris and Westcott, are unanimous in noting that the text does not say that Jesus forgave the woman.<sup>10</sup>

None of the persons mentioned above seriously examines the words and actions of Jesus in the light of Jewish legal procedures regarding the capital crime of adultery. The fathers and Luther uniformly supposed that Jesus' motives for action were his desires to grant mercy to the woman and to escape legal entrapment by the Jews, and the modern commentators do nothing to indicate disagreement with this view.

The journal articles during the past twenty years, at least those indexed in *New Testament Abstracts*, focus almost entirely on the two issues of the authenticity of the text of John 7:53-8:11 and speculation as to the content of what Jesus wrote on the ground. Virtually nothing has been done on the interpretation and application of the passage to modern needs.

In English by far the most valuable study is that of J.D.M. Derrett,<sup>11</sup> in which he marshals much valuable legal background material that is necessary for interpreting the text. Derrett, however, does not draw out the significance of the text for application to the modern controversy concerning capital punishment.

The person who comes closest to the truth in interpreting this passage is R. D. Mawdsley, who does not develop his point but writes as follows:

<sup>7</sup>R. H. Bube, "New Testament Christianity and the Morality of Capital Punishment," *Journal of the American Scientific Affiliation* 13 (December 1961) 115.

<sup>8</sup>C. C. Ryrie, "The Doctrine of Capital Punishment," *BSac* 129 (1972) 214.

<sup>9</sup>All indexed references to John 7:53-8:11 were examined in A. Roberts and J. Donaldson, eds., *The Ante-Nicene Fathers*, 10 vols. (Grand Rapids: Eerdmans, 1956); P. Schaff, ed., *The Nicene and Post-Nicene Fathers*, First Series, 14 vols. (Grand Rapids: Eerdmans, 1956); and P. Schaff and H. Wace, eds., *The Nicene and Post-Nicene Fathers*, Second Series, 14 vols. (Grand Rapids: Eerdmans, 1952).

<sup>10</sup>M. Luther, *Luther's Works* (ed. J. Pelikan; Saint Louis: Concordia, 1959), 23. 310.

<sup>11</sup>J. Calvin, *Calvin's Commentaries: New Testament* (ed. D. W. Torrance and T. F. Torrance, trans. T. H. L. Parker; Grand Rapids: Eerdmans, 1959), 4. 206-209.

<sup>12</sup>J. H. Bernard, *A Critical and Exegetical Commentary on the Gospel According to St. John* (ICC; Edinburgh: T. & T. Clark, 1928), 2. 715-721; F. L. Godet, *Commentary on the Gospel of John* (Grand Rapids: Zondervan, 1969), 2. 84-89; E. C. Hoskyns, *The Fourth Gospel* (ed. F. N. Davey; London: Faber and Faber, 1947) 563-572; L. Morris, *The Gospel According to John* (Grand Rapids: Eerdmans, 1971) 882-891; B. F. Westcott, *The Gospel According to St. John* (Grand Rapids: Eerdmans, 1971) 126-127.

<sup>13</sup>J. D. M. Derrett, "Law in the New Testament: The Story of the Woman Taken in Adultery," *NTS* 10 (1963-1964) 1-26.

Christ clearly indicated in Matthew 5:17 that He had not come "to destroy the law," and His treatment of the woman taken in adultery in John 8:1-11 demonstrated His consistent respect for the law. Even though Christ could look into the woman's heart and perceive that she was an adulteress (John 8:11), He did not condemn her to death by stoning since the witnesses against her had vanished (John 8:10). An analogous situation today would be the dismissal of the prosecution's case with prejudice for want of prosecution.<sup>12</sup>

## II. THE PROBLEM

Proper interpretation and application of this passage to the capital punishment controversy can only result if a sound hermeneutic approach is used, which necessitates taking into strict account the Biblical legal data relevant to prosecuting a capital case. This paper contends that, far from abrogating the Mosaic law, the actions and words of Jesus in this passage reflect an incredibly strict adherence to the letter and spirit of the Law. The procedure of the paper is (1) to show that it is a hazardous hermeneutic that applies this incident to the modern concern over capital punishment and (2) to demonstrate that this incident does not support an overthrow of capital punishment, either for adultery or for any other crime, in its legitimate context of a theocratic state. The relevance of the passage to the modern state will be noted in the concluding section.

Inasmuch as this passage has greatest significance if it is regarded as authentic and canonical, the author will treat the passage as such and ignore the actual controversy concerning its authenticity.

## III. HERMENEUTICAL FACTORS

The interpretation of John 7:53-8:11 is vastly simplified by the fact that it does not utilize allegory, simile or other forms of symbolic language that increase the subjective element in interpretation. The passage uses straightforward language that should be interpreted according to the normal sense of the words and grammatical constructions used, taking into consideration clear idiomatic usage of the time. The historical context of the incident is also vital to its correct interpretation.

Examination of the text shows that Jesus was interrupted, while teaching in the temple (John 8:2), by a group of scribes and Pharisees who were trying to entrap him in a legal dispute (John 8:3-6).<sup>13</sup> The content of John 8:4-11 is a "transcript" of the dialogue that took place between Jesus and the accusers (8:4-9) and between Jesus and the accused (8:10-11). That the dialogue was restricted to these two exchanges is implied in the text (v 7, "they persisted . . . , he . . . said to them," and v 10, "Jesus said to her"). There is no indication that Jesus directed any of his remarks to the crowd that overheard the exchange.

When doing hermeneutics it is vital to remember the difference between de-

<sup>12</sup>R. D. Mawdsley, "Capital Punishment in Genesis 9:6," *Central Bible Quarterly* 18/2 (1975) 24.

<sup>13</sup>That the issue was legal is clear from the legal terminology used in the passage. See the commentaries by Calvin, Godet, Morris and Westcott, and the article by Derrett, among others. The trap basically consisted in this: If Jesus followed the Mosaic law to require that an adulteress be executed, he would seem to repudiate his teaching on forgiveness and grace and further come into conflict with the Roman law that reserved the death penalty to itself. If Jesus repudiated the Mosaic law and the death penalty, he would be regarded as a blasphemer and his popular messiahship would be discredited.

ductive and inductive reasoning. The former argues from a general principle toward a specific application of the principle, while the latter attempts to derive the general principle from a series of specific events in which the principle is presumed to be acting. The accuracy of inductive reasoning is directly related to the number of events available for examination. In this pericope Jesus did not enunciate the general principle from which he worked. It is very hazardous to attempt to derive a general principle concerning the propriety of capital punishment from the few incidents in Jesus' ministry which may be thought to be relevant.

Further, while the incident was observable by many, Jesus' response was not directed to the crowd in general (as it would have been if he were teaching publicly) but to the small, select group of persons who were intimately involved in the event. An extension to the crowd of principles addressed to the scribes, Pharisees or woman is not necessarily a legitimate or easy procedure.

A particular example is necessary. Jesus' statement, "He who is without sin among you, let him be the first to throw a stone at her" (John 8:7), raises a question concerning the moral qualifications of witnesses, judges and executioners. The meaning of the term translated "without sin" is vital: In what way must one be without sin in order to be qualified to act as a witness, judge or executioner? How does this command apply to persons not involved in the original event?

Leon Morris takes notice of this important issue when he writes:

Some have thought that the word means "innocent of that particular sin." *Anamartētos* is not found elsewhere in the New Testament, but its use in LXX shows that it is not specific. It can denote innocence of various kinds of sin. In this present context it is important that this wide meaning be understood. It was not their indulgence in one particular sin but their general sinfulness which disqualified them from arrogating to themselves the position of God's agents in punishing the sin of others.<sup>14</sup>

If Morris means by this that absolute sinlessness is necessary to be a fit witness, and so forth, as Yoder and Milligan seem to believe (see above), the logical consequence is that there can be no criminal judgment and punishment on earth because all men are sinners. This would obstruct the express purpose of civil government, which is a "minister of God, an avenger who brings wrath upon the one who practices evil" (Rom 13:4).

The actual and basic meaning of the word *anamartētos* is "without fault," but the context determines the limits within which the faultlessness is asserted. The very common extension to absolute and exhaustive moral faultlessness—i.e., "without sin"—goes beyond the original intent of the word, which is basically secular.<sup>15</sup>

In the context under discussion, the persons being challenged are the witnesses in their function as witnesses. In effect, Jesus is asking the witnesses if they are truly eligible before the law to testify in the immediate case. The certainty of their having sinned at some time or other is not in mind. It is unfortunate that the term in question is translated "without sin," thus bringing to mind the general sinfulness of men. It would have been better translated, in context, as "competent to testify."

Since the term does not necessarily mean "without sin" in the absolute sense,

<sup>14</sup>L. Morris, *John*, p. 889 n. 24.

<sup>15</sup>TDNT, s.v. "*anamartētos*."

and since the arbitrary assignment of such meaning to the word necessarily obstructs effective civil government, one is justified in rejecting the absolute sense in favor of a more restricted meaning. We may agree with Calvin that

none, then, must let his own sins stop him correcting the sins of others and even punishing them when necessary, so long as he hates, both in himself and in others, what is to be condemned.<sup>16</sup>

In this particular event Jesus must be understood as commanding the scribes and Pharisees to be without evil motive in bringing the woman before him—which means, in part, that they must be obeying completely the Biblical commandments relative to trying a case of adultery. If there is any application beyond the immediate incident, it can only be to require innocence of motive and conformity to legal procedure by persons engaged in the prosecution of criminals. Any interpretation of the passage that would prevent Christians from participating in the prosecution of criminals, whether concerning capital crimes or not, must certainly be rejected as inexcusably unjustified.

In brief, from a hermeneutical perspective the pericope of the adulteress is inadequate in scope to be used in objecting to capital punishment, and the transferable concept concerning the qualifications of witnesses can not be used to exclude Christians from participating in the trial, sentencing or punishment aspects of capital crimes.

#### IV. LEGAL FACTORS

It will now be demonstrated that the pericope of the adulteress, contrary to the claims of the opponents of capital punishment, neither “denies the right to use capital punishment in a particular instance” nor is an instance of a “specific case where Jesus spoke on its applicability,” as alleged above by Ericsson and Milligan.

Jesus’ words and actions must be interpreted in light of the OT legislation regarding cases of adultery. The OT required that

if a man is found lying with a married woman, then both of them shall die, the man who lay with the woman, and the woman; thus you shall purge the evil from Israel. If there is a girl who is a virgin engaged to a man, and another man finds her in the city and lies with her, then you shall bring them both out to the gate of that city and you shall stone them to death; the girl, because she did not cry out in the city, and the man, because he has violated his neighbor’s wife. Thus you shall purge the evil from among you.<sup>17</sup>

Errors in judgment were virtually nil, because the law prescribed that

on the evidence of two witnesses or three witnesses, he who is to die shall be put to death; he shall not be put to death on the evidence of one witness. The hand of the witness shall be first against him to put him to death, and afterward the hand of all the people. So you shall purge the evil from your midst.<sup>18</sup>

<sup>16</sup>J. Calvin, *John*, p. 208.

<sup>17</sup>Deut 22:22-24; see also Lev 20:10.

<sup>18</sup>Deut 17:6-7; see also 19:15.

Witnesses to adultery meant eyewitnesses. Cases of suspicion were subject to test by "bitter waters."<sup>19</sup>

The likelihood of intentional perjury was minimized by the variable penalty attached to conviction for perjury. The law read:

If a malicious witness rises up against a man to accuse him of wrongdoing, then both the men who have the dispute shall stand before the LORD, before the priests and judges in those days. And the judges shall investigate thoroughly; and if the witness is a false witness and he has accused his brother falsely, then you shall do to him just as he had intended to do to his brother. Thus you shall purge the evil from among you.<sup>20</sup>

Inasmuch as most defendants in a capital case would challenge the testimony of the accusers, a thorough investigation would be the usual procedure.

Finally the integrity of the witness himself was subject to scrutiny, for the law specified:

You shall not carry a false rumor; do not join your hand with a wicked man to be a malicious witness. You shall not follow a multitude in doing evil, nor shall you testify in a dispute so as to turn aside after a multitude in order to pervert justice; nor shall you be partial to a poor man in his dispute. . . . You shall not pervert the justice due to your needy brother in his dispute. Keep far from a false charge, and do not kill the innocent or the righteous, for I will not acquit the guilty. And you shall not take a bribe, for a bribe blinds the clear-sighted and subverts the cause of the just.<sup>21</sup>

With this background, the incident narrated in the pericope of the adulteress can be properly interpreted.

As described in the pericope, the scribes and Pharisees attempted to trap Jesus in a legal dispute in order to remove his influence over the people (see above, n. 13). The trap focused on the Mosaic requirement of the death penalty for adultery, and the accusers demanded that Jesus state his opinion on the appropriateness of the penalty (John 8:5). Before him they exhibited the accused woman (8:3).

Beyond this description it may be safely assumed that the minimum of two eyewitnesses was present—perhaps more—and that some of the scribes and Pharisees present were willing to accept responsibility for judging and executing the woman despite the official proscription of execution imposed by the Roman government. Certainly it was expected by the accusers that Jesus' opinion on the matter would have been sufficient to entrap him, but they may have also hoped that Jesus would serve as a judge in the case, thus becoming eligible to become the scapegoat if the proscribed execution of the woman actually took place and was subsequently reported to the Roman authorities. Indeed, Jesus probably would have been denounced by them as the leader of the mob responsible for the woman's death.

Jesus responded by writing on the ground, was pressured into the verbal reply, "He who is without sin among you, let him be the first to throw a stone at her," and again stooped and wrote on the ground (8:6-8).

The verbal reply was aimed directly at the witnesses, for the right and obliga-

<sup>19</sup>Num 5:11-31. See J.D.M. Derrett, "Law," pp. 4-6, who also cites many rabbinic sources.

<sup>20</sup>Deut 19:16-19.

<sup>21</sup>Exod 23:1-3, 6-8.

tion to cast the first stone belonged to no others. Jesus directly challenged the integrity of the witnesses by his qualification of being "without sin." As argued above, this meant competency to testify in the case at hand—i.e., true testimony from pure motive with observance of the legal requirements and procedures of the law. The most amazing aspect of the challenge is that Jesus seems to have held each witness responsible for examining his own conduct.

No amount of speculation will remove the uncertainty of the content of what Jesus wrote on the ground. Derrett argues that the first writing was from Exod 23:1 (quoted above), which keyed the thoughts of the involved persons to the motives required of witnesses,<sup>22</sup> and that the second writing was from Exod 23:7 (also above), which reminded the witnesses that God himself will deal with

those who slay the "innocent and righteous," who include, according to interpretation, those who have escaped, on technical or other grounds, a penalty they would otherwise have had to pay.<sup>23</sup>

No man knows the accuracy of Derrett's surmise, but the content of Exod 23:1-8 does fit very well into the context of John 8:6-8.

The integrity of the witnesses in this case could be challenged on a number of grounds, one of them being their malevolent desire to trap Jesus. Several others exist with even more plausibility:

1. Failure to warn the woman concerning the criminal nature and consequences of adultery. Such a warning was required in later Talmudic law and may have been popularly required in Jesus' time. The requirement for such a warning seems to have extremely poor Biblical support, however, and the text of the pericope gives no indication that Jesus recognized the validity of such a requirement.<sup>24</sup>

2. A conspiracy between the woman's husband or fiancé and the witnesses to catch her and have her executed.<sup>25</sup> Several reasons for such an action can be postulated, including a desire of the husband (1) to inherit his deceased wife's property, (2) to prohibit his divorced wife from marrying her new love, or (3) to express his anger and meanness in an act of vengeance. The witnesses, having been contacted in advance, would have been guilty of failing to prevent the commission by a fellow Jew not only of a sin but also of a capital crime.

3. Failure to obey the Scriptural procedures for trying a case of adultery. The law required that both persons guilty of adultery should be tried and executed (Deut 22:22-24), but the woman's partner was conspicuous by his absence. Barring the possibility that he might have escaped or died along the way, one is forced to the conclusion that the adulterer was freed by or with the knowledge and consent of both the husband and the witnesses. The adulterer may have been

<sup>22</sup>J.D.M. Derrett, "Law," pp. 19-22.

<sup>23</sup>Ibid., p. 23.

<sup>24</sup>Cf. *ibid.*, pp. 13-16, for background on the requirement for warning. Derrett considers this to be important, for he writes in his conclusion that the woman "was sent away with the warning to which she had been entitled (v. 11c), but had not had. This time the warning had been given before a group, some of whom would certainly be competent witnesses. If she was caught again in adultery nothing could save her" (p. 25).

<sup>25</sup>The debate as to whether the woman was married or engaged, with a possibly corresponding difference in prescribed method of execution, is irrelevant to the fact of adultery and the requirement for execution. The punishment for an adulterous wife is not actually specified in Scripture.

released because of favoritism, but the likely occurrence of bribery, not unknown in such cases,<sup>26</sup> would have brought further culpability against the witnesses for violating the expressed prohibition of Exod 23:8.

Because objections one and two are not clearly based on Scripture, their significance may be questioned by some. But the third objection is clearly based on Scripture, and the text definitely leads to the conclusion that the integrity of the witnesses could be destroyed on the basis of this objection alone.

We cannot know exactly how the witnesses received Jesus' challenge or which reasons they found to disqualify themselves from offering testimony. All we know is that each one of them, beginning with the older ones, found himself disqualified by his own conscience from acting as a prosecuting witness against the woman. They left (John 8:9).

The remainder of the pericope (vv 10-11) narrates the dialogue between Jesus and the adulteress upon which some base their view that Jesus forgave the woman. The actual narrative indicates only that when Jesus learned that the witnesses had failed to "condemn her" neither did he condemn her, but he admonished her to go her way and sin no more.

The word used for condemn is a specifically legal term, as one would expect from the context. The failure of the witnesses to condemn the woman was not because of insufficient or inaccurate evidence but because the lack of integrity of the witnesses disqualified them from presenting their damning testimony. As noted above by Mawdsley, the case against the woman failed for lack of prosecution.

The failure of Jesus to condemn the woman must also be strictly understood in the civil and temporal context of the entire passage. Extension of his statement to the spiritual and eternal is not valid on either hermeneutical or exegetical grounds.<sup>27</sup> Indeed, it would have been a gross violation of Biblical law if Jesus had attempted to condemn the woman. He was not an eyewitness, and he could be only one witness in any case. Given the circumstances, Jesus could not have condemned the woman even if he had wanted to do so. He was required by law to release her, and his parting admonition to "sin no more" must be understood for what it is—excellent advice!

In brief, from a legal perspective the words and actions of Jesus recorded in the pericope of the adulteress are in strict conformity to the letter and spirit of the Mosaic law, which sought to exact justice within the limits of procedures designed to protect the individual from the innocent errors or malevolent perjury of others. Jesus did not here set aside or modify the Mosaic law.

## V. CONCLUSION

While the bait in this trap set for Jesus was the issue of the propriety of capital punishment, the real issue was the authority of the Mosaic law over the Jews in

<sup>26</sup>Prov 6:32-35 implies that bribes were sometimes accepted, though not always. Cf. especially vv 34-35: "Jealousy enrages a man, and he will not spare in the day of vengeance. He will not accept any ransom, nor will he be content though you give him many gifts."

<sup>27</sup>The comments of two excellent exegetes are worth noting. L. Morris notes: "It should not be overlooked that He says nothing about forgiveness. The guilty woman has given no sign of repentance or of faith" (*John*, p. 891). B. F. Westcott writes: "The words are not words of forgiveness (Luke vii. 48), but simply of one who gives no sentence (comp. Luke xxi. 14). The condemnation has reference to the outward punishment and not to the moral guilt" (*John*, p. 127).

Judea during the time of Jesus. In the pericope the words and actions of Jesus exhibited a strict compliance with the letter and spirit of the Mosaic law (1) by testing the integrity of the witnesses and, in the absence of credible witnesses, (2) by dismissing the charges against the woman. Thus Jesus affirmed the authority of the Mosaic law.

It is difficult to understand how anyone can assert that this pericope is a "specific case where Jesus spoke on its applicability" when the issue of capital punishment scarcely received mention in the narrative—let alone being the subject of an extended discourse on its propriety.

It is also hard to understand how anyone can assert that this pericope records that Jesus "actually denies the right to use capital punishment in a particular instance" when the text clearly states that Jesus commanded any qualified witness to begin the execution by casting the first stone. Objectors to capital punishment will be grasping at empty verbiage if they attempt to argue that Jesus made this positive command "tongue in cheek," knowing that the witnesses were disqualified and could not prosecute the woman. The record must stand as it is. In light of his demonstrable conformity to legal procedures, it is unreasonable to argue that Jesus would have broken with the prescribed penalty in this case.

In short, Jesus did not invalidate the propriety of the death penalty in the context of the Jewish theocracy either for capital crimes in general or for the specific crime of adultery.

This study applies to the modern controversy over capital punishment. Opponents of capital punishment may not use the pericope of the adulteress in any manner in their arguments. It does not prove what they want it to prove in its proper context, nor does it provide transferable concepts for a nontheocratic state that would obligate Christians to refrain from participation in the trying, judging or punishing of capital crimes. And proponents of capital punishment may use the pericope as evidence that Jesus approved of the death penalty within the context of a theocratic state, but they may not uncritically extend this approval to a nontheocratic state even for the crime of murder.