

**“As I Had Mercy on You”:****Karla Faye Tucker, Immanuel Kant, and the Impossibility of Christian Retributivism**

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**Introduction: The Execution of Karla Faye Tucker and the Challenge It Raises**

In 1998, the state of Texas executed Karla Faye Tucker—a woman whose conversion to Christianity is one of the most significant in recent decades. Her execution was vocally opposed by Christian leaders from Pat Robertson to Pope John Paul II, and was the subject of international protests (“Lessons of Karla Faye Tucker” 1998; “International Appeals to Spare Tucker Fail” 1998). In Rome, demonstrators carried crosses and held signs reading “CLINTON SALVA KARLA TUCKER.” As one protestor told reporters, “We are here to stop the execution of Karla Tucker, who is a different person from the one who committed the murder 15 years ago” (“Italy” 2015).

A former prostitute and drug addict, Tucker had participated in the pickax murders of an acquaintance and his companion. After secretly reading a Bible in her cell, Tucker converted to Christianity, became a high-profile evangelist, and married a pastor.

At the time of her execution, she had—for years—carried on a tireless career of charitable and evangelical work. In an interview with Larry King, Tucker was asked what she said to those who dismissed her salvation as a “jailhouse conversion.” Tucker replied that “I don’t try to convince people of that; if you can’t look at me and see it, then nothing I can say is going to convince you. I just live it every day” (*Death Penalty Case* 1998).

Calls to commute Tucker’s sentence to life imprisonment were rejected by George W. Bush, then the governor of Texas. In a public statement announcing that he would not spare Tucker’s life, Bush stated that “Like many touched by this case, I have sought guidance through prayer.” Privately, however, Bush expressed amusement at Tucker’s death. Following Tucker’s interview with Larry King, Bush derided Tucker to an acquaintance. Making a face of mock desperation, Bush whimpered “Please: don’t kill me” (Noah 2005).

In fact, Karla Faye Tucker had said no such thing. In her Larry King interview, Tucker affirmed that she was ready to die, stating “My life has already been saved.” She suggested that those who dismissed her bravery as an act were projecting their own naturalistic views on to her. Yet—as Jesus himself had asked that he be spared crucifixion—Tucker felt that “If he can ask it, I don’t have to feel ashamed to ask it either... I’m not ashamed to say that I’d love to live, and to share love.” Tucker’s last words were “I am going to be face-to-face with Jesus now... I love all of you very much. I will see you all when you get there. I will wait for you.”

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Among those in attendance at Tucker’s execution was Ronald Carlson—the brother of one of Tucker’s victims—who had publicly forgiven Tucker and asked that her life be spared. Soon after her death, the corrections officer responsible for “strapping down” executed inmates suffered a mental breakdown and resigned. “I was shaking,” he recalled, “and tears, uncontrollable tears, were coming out of my eyes.” Prior to Tucker’s death, he had been involved in the execution of over 120 people (Abramson 2002).

Tucker’s execution shook many Christians. Shortly after her death, Richard Cizik—then of the National Association of Evangelicals—said her execution had produced “moral revulsion” among evangelicals “because she is a woman of such obvious spiritual change” (“Lesson of Karla Faye Tucker” 1998).

The case even challenged Christians who are generally supportive of the death penalty, including Christian legal scholar Samuel Calhoun. As Calhoun said shortly after her death, “A lot of it is just visceral. Listening to her talk, watching her, I really wondered whether it made any sense to put her to death. She seemed to me, truly to me, a different person” (*Death Penalty Case* 1998).

George W. Bush was apparently untroubled, and even entertained, by an event that was earth-shaking to many people. Yet suppose, for the sake of argument, that Bush did in fact struggle with the decision and seek guidance through prayer. What possible reason, if any, could a Christian give for executing Tucker?

## **I. Contrasting Kantian and Christian Ethics of Criminal Punishment**

Perhaps more than any other thinker, the German philosopher Immanuel Kant may be said to have provided an ideological template for Tucker’s execution. Although he has a wide-ranging legacy among academics, Kant is known in the legal sphere as the father of “retributivism.” Briefly put, Kant asserted that criminals’ actions indelibly stain their moral status, that the state must judge the moral status of criminals, and that it must then administer whatever punishment their moral status deserves.

In this essay, I explore the Christian position on criminal punishment.<sup>1</sup> In particular, I ask whether the retributivism underlying Tucker’s execution can be synthesized with the

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<sup>1</sup> This paper is written from an openly Christian standpoint, and addresses the question of criminal punishment from an explicitly Christian position. I use “Christianity” here to refer to what I regard as the cardinal or minimal doctrines of the historic Christian faith. I take these doctrines to include the views that the universe is contingent upon a transcendent and personal God, that human beings are fallen and so inherently predisposed to sin, that God has uniquely condescended to humanity through his historical crucifixion and resurrection, and that personal acceptance of Jesus of Nazareth is therefore God’s sole provision for our reconciliation to him. I acknowledge that, throughout history, this definition has been rejected by substantial groups of self-identifying Christians—including, among others, the Docetae, Arians, Pelagians, and by many modern theologians. I use this definition because I consider it to be better grounded in the New Testament than its competitors, and to have endured throughout the long history of the church. This definition is inclusive of the formal

Christian faith. This question is doubly important because—among many academics—Immanuel Kant is seen as advocating an essentially Christian view of the law (see Murphy 2017:152). I argue that this perception is utterly baseless—and that Christianity must be disentangled from Kant’s ethic of punishment in order for the Christian position to speak for itself.

I begin by broadly contrasting Kantian ethics with other ethical ideas. Returning specifically to the case of Karla Faye Tucker, I then consider several retributive reasons that a Christian might offer for putting Tucker to death. I conclude that none of these reasons is successful—and that Bush was therefore wrong to execute Tucker on retributive grounds.<sup>2</sup>

I further argue that retributivism broadly fails to cohere with the Christian faith. A Christian view of criminal punishment should promote, rather than ignore, personal transformation. To borrow Jesus’ metaphor, the wine of the Gospel cannot be held in the wineskin of Kantianism. “Otherwise, the wine will burst the skins, and both the wine and the wineskins will be ruined” (NIV, Mark 2:22).<sup>3</sup>

## II. Differences Between Kantian and Senecan Goals

In order to contrast Kantian with theologically conservative Christian ethics of punishment, I will begin by reviewing Kantian ethics generally. Before doing so, we must differentiate between the various possible goals of criminal punishment. Punishment is sometimes said to serve four ends that can be separated into two basic categories: rehabilitation, deterrence, and incapacitation on the one hand, and retribution on the other. In the first century CE, the first three goals were enumerated by the Roman philosopher Lucius Seneca as a total list of the ends of criminal punishment. Seneca wrote that they are “either to correct the person punished, or to improve everyone else by punishing him, or to allow everyone else to live more securely once the malefactors have been removed from their midst” (Seneca 2010:166-167 [in the original: Book 1, chapter 22]). For the sake of convenience, I will hereinafter refer to these three goals as “Senecan” ends. On the other hand, retribution was Kant’s singular focus. A person’s actions alter

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confessions of most professing Christians in the world today, including traditional Protestants, Roman Catholics, and Eastern Orthodox Christians.

<sup>2</sup> My attribution of Bush’s decision to retributivism is based upon the Governor’s public defense of Tucker’s execution: “Like many touched by this case, I have sought guidance through prayer. I have concluded judgment about the heart and soul of an individual on death row are best left to a higher authority” (Noah 2005). Bush’s suggestion that Tucker’s conversion might not have been genuine implies that, had he positively known her conversion to be genuine, he would not have chosen to execute her. If this statement represents Bush’s thought process, it indicates that Tucker was executed because of the possibility that her moral condition warranted her execution.

<sup>3</sup> Most of the scriptural translations in this paper have been taken from the 2001 English Standard Version (ESV); those taken from either the 1978 New International Version (NIV) or the 1611 King James Version (KJV) have been so indicated.

that person’s moral status; the work of the Kantian justice system is to calculate and mete out what each person deserves according to this status. Kant wrote that, if a society ever decided to dissolve itself, “the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve” (Kant 1991:142).

Kantian and Senecan systems, we should note, depend upon very different kinds of moral duties. Every Senecan goal—rehabilitation, deterrence, and incapacitation—assumes a moral duty to help and protect other people. In other words, Senecan goals depend upon something like the Christian axiom that “as you did not do it to one of the least of these, you did not do it to me” (Matthew 25:45). The Kantian system does not depend upon this duty. In fact, Kant’s duties are entirely divorced from their consequences: Kant wrote that the moral worth of an action did not lie in any effect of the action, including “even promotion of others’ happiness.”<sup>4</sup>

For this reason, Kantian duties must be followed even when their consequences for other people are disastrous—even, in fact, if they meant the destruction of the whole world. This was the suggestion behind Kant’s personal motto: “*fiat justitia, et pereat mundus*” (“let justice reign, should all the rascals of the universe perish”; Kant 1796:61).<sup>5</sup>

Of course, we might try to salvage Kantianism by rejecting some of the opinions actually held by Immanuel Kant. Yet we cannot escape the *essence* of Kantianism: Kant’s duties are ultimately divorced from their consequences—including their consequences for people. If half the world’s population were to murder the other half, then Kant’s justice would plainly require that the remaining half be killed. Any conception of “justice” which is untethered from duties to persons will, under the right circumstances, demand that the world be destroyed.

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<sup>4</sup> To Kant, “the moral worth of an action thus lies not in [any] effect to be expected from it,” including “agreeableness of one’s condition, [or] indeed even the furthering of the happiness of others” (Kant, 2002:16).

<sup>5</sup> To take another example of this idea, one of Kant’s duties was that a head of state must always be obeyed. Kant thought that we must obey the government—not only in our actions—but in our mental lives. “A people should not inquire with any practical aim in view into the origin of the supreme authority to which it is subject, that is, a subject ought not to rationalize... with regard to the obedience he owes it... [A people] cannot judge otherwise than as the present head of state wills it to” (Kant 1991:129). It follows that, if we are properly obeying our moral duties, we will never realize that a harmful government action ought to be stopped. It is tempting to imagine a Kantian soldier serving a genocidal government, struggling with a choice between evil and disobedience, and choosing evil. Yet even this scenario misses Kant’s point. The ideal Kantian soldier would never confront such a choice: it would be unjust for him even to consider whether the government might be illegitimate. (Cf. Eichmann 1961: “I had to obey, because I could not change anything. And so I just placed my life, as far as I could, in the service—I would put it this way—of this Kantian demand. And I have already said that in fact others had to answer for the fundamental aspect.”)

Kantian goals place less emphasis on human beings than Senecan ones. Yet we should not think that Senecan goals, in contrast, embody secular humanism. Both kinds of ends depend upon duties that are objective and exist beyond human beings themselves. The difference between them is that the Senecan duties are *oriented* towards people, whereas the Kantian duties are oriented inwards upon the duties themselves. In this sense, Kantian goals are ultimately impersonal.

God, however, is interpersonal: His primary intention for human life is that humans turn toward Him and are reconciled to Him.<sup>6</sup> “As I live, declares the Lord GOD, I have no pleasure in the death of the wicked, but that the wicked turn from his way and live; turn back, turn back from your evil ways, for why will you die, O house of Israel?” (Ezekiel 33:11). Note that this intention is a particular consequence for human beings: it is, in fact, a kind of Senecan end.

God’s intentions for human life are always portrayed in the Bible as interpersonal: He intends that His mercy and power be displayed to us, that human beings turn toward Him, and that His sovereignty be honored in human life. His intentions are never presented as Platonic abstractions without any benefit to anyone.

In fact, it is God’s intention for each human being that a particular personal consequence be realized. God is patient, “not wishing that any should perish, but that all should reach repentance” (II Peter 3:9). God would therefore not ordain any moral duty that was wholly untethered from its results for human beings.

Kantian justice is often thought to be associated with the Christian tradition. Legal scholar Jeffrie G. Murphy has said that Kant “has been interpreted, with some justice, as seeking a secular and rational defense for what is essentially a Protestant moral vision” (2017:152). I expect that this is because many secular people see Christianity as essentially abstract—amounting to a series of impersonal demands with no discernable purpose for human life (see, e.g., Russell 1920:118). Kantian morality is rightly perceived as abstract in just this way.

Kant was not himself a professing Christian; Murphy indicates that Kantianism represents a kind of “Christian atheist” perspective (2017:152). Of course, the fact that Kant was not a professing Christian does not, by itself, mean that Christians should reject Kantian legal thought.<sup>7</sup> Yet, if Kantianism and Christianity are opposed to one another, then Christians obviously cannot allow Kant to be their spokesman in the legal academy. “For what partnership has righteousness with lawlessness? Or what fellowship has light with darkness?” (II Corinthians 6:14).

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<sup>6</sup> The use of masculine pronouns reflects my belief that God self-identifies as analogically male, both through the metaphor “father” and through the incarnation of the “Son” as a biological male. Central to this is Ephesians 5:25-33, which teaches that God is to be identified as the male partner in a male-female union with the church.

<sup>7</sup> If Kant observed truths about justice, then these truths should be accepted and sanctified by Christians, as Paul sanctified the Greek poets Epimenides and Aratus when he quoted them. “‘In him we live and move and have our being’; as even some of your own poets have said, ‘For we are indeed his offspring’” (Acts 17:28).

On its face, there is little in the New Testament that resembles Kant’s philosophy. Jesus specifically criticized the idea that laws should be applied for their own sake, saying “the Sabbath was made for man, not man for the Sabbath” (Mark 2:27). Again, Jesus advocated pardoning debtors and adulterers who were in fact guilty (Matthew 18:23-35; John 8:2-11). One of Christianity’s central stories is that of Paul, who was forgiven and transformed after participating in a murder and countless other acts of violence (I Timothy 1:12-17; Acts 7:54-8:1; Acts 8:3). Far from somehow embodying Christian juridical instincts in an atheistic form, Kant seems to have inverted them. In the words of pastor John Piper, “Kantian morality... has passed as Christian for too long” (1995).

### **III. Kantian Retribution is Logically Unavailable to Christians as a Justification for Criminal Punishment**

Can a Christian consistently espouse the position that governments must exact retribution on criminals according to their individual moral status?

From a Christian standpoint, the most monumental problem with this idea is that it cannot provide a justification for punishing a regenerate Christian who commits a crime and repents. The Bible is unambiguous: a believer who seeks God’s forgiveness does not bear moral guilt for his sins. God has “cancelled the record of debt that stood against us with its legal demands. This he set aside, nailing it to the cross” (Colossians 2:14).

A Christian retributivism would be especially powerless to punish wrongs committed prior to a Christian’s conversion. “Therefore, if anyone is in Christ, he is a new creation. The old has passed away; behold, the new has come” (II Corinthians 5:17). Even if a Christian were somehow to incorporate Kantian elements into his faith, and offer a retributive justification for some acts of punishment, he could not on this account punish Paul for his role in the murder of Stephen or the abduction of Christians; Augustine for his myriad sexual sins; John Newton for his role in slave trade; Charles Colson for his corruption; or Karla Faye Tucker for the murders she committed prior to her conversion, without denying the sufficiency of the crucifixion.

This is not to say, of course, that a Christian cannot justify criminally punishing Christians. Senecan ends, including the duty to protect others, are still available (see e.g. Acts 7:24-25, Jeremiah 22:3). Rulers are to serve as “a terror to bad conduct,” deterring crime for their subjects’ good—something they could not do if Christians were given absolute license to commit crimes (Romans 13:3-4). Yet a Christian who criminally punishes a repentant sister in Christ cannot claim to be rectifying a moral imbalance, restoring a moral order, or doing to the offender what her moral status deserves.

To offer a Kantian justification for punishing a Christian would be to imagine two separate judges. It would be as if there were twin thrones of justice: one occupied by God, who forgives, but the other occupied by the impersonal Form of the Good, which does not. There is, in fact, no Form—or other moral standard of any kind—which is not found in God. “There is only one lawgiver and judge, he who is able to save and to destroy” (James 4:12). There is, of course, an *Accuser* who stands before the Throne of God, but he is neither a “Form” nor “good.”

We can now analyze the particular case of Karla Faye Tucker, considering her execution by the earthly state in light of her vindication before the Throne of God. Examining both stated and conceivable justifications for her execution, we can demonstrate that no retributive justification is satisfactory. Even those who *have not been* vindicated before God should not be punished on Kantian grounds. This leaves Senecan justifications as the only basis for punishment on which Christians should rely.

In particular, we shall see that a Christian system of punishment should promote the transformation of the offender—including through acts of mercy. This objective serves as additional proof that syncretizing Christianity and Kantianism is impossible.

On what justification might George W. Bush have relied in putting Tucker to death? For Bush's part, his public statement seemed to rely on the specter of a "jailhouse conversion." In full, Bush said,

Like many touched by this case, I have sought guidance through prayer. I have concluded judgment about the heart and soul of an individual on death row are best left to a higher authority. (Noah 2005)

In other words, because one cannot be certain that a death row inmate has genuinely changed, it is best to execute her and leave judgment to God. If this characterization of Bush's statement is correct, then Tucker's execution was in fact not based on any positive claim about her moral status. Instead, it was a prophylactic measure taken because Bush stood in a position of agnosticism about Tucker's actual spiritual condition.

Could Bush have rationally doubted that Tucker was a Christian? It is difficult to think of any evidence at all that Tucker's conversion was not genuine. After viewing lengthy interviews and reading detailed accounts of Tucker's extraordinary life and ministry, one would be hard pressed to find a reason to doubt the sincerity of her conversion.

Of course, one conceivably could urge that the depth of her sin prior to her conversion is itself reason to doubt her faith. This, however, would be flatly contrary to scripture. "Just so, I tell you, there will be more joy in heaven over one sinner who repents than over ninety-nine righteous persons who need no repentance" (Luke 15:7). In fact, writes Paul,

The saying is trustworthy and deserving of full acceptance, that Christ Jesus came into the world to save sinners, of whom I am the foremost [or, "of whom I am chief"]. But I received mercy for this reason, that in me, as the foremost [of sinners], Jesus Christ might display his perfect patience as an example to those who were to believe in him for eternal life. (I Timothy 1:15-16)

If Tucker's prior sinfulness makes her repentance especially glorious—and if Christ transformed *the chief of sinners* in order to reach even the most wretched human being—then to *presume* Tucker's conversion was farcical would be to reject the very nature of the Cross. In fact, "he who is forgiven little, loves little" (Luke 7:47). If Bush had as much reason to accept Tucker's faith as he would ordinarily require, and if Bush also maintained

that Tucker’s own sinfulness was greater than his, then in fact he should think that *Tucker loved Jesus more* than he did.

At any rate, a Christian should be more than wary of deeming someone else’s sinfulness greater than his own. The theologian and philosopher Jonathan Edwards wrote that he preached about sin not “because I have so much more conviction of sin than other Christians, but because *I am so much worse*, and have so much more wickedness to be convinced of” (2016: 802-803; emphasis added). Jesus’ statement that “he who is forgiven little, loves little” is, by itself, reason to think that one does not have much love for Christ unless he sees that his personal merit is dwarfed by the awful volume of his sins. There is no Christian alive for whom this is not a pressing concern, for “[n]one is righteous, no, not one”; human beings are “by nature children of wrath” (Romans 3:11; Ephesians 2:3).

Again, all the available evidence suggests Tucker’s conversion was sincere: none suggests that it was insincere. A Christian cannot use an *a priori* presumption, in spite of all the evidence, to tilt the scales against accepting her conversion.

Bush’s agnosticism, then, can only have been based on the fact that it is not possible to see into another person’s heart, or perceive the world from her first-person perspective. Yet this is true in every case—not just Tucker’s. Suppose we grant that it would be a moral failure if Bush failed to execute an unregenerate murderer. Assuming that Bush is a Christian, it would likewise be a moral failure if Bush were to marry a non-Christian, for Christians are not to be unequally yoked with unbelievers (II Corinthians 6:14). By marrying, Bush made an assumption that was unwarranted according to his own standard, for he had never seen into his wife’s heart. He therefore risked moral failure on the basis of an unwarranted belief. In short, if one cannot be warranted in accepting Tucker’s conversion merely *because one cannot read her mind*, then one cannot be warranted in thinking that *anyone* is a Christian, or in depending upon the belief that another human being is a brother or sister in Christ.

Perhaps a more straightforward interpretation of Bush’s remarks is simply that a Christian should compartmentalize spiritual and worldly affairs—that faith is strictly a matter of one’s inner mental state, whereas law is a matter of action. In the 19<sup>th</sup> century, the United States Supreme Court implicitly endorsed this view, writing that the “Free Exercise” clause protects “mere opinion, but [Congress] was left free to reach actions” (*Reynolds v. United States*, 98 U.S. 145 [1878], at 164).

As was noted above, however, this compartmentalization is alien to the Bible. “Faith, if it hath not works, is dead,” and “every tree that does not bear good fruit is cut down and thrown into the fire. Thus you will recognize them by their fruits” (KJV, James 2:17; Matthew 7:19-20). The New Testament is not only a book of doctrine, but is a book full of practical ethical instruction on a vast range of topics (see e.g. I Corinthians 11:14-15).<sup>8</sup> Even Christianity’s cardinal doctrines speak to the most worldly of human affairs. For instance, if one believes that humans are inherently predisposed to sin, it follows that one cannot use the premise “human beings are basically good” in a political argument. The absolute claims of the Christian worldview gave rise to the theologian Abraham Kuyper’s

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<sup>8</sup> “Does not even nature itself teach you that if a man has long hair, it is a dishonor to him, but if a woman has long hair, it is a glory to her?”



famous epigram: “There is not a square inch in the whole domain of our human existence over which Christ, who is Sovereign over all, does not cry, Mine!” (Kuyper 1998:488).

As has already been argued, Tucker’s execution could not have been justified by Tucker’s moral status as such; in fact, Tucker’s sins had no substantive existence at all. Christ “offered for all time a single sacrifice for sins,” so that no further sacrifice can possibly have been required to expiate Tucker’s crimes (Hebrews 10:12). In fact, as the letter to the Hebrews reaffirms, “I will remember their sins and their lawless deeds no more” (10:17). There can be no source of morality other than God. Sins which have been blotted out by God can have no ultimate reality and do not taint the moral status of the sinner: they are destroyed. As if that were not enough, the regenerate Karla Faye was not the same person as the woman who was first sentenced: “if anyone is in Christ he is a new creation. The old has passed away; behold, the new has come” (II Corinthians 5:17).

Those who would punish a Christian on retributive grounds should see in the Bible a fervent reproach. To charge a repentant Christian with moral guilt, Paul suggests, is absurd in light of the cosmic sufficiency of the Cross. “Who shall bring any charge against God’s elect? It is God who justifies. Who is to condemn? Christ Jesus is the one who died—more than that, who was raised—who is at the right hand of God, who indeed is interceding for us” (Romans 8:33-34).

The Bible is clear, of course, that this does not mean Christians will not be accused before the Throne of God. Yet Christians are not accused by God, or by an impersonal Form of the Good, but by Satan, “the accuser of our brothers... who accuses them day and night before our God” (Revelation 12:10). Not only are believers uncondemned by any morally credible power—they are condemned by the evil power of the Enemy.

A Christian retributivist might respond by pointing out that, when God forgives a believer, this does not necessarily mean that God will nullify the material consequences of sin. Notably, God sometimes does intervene to protect sinners from material consequences—as when Jesus actively spared the adulteress or when God released the repentant King Manasseh from prison (John 8:1-7; II Chronicles 33). Yet, as the great Christian thinker G.K. Chesterton once noted, “Only a convicted thief has ever in this world heard that assurance: ‘This night shalt thou be with me in Paradise’” (1925:606). Yet, although the thief was forgiven, God did not dissolve the thief’s cross, scatter the jeering crowds, and strike down the nearby guards with lightning and fire.

To derive retributivism from this point, however, would fail to make an *is-ought* distinction. We are not here asking merely what *does* happen to criminals as a matter of historical fact, but—putting ourselves in the position of those administering punishment—what a Christian *ought* to do. Had Jesus been asked what *ought to be done* to the forgiven thief, it is possible that he would have said “Let him who is without sin among you be the first to throw a stone,” or perhaps even “You wicked servant! ... And should not you have had mercy on your fellow servant, as I had mercy on you?” (John 8:7; Matthew 18:32-33).

If what *does* happen is also what *ought* to happen, then one could say with equal confidence that—as God allows martyrs to be stoned, beheaded, and crucified—the actions of persecutors are morally right. On the contrary: if retribution is the only way to justify Tucker’s execution, then Tucker *ought not* to have been executed. If Tucker’s sins did not require any blood in addition to Christ’s, if her sins were utterly wiped away, if she

herself was *a new creation*, if none can justly accuse a Christian before the Cross, and if it is only Satan who accuses Tucker before God, then Bush *ought not have* affirmed the accusations of the Enemy by executing Tucker on retributive ground. In the words of the Christian jurist Henry de Bracton, the king is the minister of him whose work he performs (1968:305).

Of course, as already noted, one can conceive of non-retributive reasons to punish Christians for criminal offenses. Suppose that, one week after Tucker’s arrest, Bush had given her a full pardon, and ordered her immediate release, on the grounds that she was a regenerate Christian. Even if Tucker had in fact converted and repented in that week, it is easy to see how potential murderers would get the idea that they could commit crimes with virtual impunity by self-identifying as born-again Christians. By failing to protect Texans through deterrence, then, Bush would have failed in his God-ordained duty to be a terror to bad conduct (see Romans 13:3).

Whether the death penalty has any deterrent effect—relative to some term of imprisonment—is an empirical question beyond the scope of his essay. Suffice it to say that modern proponents of the death penalty rarely bother to claim that deterrence plays any part in their support for capital punishment. Yet if—relative to the next-closest penalty—executing Tucker did nothing to protect Texans, then Tucker’s execution cannot have been morally justifiable.

In fact, there is some reason to think that *not executing* Tucker would have had a protective effect. As Tucker noted in her Larry King interview, “I can witness to people who’ve been into prostitution or been on drugs, and they’ll listen to me. ‘If I can change, you can too’” (*Death Penalty Case* 1998). Tucker’s statement brings to mind Paul’s observation that he obtained mercy so that “in me, as the foremost [sinner], Jesus Christ might display his perfect patience as an example [or ‘pattern’]” (I Timothy 1:16). God ordained Paul, a man who had previously engaged in murder and kidnapping, to be the most important minister of the Gospel after his own Son (Acts 7:54-60; Acts 8:3). Subsequently, as we will see, large numbers of early Christians were regenerate ex-criminals. Had Tucker been allowed to continue her ministry, she would have been part of a tradition which has proven itself to be transformative.

This brings us to a final, and affirmative, point on this topic. The Apostle Paul not only brought untold numbers of people to Christ, but wrote much of the New Testament. If repentant Christians should be punished on Kantian grounds, then Paul—who was formerly the murderer and kidnapper Saul—should plainly have been executed rather than allowed to embark on a ministry around the Mediterranean world. It would be awfully peculiar, to put it mildly, for a Christian to say that—though Paul’s ministry of travel and writing was directly ordained by Christ—he would have put Paul to death, “so that it could be done to him what his deeds deserved.”

Thus far, we have discussed punishment by focusing on Karla Faye Tucker, who we have treated as a repentant believer. Yet what about nonbelievers? Although Tucker could not justly be an object of retributive punishment, can Christians punish *non-Christians* on retributive grounds? Perhaps, without contradicting all the verses just cited, a Christian could hypothetically affirm “semi-Kantianism,” a view that, while Christians may be punished only on Senecan grounds, nonbelievers may be punished on both Senecan and

Kantian grounds. This distinction has a practical effect, and in a range of cases could lead to nonbelievers receiving more severe punishments than Christians.<sup>9</sup> However, there are three principal reasons that semi-Kantianism is not tenable.

First, semi-Kantianism is ad hoc and contrived. Binding verses which discuss magistrates as agents of God's wrath articulate a duty to protect others—not to rectify a metaphysical harm. Rulers are to “rescue” and “deliver” their subjects “from the oppressor and the robber” and serve as “a terror to bad conduct ... for your good”—that is, for the good of the ruler's subjects (Jeremiah 22:3; Psalm 82:3-4; Romans 13:3, 4). That one can imagine additional justifications for punishment does not mean that Christians should affirm those justifications without some clear, positive reason to believe that they are part of the Christian worldview.

Second, scripture provides affirmative reasons for us to question any retributive justification for punishment. Consider, first, Jesus' injunction “Judge not, that you be not judged” (Matthew 7:1). Concededly, this is perhaps the most misused verse in the Bible. Jesus clearly does not mean, for example, that one should not form judgments about whether a particular belief or action is correct. Nor does Jesus mean that one must not make practical decisions on the basis of those judgments, as by being a juror or judge in court (see I Corinthians 6:3).<sup>10</sup> Yet, if Jesus' statement means anything, it surely means that we should not condemn the moral status of another person—or “the speck that is in your brother's eye” (Matthew 7:3). This, however, is precisely what Kant does when he says that an executed murderer is being given what he deserves.

Jesus' reasoning suggests that to condemn another person's moral status is to ignore the “log in your own eye.” In other words, a sinful human being lacks a firm foundation from which to judge another's moral status. Likewise, when Jesus saves the woman taken in adultery, his reasoning is that the accusers themselves lack the moral status to administer punishment: “Let him who is without sin among you be the first to throw a stone at her” (John 8:7).<sup>11</sup>

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<sup>9</sup> “Nonbeliever” is a label customarily used by Christians to refer to non-Christians. I take “non-Christians” to include all those who reject Christianity as defined above.

<sup>10</sup> “Do you not know that we are to judge angels? How much more, then, matters pertaining to this life?”

<sup>11</sup> As an aside, it should be acknowledged that John's famous story of the adulteress—rarely for any piece of scripture—is not present in the oldest extant manuscript. Without exploring this topic in complete detail, there are nonetheless good reasons to accept the veracity of the story. Augustine was confident that this story was present in the original text, but had been deleted by those who feared its implications, “as though He who said ‘From now on, sin no more’ granted permission to sin” (Augustine 1955:107 [in the original: Book 2, chapter 7]). The story of the adulteress was apparently accepted as historical by the church father Papias, an incredibly early source (Eusebius 1926: 296-299). Papias personally spoke with many persons who had known the disciples, and investigated “what Andrew of Peter said, or Philip, Thomas, James, John, Matthew, or any of the Lord's disciples had said” (MacDonald 2012: 16-17).

Jesus makes a related argument in the less famous—but no less important—“Parable of the Unmerciful Servant.” In the Gospel of Matthew, Jesus imagines a servant whose master has mercifully forgiven him for an unimaginable debt. The servant, however, then goes to *his own debtor*, demands repayment, and has that debtor thrown in jail. Indignant at the servant’s conduct, the master declares “‘You wicked servant! . . . should not you have had mercy on your fellow servant, as I had mercy on you?’ And in anger his master delivered him to the jailers, until he should pay all his debt” (18:32-34). Note that Jesus’ message here is different from, but consistent and complementary with, his message in John. In John, Jesus states that one’s sinfulness disqualifies one sinner from passing judgment on another. In Matthew, on the other hand, Jesus’ point is this: *the fact that a Christian has been shown mercy* means that he has a duty to show mercy to others.

In both stories, Jesus mandates practical acts of mercy, not merely an inner disposition of forgiveness. His ethics do not compartmentalize one from the other. Jesus does not, for instance, tell the crowd, “let he who has forgiven this woman cast the first stone.” Likewise, the problem with the unmerciful servant is not merely that he did not mentally forgive his debtor, but that he actually had his debtor thrown in jail: this appears to be why the master had the unmerciful servant himself “delivered to the jailers.”

After all, the master had shown practical mercy to the unmerciful servant. He did not merely offer the servant feelings of forgiveness, but physically *let him go* rather than having the servant “sold [into slavery], with his wife and children and all that he had.” The master then expected the servant to show mercy to others “as I had mercy on you.”

As we have already noted, Jesus’ claims over human life are comprehensive, and that mental states and actions cannot be compartmentalized. Contrary to the assumptions of many, the Bible does not advocate allowing a person to physically carry out acts of injustice so long as his mental state is oriented towards justice. On the contrary, “every tree that does not bear good fruit is cut down and thrown into the fire” (Matthew 7:20).

A third reason semi-Kantianism is untenable is its bizarre practical implications: namely, that it requires nonbelievers to be punished more severely than Christians as a matter of course. While it would certainly be God’s prerogative to ordain such a system, we should be hesitant to embrace a consequence so outlandish unless there is a compelling argument that scripture requires it. There is no such case for semi-Kantianism, which can only be imagined as an ad hoc position created to enable Christians to retain certain Kantian presuppositions.

Yet if the semi-Kantian is to get off the fence, he cannot simply alight onto the side of universal Kantianism. It would be more biblical *to stay on the fence*—for to punish a repentant Christian on Kantian grounds would be to contradict one of the overwhelming themes of the New Testament. If he does not want the discomfort of semi-Kantianism, a Christian must reject Kantianism and use Senecan justifications for all punishment.

#### **IV. A Christian View of Criminal Punishment Must Promote Personal Transformation**

Tucker’s execution requires us to reflect upon the relationship between Christianity and the death penalty. Progressive expectations to the contrary, a growing body of research

suggests that conservative religiosity is not associated with support for the death penalty, but with skepticism of it. Among males, religion is associated with less support for the death penalty (see Robbers 2006). Again, people who attend church often are significantly less likely to support the death penalty (see Unnever and Cullen 2007:139). In fact, “Those who attended church services with greater frequency have a strong tendency to disagree that criminals should be treated more harshly” (Bader et al. 2010: 99).

Now is not the time to examine a broad Christian position on capital punishment. Suffice it to say that this association arises from the tradition’s deep emphasis on personal transformation—and that it is right for this emphasis to influence the punishment of criminals.

In keeping with Jesus’ radical emphasis on personal transformation, the earliest saints were drawn in significant part from the most reviled segments of Roman society. That many Christians were ex-criminals was the reproach of anti-Christian writers and the boast of the church. Writing in the early second century, the Platonist philosopher Celsus complained incredulously that Christians “invite into membership those who by their own account are sinners: the dishonest, thieves, burglars, poisoners... I mean—what other cult actually invites robbers to become members!” Humorously, Celsus demanded “Why was their Christ not sent to those who has not sinned—is it any disgrace not to have sinned?” (Celsus 1987:103). The early church father Tertullian commented:

Others stigmatize [Christians] on the very grounds on which they praise them, those whom they knew formerly in their pre-Christian days as vagabonds, worthless, and base. In the blindness of their hatred they are driven into pronouncing a eulogium... Thus the name is credited with their reform. (Tertullian 1890: 11-12)

Complete transformation is ultimately effected only by personal acceptance of God’s condescension in Christ. Yet, when Jesus encouraged practical mercy towards the adulteress and the debtor—and in specifically criminal or judicial contexts—he plainly had in mind the goal of advancing their personal transformation. He told the adulteress “and from now on sin no more” (John 8:11). Again, “I forgave you all that debt because you pleaded with me. And should not you have had mercy on your fellow servant, as I had mercy on you?” (Matthew 18:32-33). If Christians are to be “imitators of God” (Ephesians 5:1), then we, too, should promote a conception of justice which is influenced by practical mercy—with the goal that criminals be eventually reformed. Likewise, Paul was shown mercy by God so that *others* might be reformed through his ministry: that “Jesus Christ might shew forth all longsuffering, for a pattern to them which should hereafter believe on him to life everlasting” (I Timothy 1:16, KJV).

The Christian legal scholar Linda Ross Meyer argues that retributive regimes of immutable punishment necessarily reject core Christian ideas. Meyer argues that punishment must take account of the ongoing evolution of a criminal’s character. “Strict retributivists... freeze the crime in an eternal present and freeze the character/desert of the offender in the moment of the crime” (2017:73). Yet, as Paul notes, character is not static. “We were buried therefore with him by baptism into death, in order that, just as

Christ was raised from the dead by the glory of the Father, we too might walk in newness of life” (Romans 6:4).

Meyer’s argument here suggests two variations. The first is similar to a point we have already made: Kantian accounts of punishment purport to rely upon one’s moral status, yet Kantians cannot freeze one’s moral status in the face of the Cross. The second is that, insofar as some punishment is justified by a need for incapacitation, a transformed character may negate that need and therefore lessen or eliminate the punishment. Neither of these arguments, strictly speaking, requires an absolute prohibition on the intentional taking of a human life. It is possible to conceive of a narrowly circumscribed death penalty that takes account both of changing character and the finitude of our knowledge. In church history, in fact, there have been multiple—and sometimes questionable—attempts to realize such a penalty.

When the medieval Church had jurisdiction over a particular crime, like heresy, its usual model was first to try to effect the transformation of the offender and, only if this failed, to turn the criminal over to the secular authorities so that they might carry out their protective function—including, if deemed necessary, through capital punishment. As Thomas Aquinas wrote,

On the part of the Church... there is mercy which looks to the conversion of the wanderer, wherefore she condemns not at once, but “after the first and second admonition,” as the Apostle directs: after that, if he is yet stubborn, the Church no longer hoping for his conversion, looks to the salvation of others... (1917:154)

What is unimaginable, however, is a Christian justice system that takes no account of the transformation of individual character—or which does not deliberately use mercy as a means of effecting it. Even alongside this politely menacing exhortation from Aquinas, any such system would be unrecognizably alien.

When Christian scripture and tradition is allowed to have its own voice on the topic of criminal punishment, that voice cannot be recognized as the abstract voice of Kant. It is, instead, the decidedly practical and interpersonal voice of Christ, calling us to reconciliation with him. Christianity can no more countenance the execution of Tucker than it can trade Christ’s “the Sabbath was made for man” (Mark 2:27) for Kant’s “*fiat justitia, et pereat mundus.*” Christ’s answer to retributivism is clear: “You wicked servant! ... should not you have had mercy on your fellow servant, as I had mercy on you?” (Matthew 18:32-33).

“From him and to him and through him are all things” (Romans 11:36), including the punishment of criminals. If we believe in the reality of Christianity, then we must also believe that it governs this issue. A Christian law student or lawyer must reflect rigorously on the way in which Christianity informs it. This reflection should reveal that the Christian perspective, like Christ himself, challenges our conventions.

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