

# MODERN AGE

A QUARTERLY REVIEW



## *Criminal Character and Mercy*

RUSSELL KIRK

TO PERCEIVE TRUTH, we require images. As G. K. Chesterton put it, all life is an allegory, and we can understand it only in parable. I am about to offer some observations concerning mercy: that is, mercy toward deadly criminals. I believe that the capital penalty has a compassionate function. I propose to make my point through presenting a series of images—some of them drawn from perceptive works of fiction, others taken from my own experience and acquaintance in the course of a wandering life.

My introductory image is extracted from a memorable short story by the German writer Stefan Andres, "We Are God's Utopia." This is a realistic episode from the Spanish Civil War, and it takes place in a desolated convent in a deserted walled town. One faction—the Reds, apparently—have confined two hundred prisoners of the opposing faction in the cells of a convent. These prisoners will be executed if the battle goes against the faction to which the jailers belong.

The captors are commanded by a lieutenant, Don Pedro, who already has commit-

ted indescribable atrocities. The memory of the worst of these acts will not permit the lieutenant to sleep—not in this very convent where he tortured the nuns to death.

Among the prisoners here is a former priest, Paco, taken in arms. Don Pedro implores Paco to hear his confession, so that he may sleep again. Although no enthusiast himself for the rite of confession, Paco consents to receive this dreadful penitent. In the course of the lieutenant's confession, Paco learns that Pedro, when a boy, had tortured cats hideously; that he had beheaded the puppets in his own puppet-theater; that he had flung to his death the kindest man Paco ever had known; that he had kept the nuns screaming in agony all night long. Yet Teniente Pedro has taken no real pleasure in these acts; they have made him sad, at the time of their commission and thereafter. He says to Paco, "I dwell in myself as though in a grave!"

The sometime priest absolves Pedro, for at the moment of absolution he is contrite. (Half an hour later, nevertheless, he will direct the massacre of the prisoners.) But

before granting absolution, the confessor instructs his penitent, who kneels before him:

"I tell you, it would be good for you if you were to die in the war." The voice was silent; after a pause it went on. "Yes, pray to God for death. According to the laws of man—but no, you know that!—no sin can separate you from God if you want to come back to Him, but it can separate you from life. For this reason, the death penalty for certain crimes has a decidedly compassionate character. You are a criminal of this sort. Pray to God for death!"

To Don Pedro, death would bring relief from his ghastly sadness and the moral solitude in which he had suffered since childhood; relief from the tormenting memory of his atrocious crimes; relief from the depravity of his own nature. Like most murderers, Pedro is not totally corrupt: he is capable of some kindly acts and of gratitude. But there is no way in which he can be redeemed or relieved of the torment of being what he is, in the flesh—except through death. To such a one, capital punishment would be an order of release. Sin already has separated the atrocious homicide from true life; yet through grace in death, even the slayer's soul may be redeemed. Death is not the greatest of evils. In the language of orthodoxy, indeed, death is no evil at all.

At this point, it may be objected that I have offered merely a fictitious instance. But great works of fiction are more true than particular incidents of the actual: that is why they are recognized as great. Andres gives us in this story a kind of distillation from mankind's experience of spirit. Those of us who have knocked about the world have encountered our real Teniente Pedros. It is not pleasant to meet them in confined quarters. A friend of mine spent much of his life in the company of conspicuous specimens of such unregenerate humanity. Permit me to offer you, then, a different sort of image: that of my friend the late Clinton Wallace, very much flesh and blood.

Clinton was the most heartfelt advocate of capital punishment that ever I have met. At the age of fourteen, Clinton had run away from a brutal father. Thereafter, until he came to live in my house, Clinton spent his life either on the roads or in prisons. His convictions were for petty offenses against property—usually the pilfering of church poor-boxes—or for endeavoring to escape from prisons. He was a giant in size and strength, and an innocent.

I do not mean that Clinton was a fool: the prison psychiatrists wrote him down as "dull normal," but Clinton was neither dull nor normal. He did not drink, except for one glass of beer on especially convivial occasions; did not smoke; did not curse; did not offend against women or children. His only vice, aside from petty larceny in time of necessity, was indolence. (Like Don Pedro, though, Clinton dwelt in himself, as in a grave.)

Clinton could recite a vast deal of good poetry, could make himself amusing, loved children, and prided himself upon being non-violent. The worst aspect of life in prison, Clinton told me once, was not the boredom, or even the loss of liberty, but the foul language of the convicts—their every other word an obscenity. In recent years, Clinton added, prison conversation had grown monotonous—everybody discussing interminably the pleas of Miranda and Escobedo.

My wife once asked Clinton—who lived with us for six years near the end of his tether—how many of the men in prison are innocent.

"They're all innocent, Annette," Clinton replied. "You only have to ask them." He chuckled briefly. "They're all guilty, really, guilty as sin. Many of them are animals, brutes that ought to be put out of their misery."

From the worst forms of degradation at the hands of fellow prisoners, Clinton had been saved by his size, strength, and stenorian power of lung. But he had not been spared the company of the depraved. For some months, in one prison, Clinton's cellmate had been a man who had taken off

his wife's head. That missing head never had been discovered. Clinton (who, like Don Pedro, had trouble getting to sleep) used to lie awake in his bunk at night, watching his cell-mate in the opposite bunk and stroking his own throat to reassure himself.

Clinton went on, in his kitchen-table conversations with us, to talk of the horror and the danger of existence in company with such men. Any tolerably decent person who had been sentenced to confinement might find himself at their mercy. "They're lower than beasts." Out of compassion for the other prisoners and for the guards, Clinton argued, the death penalty ought to be imposed upon men who had committed deliberately those crimes once called capital.

"Nobody can reform you," Clinton would continue. "There's no such thing as a 'reformatory' or a 'correctional facility.' The only person who can reform you is yourself. You have to begin by admitting to yourself that you did wrong. Then you may begin to improve a little."

Clinton Wallace had concluded from much observation and painful experience that very few deadly criminals possess either the ability or the intention to reform themselves. It is their nature, outside of prison, to prey beast-like upon whomever they may devour; and if confined within prison, these human predators are impelled by their very nature to ruin the other inmates. From the time he first was imprisoned—for truancy, at the age of fourteen—Clinton had been flung behind bars with such men. To make a swift lawful end of them, he declared, would be a work of mercy for all concerned.

My acquaintance with convicts is not confined to Clinton Wallace. For armed robbery, my friend Eddie was sentenced to three to thirty years imprisonment. (It was his first offense, committed under the influence of a kinsman and perhaps of drugs.) Within the walls, Eddie's religious yearnings of earlier years returned to him, and he grew almost saintly amidst the general corruption. As a reward for his

good conduct, the warden was ready to assign him to an open-air work detail in the Upper Peninsula of Michigan. "For God's sake," Eddie cried, "don't do that to me! Put me in solitary if you have to, but keep me behind these walls! In a camp like that, I wouldn't have a chance against the gangs."

Eddie was a rough-and-ready young man, a seaman by trade, courageous to the point of recklessness. He did not labor under any illusions concerning the character of the dominant spirits within prison walls. He knew that no adequate punishment could be imposed upon any "lifer" who might take it into his head to do Eddie a mischief—including as "mischief" a knife between Eddie's ribs. So Eddie was no advocate of gentleness with the brutally violent.

Both Clinton and Eddie, flesh and blood though they were, have appeared as characters in short stories of mine—Clinton in my best-known tale, "There's a Long, Long Trail a-Winding"; Eddie in my more recent story "Lex Talionis." I drew them with affection from the life. The final penalty called capital punishment does something to protect those men behind bars, like Clinton and Eddie, who may yet redeem themselves.

I have been suggesting through these incidents and images that capital punishment possesses certain merciful aspects. It may be merciful, first, in that it may relieve a depraved criminal of the horror of being what he is. It may be merciful, second, in that it can help to protect the less guilty from the more guilty. And in a third way, which I am about to touch upon, capital punishment may mercifully protect the guiltless from the more extreme forms of violence.

Here the arguments concerning "deterrence," already widely discussed, may emerge afresh. But let me assure you that I have no intention of returning to the theoretical and statistical considerations advanced so often. Instead I offer you now another image which strongly impressed itself upon my consciousness, early. It is an

image formed out of a real happening—the kidnapping of my grandfather.

Although that abduction occurred when I was a small boy, I recollect all the details clearly. Frank Pierce, my grandfather, was a bank manager, a well-read man, kindly and charitable, the leading spirit of our Lower Town by the great railway yards outside Detroit. During the 1920's he repelled several attempts at robbery of his bank. (He carried a tear-gas fountain pen and kept a pistol handy in a drawer, but always had succeeded in baffling the robbers without using either instrument.) On one occasion, for all that, my grandfather lost the contest.

As he walked from his house toward his bank, very early in the summer morning, an automobile drew up alongside him, a submachine gun was pointed at him, and he was persuaded to enter the car. His captors were two: a vigorous voluble man and an armed thing muffled in women's clothes which never spoke—possibly a disguised man.

They took my grandfather to his bank, long before any customers would appear, and ordered him at gunpoint to open the safe. He would not do so. The two robbers sat down to converse with Mr. Pierce; there was plenty of time yet. The voluble robber, in rather friendly fashion, recounted the story of his own life. He had been a victim of circumstances, he said; but he had transcended them by taking up the robbing of banks. He held a theory of law and society rather like that of Thrasymachus, it seemed to my historically-minded grandfather: that is, the robber maintained that might is right, and that he was by nature one of the strong, which truth he was presently demonstrating. He then requested Mr. Pierce, once more, to open the safe. My grandfather still refused.

"Then, Mr. Pierce, though I've come to like you, I'm going to have to kill you." The voluble robber explained that for the sake of his very reputation and livelihood, it was regrettably necessary for him to shoot bankers who set him at defiance. How

otherwise could he subsist at his trade? So, if you really won't...

Convinced of his companion's sincerity, my grandfather opened the safe. The robbers took the money and drove away with my grandfather to an isolated barn. They left him inside, very loosely tied about his wrists, with the admonition that if he should come out within ten minutes, he would be shot. But my grandfather emerged so soon as he heard the robbers' car roar away. It had been his one defeat.

Years later, in an Illinois prison, a police officer who had known my grandfather happened to talk with Machinegun Kelly, generally believed to have been the author of the St. Valentine's Massacre in Chicago. According to my grandfather's acquaintance, Kelly told him that the Plymouth bank-robbery had been one of his jobs, and that he had taken a liking to Mr. Pierce, the banker. Whether or not there was truth in this confession, certainly the man who kidnapped my grandfather was an accomplished professional criminal without scruples. Against him my grandfather could have been a convincing and convicting witness. Then why did he let my grandfather live? Perhaps because this robber was a highly rational criminal who calculated chances and weighed penalties. Pursuit for a murder is more intense than for a mere robbery, and penalties are heavier.

As others have suggested, the degree of deterrence provided by any severe penalty depends in part upon the calculating intelligence of the criminal—or the lack of reckonings and calculations on his part. From what I have observed, systematic bank robbers and safecrackers commonly are cold, egoistic, calculating persons who rank Number One very high indeed, look out carefully for Number One, and therefore weigh disadvantages and penalties. Fairly often they, like my grandfather's kidnapper, develop ideological apologies for their actions. Upon such mentalities, the final penalty of death may exercise a prudent restraint.

I have digressed at this length to suggest

that the death penalty may be merciful toward the victims of certain types of crimes, committed by certain types of persons. In such cases, heavy penalties—and capital punishment especially—tend to deter a rational offender from covering up one crime by committing a worse. The instance of my grandfather's misadventure early fixed in my mind, at least, a certain healthy prejudice in favor of stern deterrents.

Doubtless many people could tell us of more dreadful cases of criminality, within their personal experience, than these three vignettes drawn from my own past with which I have just presented. The breakers of violence sweep ever higher up the beaches of our civilization. We have supped long on horrors. About four years ago, my wife was kidnapped—though she escaped, chiefly through her gift of persuasive talk. (That episode also has gone into a short story of mine, "The Princess of All Lands".) Everyone knows how the previous exemptions from criminal depredations have been cancelled. That, I suppose, is why we are discussing the possible restoration of capital punishment.

The meliorists of the nineteenth century took it for granted that by a century after their time—by the year 1980, say—violent criminality would be virtually extinguished through universal schooling, better housing, better diet, general prosperity, improved measures for public health, and the like. They assumed that capital punishment was a relic of a barbarous and superstitious age. Capital punishment, they thought, was merciless; and they were themselves evangelists of mercy. Their intellectual descendants did succeed, by the 1950's, in abolishing the death penalty throughout most of the civilized world.

But they did not succeed in abolishing hideous crimes of the sort formerly labelled "capital." In the most affluent of great countries, the United States, the rate of serious crimes rose most steadily and rapidly. At a time when the need for restraints upon criminality appeared to be greater than before, penalties were diminished.

All this was done in the name of mercy. Yet to whom was this mercy extended? Was it mercy toward the criminals? The recent insistence of two murderers in this country upon being executed according to sentence is no peculiar phenomenon. Doubtless many of the unfortunates being worked slowly to death in the prison-camps of the Soviet Arctic would find a firing-squad far more merciful than the pretended mercy of a thirty-year sentence. But we need not turn to totalist lands.

Is it not refined cruelty to keep alive, in self-loathing, a man who is a grave danger to the innocent and a grisly horror to himself? And to do such a thing in countries long admired for the justice of their laws? Once, walking Dartmoor, I came within sight of Dartmoor Prison, celebrated in so many English detective-yarns, but abandoned since I strolled nearby. At that time there was immured in Dartmoor Prison a little man with a talent for escaping. Although serving a life term there, he had managed to get out four or five times. And every time he contrived to elude his pursuers long enough to find, ravish, and kill a small girl. That done, he would submit in apathy to arrest and return to Dartmoor Prison.

This pitiable, loathsome being, after recapture, would be overwhelmed by remorse and would beg for death—which would be denied him, although yet another sentence of imprisonment for life would be imposed. For what purpose was his life so carefully preserved? His continued existence here below was of benefit only to the gutter press of London, which regaled the public with details of his atrocities. To whom was this policy merciful? To the twisted creature himself? To the other inmates of Dartmoor, compelled to associate with this creature? To the rural population of Devonshire, among whom the creature repeatedly committed his depredations? What sort of human dignity was this abstinence from capital punishment upholding?

Georgia's most talented writer of this century, the late Flannery O'Connor, once

read aloud to me the most famous of her short stories, "A Good Man Is Hard to Find." Flannery was no sentimentalist and no meliorist; blameless herself, she nevertheless perceived the whole depravity of our fallen nature. In her art, she agreed with T. S. Eliot (who never read her stories) that the essential advantage for a poet "is to be able to see beneath both beauty and ugliness; to see the boredom, and the horror, and the glory."

In "A Good Man Is Hard to Find," Miss O'Connor describes the roadside murder of a whole family by an escaped convict called The Misfit, and his chums. (Flannery told me that she had got The Misfit's sobriquet from Georgia newspapers—their appellation for a real-life fugitive from justice quite as alarming as Flannery's character.) The Misfit, like Teniente Pedro in "We Are God's Utopia," is not without his amiable qualities: he apologizes to the grandmother (whom he kills a few minutes later) for not having a shirt to his back. He is a psychopath who had been "buried alive" in the penitentiary. Like many others of his dreadful nature, he has drifted through existence:

"I was a gospel singer for a while," The Misfit said. "I been most everything. Been in the arm service, both land and sea, at home and abroad, been twict married, been an undertaker, been with the railroads, plowed Mother Earth, been in a tornado, seen a man burnt alive oncet," and he looked up at the children's mother and the little girl who were sitting close together, their faces white and their eyes glassy; "I even seen a woman flogged," he said.

After a nightmare conversation about how "Jesus thown everything off balance," the grandmother impulsively touches The Misfit; and he shoots her three times. His helpers return from disposing of the other members of the helpless family.

"She would of been a good woman," The Misfit said, "if it had been somebody there to shoot her every minute of her life."

"Some fun!" Bobby Lee said.

"Shut up, Bobby Lee," The Misfit said.

"It's no real pleasure in life."

Aye, a good man is hard to find; in Adam's fall we sinned all; yet the depth and extent of our depravity varies from one person to another; and for the safety—perhaps the survival—of our species, it was found necessary in all previous ages to put out of their misery such criminals as The Misfit. Their physical presence among us cannot well be tolerated; the ultimate mysterious judgment upon their souls—so Flannery O'Connor implies—we leave to God.

To the Dartmoor child-ravager or the Jesus-accusing Misfit, what sort of mercy was burial alive in a penitentiary? Why, such preservation at public expense is merciful only if the mere prolongation of life here on earth is viewed as the chief purpose of existence; it is merciful only if one assumes that death brings annihilation—in Eliot's lines,

whirled

Beyond the circuit of the shuddering  
Bear

In fractured atoms.

The abolition of capital punishment, I mean, is one of the products of humanitarianism—that is, of the belief that man's cleverness will suffice for all purposes, without need for knowledge of the transcendent and the divine.

Yet humanitarianism is now a decayed creed, worthless as a defense against the ideologues and the terrorists of our age, insufficient even to induce men and women to perform the ordinary duties which are supposed to bring the rewards of ordinary integrity. In a world that has denied God the Father, God the Son, and God the Holy Ghost—why, today the Savage God lays down his new commandments. The gods of the copybook headings with fire and slaughter return. The humanitarian who finds nothing sacred except (mysteriously) human life (so long as it is a criminal's life, not the life of an unborn infant) soon goes

to the wall, throughout most of the world, in our time.

Flannery O'Connor, a woman of humane letters, was no humanitarian. She was aware that this brief existence of ours—in her case, a brief life of physical suffering—is not the be-all and end-all. She did not mistake physical death for spiritual destruction.

One of the many consequences of the widespread decay of belief in the resurrection of the flesh and the life everlasting has been the revulsion against capital punishment. But our understanding of the human soul begins to revive—encouraged, strange though it may seem to some people, by the speculations of physicists. No longer does it seem absurd to deny the suppositions of materialists and mechanists; no longer is it a mark of ignorance to declare that man is made for eternity. For a popular treatment of this renewed awareness of the realm of spirit, I refer those interested to Morton T. Kelsey's recent book *Afterlife: the Other Side of Dying*; I might cite also a score of other serious books, among them certain studies of what time is and of what energy is.

The rejection of capital punishment in any circumstances thus is becoming an attitude which belongs to the intellectual and moral era that is passing. If the deprivation of life by human agency amounts only to opening the gate of another realm of existence—why, Death has lost his sting.

Why do some people retain so extreme an aversion to capital punishment that they would deny the death penalty even to condemned murderers who desire to be executed? Because of the fear of death—the dread of the void, of annihilation. Their dread of extinction—even if repressed in their conversation—for themselves is so powerful that they cannot abide the terminating of others' lives, not even the lives of Don Pedros and Misfits. It is an illogical dread, this terror of the inevitable: for we all die, just the same. John Strachey, as the Labour party was about to push the Chur-

chill government out of power, promised the electorate that under socialism, the ministry of health would work such wonders that human life itself would be prolonged indefinitely. That did not come to pass. No statutes can assure immortality, except perhaps for corporations.

Yet why is death so dreadful? On my recommendation, the American Book Awards people have chosen as one of the five best religious books of 1979 Peter J. Kreeft's *Love Is Stronger Than Death*; "Death makes the question of God an empirically testable question," Kreeft writes. "Death makes the abstract God-question concrete. Instead of 'Is there a God?' the question becomes 'Will I see God?' It is a dramatic thought, the thought of meeting God at death. Death gives life to the God-question. Perhaps we shall find death giving life to many other things too.

We have lost all our absolutes today except one. Once, we had God, truth, morality, family, fidelity, work, country, common sense, and many others—perhaps too many others. Now, in the age of absolute relativism, one absolute is left: death. Death is the one pathway through which all people at all times raise the question of the absolute, the question of God. The last excuse for not raising the God-question is Thoreau's "one world at a time." Death removes this last excuse.

The zealots against capital punishment fear to raise the God-question. Yet death, as Peter Kreeft tells us, can be a friend, a mother, a lover. Those who do not fear to clasp darkness as a bride die well, and are not extinguished. For all of us, in the end, death is the ultimate mercy. I do not understand why we should deny that mercy to slayers whose earthly existence is a grave; nor why we should deny a merciful protection to the guiltless whose purpose in this world may be undone by those guilty slayers.