

# *MORMONISM AND CAPITAL PUNISHMENT: A DOCTRINAL PERSPECTIVE, PAST AND PRESENT*

MARTIN R. GARDNER

ON JANUARY 17, 1977, Gary Mark Gilmore's execution by a Utah firing squad ended an almost ten-year moratorium on capital punishment in the United States. The death penalty, at least in Utah, had again become a reality. Reaction to the Gilmore execution from the Mormon community indicated a general approval of the use of capital punishment in that case as well as a commitment to the institution of capital punishment itself. Numerous students interviewed at BYU defended the death penalty in terms of Mormon theology, believing that a clear church commitment to capital punishment exists. These defenses are not uncommon in Mormon culture generally.<sup>1</sup> To understand such defenses it is important to examine not only what church leaders have said about the subject, but also what the Mormon people did about it. It seems less profitable to explore the old anti-Mormon claim that the Church or church members practiced extralegal capital punishment than to focus on how Mormon belief was expressed when Mormon legislators enacted secular capital punishment law. Since the capital punishment law in Utah was initially a product of Mormon lawmakers influenced by Mormon doctrine, an historical understanding of Utah law provides rich insights into nineteenth century Mormon thought about capital punishment.

Present Utah law provides capital offenders, specifically those committing murder in circumstances justifying execution, with the option of death by hanging or death by firing squad. Utah is unique in its use of the firing squad, indeed, in its use of an execution mode which actually spills the blood of the offender. Existence of the firing squad solely in Utah is no coincidence but instead is a

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consequence of an attempt by early legislators to effectuate religious belief through the capital punishment law of the state. Mormon justifications of capital punishment were intricately related to blood atonement, a doctrine requiring shedding blood as expiation for certain sins.

It should be noted, however, that religious justification for capital punishment is not unique to the Mormon people.<sup>2</sup> Neither is current theological rationale for the death penalty limited to the state of Utah.<sup>3</sup> But while sectarian defenses of capital punishment may be somewhat commonplace, Mormonism is unusual in its historical emphasis on observing particular methods of execution which conform with divine will. Because of this concern for the form of implementing the death penalty, as well as the profound influence of Mormonism in Utah, the impact of religion on capital punishment law in that state is more vivid than it is elsewhere. Religious justifications of the death penalty are often concealed by appeals to a variety of secular purposes which make the full extent of religious undergirding unclear. Ecclesiastical impact on capital punishment in Utah, however, is more readily identifiable because of the distinctly sectarian origins of the firing squad.

#### *THE BLOOD ATONEMENT DOCTRINE*

Mormon doctrine teaches that Christ's atonement unconditionally saves the entire human family from physical death, the separation of the body and spirit which results from Adam's transgression. Christ's atonement also saves man from spiritual death, alienation from God resulting from one's actual sins, on the condition that the individual repent of his sins and obey God's commandments. However, the doctrine of blood atonement posits that man can commit some sins so heinous that Christ's sacrifice is unavailing, but the offender himself may partially atone for his sin by sacrificing his life in a way which literally sheds his blood. The spilling of blood is required because blood is viewed as possessing symbolic religious significance. "The man who commits murder, who imbues his hands in the blood of innocence, cannot receive eternal life because he cannot get forgiveness of that sin. What can he do? The only way to atone is to shed his blood."<sup>4</sup>

What is the reason for that? Why, we are told in the book of Leviticus, 17th chapter and 11th verse: 'For the life of the flesh is in the blood; and I have given it to you upon the altar to make an atonement for your souls; for it is the blood that maketh an atonement for the soul.' . . . If Christ's blood had not been shed, each individual would have had to have his blood shed, according to Bible doctrine.<sup>5</sup>

The first seeds of blood atonement teachings were planted in Mormon thought before the Saints settled in Utah. In 1843, Joseph Smith said:

In debate, George A. Smith said imprisonment was better than hanging.

I replied, I was opposed to hanging, even if a man kills another, I will shoot him, or cut off his head, spill his blood on the ground, and let the smoke thereof ascend up to God; and if ever I have the privilege of making a law on that subject, I will have it so.<sup>6</sup>

On another occasion Joseph stated, "Hanging is the popular method of execution among the Gentiles in all countries professing Christianity, instead of blood for blood according to the law of heaven."<sup>7</sup>

Although the doctrine was taught, or at least suggested before the Saints went to Utah, blood atonement was fully developed by Brigham Young:

There are sins that men commit for which they cannot receive forgiveness in this world, or in that which is to come, and if they had their eyes open to see their true condition, they would be perfectly willing to have their blood spilled upon the ground, that the smoke thereof might ascend to heaven as an offering for their sins; and the smoking incense would atone for their sins, whereas, if such were not the case, they would stick to them and remain upon them in the spirit world. . . .

It is true that the blood of the Son of God was shed for sins through the fall and those committed by men, yet, men can commit sins which it can never remit . . . There are sins that can be atoned for . . . [only] by the blood of the man.<sup>8</sup>

Other early Mormon leaders, including Jedediah M. Grant and Heber C. Kimball, both counselors in the First Presidency of the Church, taught the doctrine of blood atonement<sup>9</sup> and all played major roles in implementing the first capital punishment law in Utah.

While the most fervent sermons on blood atonement were preached during the reformation movement in the 1850s, a period of intense Mormon revivalism bordering on fanaticism,<sup>10</sup> the doctrine also seems to have been defended by nineteenth century church leaders after the excessive rhetoric of the reformation had subsided. Responding to anti-Mormon critics in 1884, George Q. Cannon said, "We do not believe in hanging. We think that if a man sheds blood, his blood should be shed by execution . . . [But] it is a process of law [not a Church function] and has no reference to any Church ordinance."<sup>11</sup> In 1889, the First Presidency and Council of Twelve issued an official proclamation answering claims that the Mormon Church had practiced blood atonement extralegally. "We regard the killing of a human being, except in conformity with the civil law, as a capital crime, which should be punished by shedding the blood of the criminal after a public trial before a legally constituted court of the land."<sup>12</sup>

In 1891, President Wilford Woodruff answered scurrilous charges against the Mormons:

It is a fundamental doctrine of our creed that a murderer cannot be forgiven; that he 'hath not eternal life abiding in him'; that if a member of our Church, having received the light of the Holy Spirit, commits this capital crime, he will not receive forgiveness in this world nor in the world to come. . . . It is part of our faith that the only atonement a murdered [sic] can make for his 'sin unto death' is the shedding of his own blood [through capital punishment as practiced by the State and not the Church] according to the fiat of the Almighty after the flood: 'Whoso sheddeth man's blood by man shall his blood be shed.' But the law must be executed by the lawfully appointed officer. This is 'blood atonement' so much perverted by maligners of our faith. We believe also in the atonement wrought by the shedding of Christ's blood on Calvary; that it is efficacious for all the race of Adam for the sin

committed by Adam, and for the individual sins of all who believe, repent, are baptized by one having authority, and who receive the Holy Ghost by the laying on of authorized hands. Capital crime committed by such an enlightened person cannot be condoned by the Redeemer's blood. For him there is 'no more sacrifice for sin'; his life is forfeit, and he can only pay the penalty. There is no other blood atonement taught, practiced or made part of the creed of the Latter-day Saints.<sup>13</sup>

Scriptural support for the doctrine of blood atonement, for the sin of murder at least, was derived primarily from Genesis 9:6: "Whoso sheddeth man's blood, by man shall his blood be shed." This verse, coupled with I John 3:15 ("No murderer hath eternal life abiding in him"), Hebrews 9:22 ("And almost all things are by the law purged with blood; and without shedding of blood is no remission"), and Leviticus 17:11 ("For the life of the flesh is in the blood: and I have given it to you upon the altar to make an atonement for your souls: for it is the blood that maketh an atonement for the soul") provided the foundation from which Mormon leaders developed their doctrine.<sup>14</sup>

It is not entirely clear under what circumstances and for which sins blood atonement would avail the offender. As noted, some sins, particularly murder committed by baptized Mormons who have been "specially enlightened" by the power of the Holy Spirit, apparently can never be forgiven even if the offender willingly atones for this offense with his own blood.<sup>15</sup> For such offenders, however repentant, there seems to be no hope of overcoming spiritual death. Apparently, there are very few possible candidates for this class of "specially enlightened" murderers. The vast majority of murderers, therefore, would be capable of a modicum of salvation from their sins if they have atoned by shedding their own blood.<sup>16</sup>

Apart from murder, Mormon leaders also taught that sexual misconduct by Church members in certain circumstances, as well as the violation of certain sacred covenants, would be dealt with through blood atonement if the complete law of blood atonement were being lived.<sup>17</sup> Such opinions on blood atonement for sins other than murder did not, however, express a doctrine viable in this dispensation. They were discussions of a doctrine that operated in the past when church and state were not separated and which would apply in the future when the power to take life would be vested in a ruling theocracy.<sup>18</sup> Blood atonement for murder, while a possibility in this dispensation, was never viewed as an ecclesiastical function<sup>19</sup> but rather as a possible consequence of secular capital punishment law. Because blood atonement involves an outward act of religious significance—shedding the sinner's blood as a means of salvation—it should not be seen merely as abstract doctrine.<sup>20</sup> That blood atonement was not viewed by the early Mormons as a purely hypothetical principle becomes clear when the relationship between the doctrine and the Utah capital punishment law is examined.

#### *CAPITAL PUNISHMENT LEGISLATION IN UTAH*

The first efforts towards establishing secular government among the Mormons in Utah occurred in 1849 when the Council of Fifty drafted a plan for territorial

government. The Council of Fifty, while theoretically a political body distinct from the Church, was composed of and controlled by the Mormon hierarchy and therefore was virtually indistinguishable from the Church itself. While waiting for federal approval of their petition for territorial status, the Council of Fifty established the provisional state of Deseret under the ideal of the political Kingdom of God. Although the constitution of the state of Deseret paid lip service to the principle of popular sovereignty, the first legislature was apparently handpicked by the Council of Fifty and not by a vote of the people. Members of the Council filled all of the executive and judicial branches of the new government, with Brigham Young "elected" governor by the Council. "Church and state were clearly welded together."<sup>21</sup>

In 1851 the General Assembly of the state of Deseret, controlled by members of the Council of Fifty,<sup>22</sup> adopted a criminal code that imposed capital punishment for the crime of murder: "Be it further ordained, that when any person shall be found guilty of murder, under any of the preceding sections of this ordinance, and sented [*sic*] to die, he, she or they shall suffer death by being shot, hung or beheaded." Apparently the court was to direct the mode of execution.

The provisions of the Deseret Assembly were hardly in force before territorial government was established and a more extensive criminal code enacted. In 1852 the territorial legislature adopted all the laws of the provisional state of Deseret, including the capital punishment measures, but the legislature also provided that the offender could choose the mode of execution. First degree murderers were to "suffer death by being shot, hung or beheaded as the court may direct, or as the convicted person may choose." As had been the case with the Deseret Assembly, the Council of Fifty orchestrated the election of the territorial legislature with at least twenty of the thirty-nine seats held by members of the council.<sup>23</sup>

The Act of 1852 remained the capital punishment law in the Territory of Utah until 1876 when a more complete criminal code was adopted. The 1876 act inadvertently repealed the section on modes of execution without providing a new section, but the Utah courts continued to impose capital punishment by shooting. In 1888, a statutory revision of the criminal law removed beheading as an execution method. Shooting and hanging were retained with no subsequent changes in the methods of imposing capital punishment. The present statute, virtually identical to the 1888 measure, provides

The punishment of death must be inflicted by hanging the defendant by the neck until he is dead, or by shooting him, at his election. If the defendant neglects or refuses to make election, the court at the time of making the sentence must declare the mode and enter the same as a part of its judgment.<sup>24</sup>

Whether by exercise of the defendant's option or by judicial imposition, shooting has been the predominant mode of execution in Utah.

#### *HISTORICAL PURPOSE OF FIRING SQUAD PROVISION*

Since virtually no official legislative discussion of the firing squad provision exists apart from the language of the law itself, the purpose of the law and the intent of the legislators who enacted it must be drawn from circumstantial

evidence. The evidence suggests that the motivations of the lawmakers who first introduced the firing squad into Utah law were essentially religious.

The Deseret Assembly and later the territorial legislature were the first American lawmakers to adopt beheading or the firing squad as modes of execution. Except for a few aberrations during colonial times, beheading was never employed in any American jurisdiction<sup>25</sup> and had ceased to be used in Britain one hundred years before the Mormons adopted it in 1851.<sup>26</sup> While shooting was acceptable for military executions, hanging was the exclusive means of state executions in other jurisdictions when the firing squad was introduced into Utah law.<sup>27</sup> Utah stood alone in its use of beheading and shooting and thus was unique in literally "spilling the blood of the murderer on the ground." Since Joseph Smith was revered by Brigham Young and the other Mormon leaders in early Utah, it is only natural that his views would influence their thoughts on capital punishment. George A. Smith, the person with whom Joseph Smith was debating when Joseph expressed his views on the virtues of beheading and shooting, is the reputed author of the first criminal code in Utah.<sup>28</sup> Perhaps the debate with Joseph convinced George A. Smith of the religious virtues of execution by beheading and shooting, thus explaining why those modes appeared in early Utah law.

Whether or not Joseph Smith's opinion on the religious advantages of blood-spilling modes of capital punishment directly shaped Utah law, it seems clear that the opinions of other prominent churchmen did. Three of the most vigorous advocates of blood atonement in early Utah, Brigham Young, Jedediah M. Grant and Heber C. Kimball, were directly involved in the 1851 Deseret Assembly that introduced beheading and the firing squad into Utah law. Young approved the measure in his capacity as governor of Deseret, and Grant and Kimball were speakers of the Deseret House and Senate, respectively. All three were also members of the Council of Fifty. Minutes of secret meetings of the Council show that the doctrine of blood atonement was discussed, at least in passing, by the Council before adoption of the 1851 capital punishment law.<sup>29</sup> Given the political influence of the Council and its commitment to blood atonement, the sudden and novel emergence of beheading and the firing squad in the law of Utah seems to be a religious phenomenon.

The fact that hanging was also included as a mode of capital punishment, and that the offender was later given his choice of method, does not diminish the strength of the conclusion that beheading and the firing squad were implemented to allow for the blood atonement rite. Hanging was viewed by the Mormons as a secular method of imposing capital punishment available to those who did not choose to atone for their sins.<sup>30</sup> The notion of individual freedom is fundamental to both Mormon theology and to the political theory espoused by the Council of Fifty. Forcing blood atonement upon the offender would be inconsistent with basic Mormon belief.

Not all early Mormons thought of beheading and shooting in purely sectarian terms. Some evidence of deterrence theory occasionally crept into discussion of capital punishment by those methods. For example, Orson Hyde said:

The best way to sanctify ourselves, and please God our Heavenly Father in

these days is to rid ourselves of every thief, and sanctify the people from every vile character. I believe it is right; it is the law of our neighboring state to put the same thing in execution upon men who violate the law, and trample upon the sacred rights of others. It would have a tendency to place a terror on those who leave these parts, that may prove their salvation when they see the heads of thieves taken off, or shot down before the public.<sup>31</sup>

It does seem, however, that the early Mormon theory of punishment was essentially non-utilitarian. Retributive elements are evident in the Mormon concept of legal punishment in general, as in Doctrine and Covenants 134:8.

We believe that the commission of crime *should be punished according to the criminality of the offense*; that murder, treason, robbery, theft, and the breach of the general peace, in all respects, *should be punished according to their criminality* and their tendency to evil among men, by the laws of that government in which the offense is committed; and for the public peace and tranquility all men should step forward and use their ability in bringing offenders against good laws to punishment. (Emphasis added).

"The Mormons were firm believers in the Hebrew concept that crimes were sins against God: the social attitude toward the criminal offender was that 'he should willingly confess his crime and willingly expiate his wrong and then go forth with a repentant heart.'"<sup>32</sup> Capital punishment through shedding blood offered a specific means of expiating sin while hanging apparently lacked religious significance.

It is thus possible to divide the early capital punishment law into secular and religious components. Hanging represents a secular alternative provided offenders who, in the exercise of their free agency, choose to reject the way to salvation. Beheading and the firing squad afforded the murderer the opportunity to pay for his sins.

Numerous commentators have agreed that the firing squad exists in Utah law in order to effectuate blood atonement. To quote B.H. Roberts:

Latter-day Saints believe that where secular government prescribes capital punishment it is better that such form of execution be adopted as will shed the blood of the criminal; hence in Utah, when the Latter-day Saints, in their capacity as citizens of the state have made the laws, condemned criminals, subject to capital punishment, are permitted to choose their mode of execution either by being hung or shot, the latter mode, or course, resulting in the shedding of their blood, thus meeting the requirement of the law of God as well as the law of the state.<sup>33</sup>

Joseph Fielding Smith concluded that Mormon legislators wrote capital punishment provisions into the laws of Utah so the offender could "have his blood shed in harmony with the law of God; and thus atone so far as it is in his power, for the death of his victim."<sup>34</sup>

#### BLOOD ATONEMENT AS A CURRENT DEFENSE FOR CAPITAL PUNISHMENT

Present justifications of capital punishment in terms of blood atonement are

sometimes offered by ordinary Mormon citizens as well as by government officials.<sup>35</sup> Since bloodshed does not result from hanging, electrocution, lethal gas or lethal injection, blood atonement can be practiced only in Utah and only through the firing squad. It has been speculated that the present Mormon-dominated Utah legislature would be reluctant to adopt more humane methods of execution because offenders would choose those new methods in lieu of the firing squad and its potential for atonement.<sup>36</sup> Although it is impossible to determine the accuracy of such speculation the Utah legislature did recently reject "medical anesthesia" as a third alternative. Shortly after the Utah legislature expressed its continued preference for shooting and hanging, the Idaho legislature adopted lethal injection as the sole means of execution. Interest in blood atonement then seems to explain the radically different approaches of the two legislatures.

#### *CAPITAL PUNISHMENT AND MORMON BELIEF—THE TWENTIETH CENTURY VIEW*

Unlike the situation in the nineteenth century, discussion of capital punishment by modern Mormon leaders is now rare, and almost always without specific reference to blood atonement. A few modern references to the doctrine do exist, however. B. H. Roberts, in "divine instructions to the Church" represented the status of blood atonement as follows:

But if, as seems to be the case . . . there are certain limitations to vicarious atonement, even to the vicarious atonement of the Christ then these ancient laws proclaiming that the life of the flesh is in the blood, and that 'the blood maketh an atonement for the soul,' make plain what is needful for the salvation of the soul where one's sins place him beyond the reach of vicarious means of salvation—then it is the shedding of the sinners [*sic*] own blood that must be referred to.<sup>37</sup>

Likewise, Joseph Fielding Smith stated that Utah capital punishment law granted unto the condemned murderer the privilege of choosing for himself whether he die by hanging or whether he be shot, and thus have his blood shed in harmony with the law of God; and thus atone, so far as it is in his power to atone, for the death of his victim.<sup>38</sup>

More recently, Bruce R. McConkie stated:

But under certain circumstances there are some serious sins for which the cleansing of Christ does not operate, and the law of God is that men must then have their blood shed to atone for their sins. Murder, for instance, is one of these sins; hence we find the Lord commanding capital punishment.<sup>39</sup>

(In an earlier discussion, McConkie had stated, "As a mode of capital punishment, hanging or execution on a gallows does not comply with the law of blood atonement, for the blood is not shed."<sup>40</sup> The deletion of the reference to hanging in McConkie's later work apparently reflects a modification of his thinking.) An allusion to blood atonement was also contained in a February 26, 1972 editorial in the *Church News*:



Biblical principles are sound, and are as applicable today as they were in ancient times. One of those principles as taught in scripture was capital punishment.

As far back as the days of Noah the Almighty gave this law: 'Whoso sheddeth man's blood, by man shall his blood be shed . . .

Have the opponents of capital punishment ever thought of it in its eternal sense? Is this one way by which sinful man may atone, at least in part, in the eyes of God, for his serious offenses?

Although these few references to blood atonement suggest the doctrine's modern vitality, discussion of the concept is notably absent in other major twentieth century treatment of Mormon doctrine by church authorities. In his discussion of murderers in *The Miracle of Forgiveness*, Spencer W. Kimball not only failed to mention blood atonement as theologically relevant to murderers but made no reference at all to capital punishment.

Any uncertainty surrounding the doctrinal status of blood atonement was laid to rest in a recent statement by Bruce R. McConkie. Speaking on behalf of the First Presidency and in response to a query from the *Utah Law Review*, Elder McConkie wrote the following:

You note that I and President Joseph Fielding Smith and some of our early church leaders have said and written about this doctrine and you asked if the doctrine of blood atonement is an official doctrine of the Church today.

If by blood atonement is meant the atoning sacrifice of Christ, the answer is Yes. If by blood atonement is meant the shedding of the blood of men to atone in some way for their own sins, the answer is No.

We believe that the blood of Christ, shed in the Garden of Gethsemane and on the cross of Calvary, cleanses all men from sin on condition of repentance. As expressed by a Book of Mormon scripture: 'Salvation was, and is, and is to come, in and through the atoning blood of Christ, the Lord Omnipotent.' (Mosiah 3:18).

We do not believe that it is necessary for men in this day to shed their own blood to receive a remission of sins. This is said with a full awareness of what I and others have written and said on this subject in times past.

In order to understand what Brigham Young, Heber C. Kimball, Charles W. Penrose and others have said, we must mention that there are some sins for which the blood of Christ alone does not cleanse a person. These include blasphemy against the Holy Ghost (as defined by the Church) and that murder which is the unlawful killing of a human being with malice. However, and this cannot be stressed too strongly, this law has not been given to the Church at any time in this dispensation. It has no application whatever to anyone now living whether he is a member or a non-member of the Church.

There simply is no such thing among us as a doctrine of blood atonement that grants a remission of sins or confers any other benefit upon a person because his own blood is shed for sins. Let me say categorically and unequivocally that this doctrine can only operate in a day when there is no separation of Church and State and when the power to take life is vested in the ruling theocracy as was the case in the day of Moses. From the day of Joseph Smith to the present there has been no single instance of so-called blood atonement under any pretext.

Anything I have written or anything said by anyone else must be understood in the light of the foregoing limitation. Brigham Young and the others were speaking of a *theoretical principle* that operated in *ages past* and *not* in either their or our day. As I recall, Brigham Young's illustrations were taken from the day of Moses and the history of ancient Israel and could not be applied today.

There is no such a doctrine as blood atonement in the Church today nor has there been at any time. Any statements to the contrary are either idle speculation or pure fantasy. It is certainly not the current teaching of the Church and I have never in over 60 years of regular church attendance heard a single sermon on the subject or even a discussion in any church class.

You asked if the statements of our leaders of the past, including those found in the Journal of Discourses, represent the official stand of the Church. The answer, as indicated in the comments above set forth, is that they do not. The statements pertain to a *theoretical principle* that has been *neither revealed to nor practiced by us*.

If by blood atonement is meant capital punishment, then any proper analysis of the subject would call the matter by the name capital punishment and not by the name blood atonement. To use this latter term is wholly misleading and stirs up the idea that we believe in that which we most emphatically do not believe.

We believe in capital punishment. In a revelation to Joseph Smith, on February 9, 1831, the Lord said: 'And now, behold, I speak unto the church. Thou shalt not kill; and he that kills shall not have forgiveness in this world, nor in the world to come. And again, I say, thou shalt not kill; but he that killeth shall die.' (D. & C. 42:18-19.)

Elder McConkie then quotes the Woodruff letter cited above and continues:

I repeat: Except for the atonement of Christ, which is or should be a part of the creeds of all Christian churches; and except for the use of the term 'blood atonement' as a synonym—nothing more—of 'capital punishment' where 'enlightened' members of the Church are concerned, there is no such a doctrine in this dispensation as blood atonement . . . .

Now, as to your final question—whether blood atonement, 'if' it is 'a valid doctrine,' would have any effect on the *mode* of imposing the death penalty, I need only say:

1. Since there is no such thing as blood atonement, except as indicated above, the *mode* of execution could have no bearing on the matter of atoning for one's sins; and
2. If we are speaking simply of capital punishment (and falsely calling it blood atonement), still I can see no reason for supposing that it makes the slightest difference *how* an execution is accomplished.

As far as I can see there is no difference between a firing squad, an electric chair, a gas chamber, or hanging. Death is death and I would interpret the shedding of man's blood in legal executions as a figurative expression which means the taking of life. There seems to me to be no present significance as to whether an execution is by a firing squad or in some other way. I, of course, deleted my article on 'hanging' from the Second Edition of *Mormon Doctrine* because of the reasoning here mentioned.<sup>41</sup>

Although this statement may end some controversy, it also raises a number of questions, including whether capital punishment, as distinguished from blood-spilling modes of capital punishment, still offers spiritual benefit to the offender. Elder McConkie's reference to the Woodruff letter is confusing. The letter provides that

the only atonement a murdered [*sic*] can make for his 'sin unto death' is the shedding of his own blood . . . We believe also in the atonement wrought by the shedding of Christ's blood . . . that it was efficacious for all the race of Adam for the sin committed by Adam and for the individual sins of all who believe, repent, are baptized by one having authority, and who receive the Holy Ghost by the laying on of authorized hands. *Capital crime* committed by such an *enlightened person* cannot be condoned by the Redeemer's blood. For him he can only pay the penalty (emphasis added).

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If the Woodruff letter is read to mean that the only atonement, thus implying the existence of some "atonement," possible for "enlightened" murderers is through giving their lives, then Elder McConkie may also be claiming that capital punishment is a means of atonement for such murderers. On the other hand, if the Woodruff letter is read to exempt "enlightened persons" from any hope for salvation, such persons "can only pay the [eternal?] penalty" of estrangement from God.

It is not clear exactly what Elder McConkie has in mind when he relates his view of capital punishment to "enlightened" members of the Church. If he does mean to say that the Church favors capital punishment so that a few "enlightened members" may be given a means of expiating their sins, it is highly questionable whether such a view can support capital punishment in a secular society.

Perhaps the most plausible reading is that he is suggesting no theory of atonement through capital punishment at all. Given the fifth paragraph of his statement—that as of now there are no sins for which the blood of Christ does not cleanse a person, it would seem to follow that atonement is not necessary or possible through the death of the offender. If, as he says, "there simply is no such thing among us as a doctrine of blood atonement that grants a remission of sins or confers any other benefit upon a person because his own blood is shed for sins," it would appear that there is no doctrine granting remission of sins or any other benefit to persons because their lives are taken through bloodless modes of capital punishment. Thus apparently, the Church no longer has a doctrine which defends capital punishment as religiously beneficial to capital offenders.

Such a reading of the recent church statement is further supported when the implications of a view of capital punishment as a necessary atonement are

examined. If giving one's life is a means of salvation for a murderer, it would follow that all murderers who commit their crimes in jurisdictions that have abolished capital punishment would be eternally disadvantaged. Such a consequence is inconsistent with the fundamentals of the Mormon plan of salvation. Redemption is conditioned on faith and repentance, not on one's sins being committed in a particular geographical location.

If capital punishment affords no spiritual benefits to the capital offender, what then is the theological rationale for executing murderers?

The remaining basis for present church support of capital punishment appears to be derived from Doctrine and Covenants 42:18–19, as noted by Elder McConkie. Verse 18 states, "And now I speak unto the church. Thou shalt not kill; and he that kills shall not have forgiveness in this world, nor in the world to come." Thus, murderers shall suffer *spiritual death* through their inability to obtain forgiveness. Verse 19 is a mirror of verse 18: "And again, I say, thou shalt not kill; but he that killeth shall die." (emphasis added). Verse 19 may be read as a repetition of verse 18, given to emphasize the points made in the earlier verse. Thus the reference to death in verse 19 ("he that killeth shall die") may well refer to *spiritual death* as in verse 18 and not to capital punishment at all.

This reading is supported by other scripture. Doctrine and Covenants, 132:27, provides that

The blasphemy against the Holy Ghost, which shall not be forgiven in the world nor out of the world, is in that ye commit murder wherein ye shed innocent blood, and assent unto my death, after ye have received my new and everlasting covenant, saith the Lord God; and he that abideth not this law can in nowise enter into my glory, but shall be damned, saith the Lord.

Thus certain murderers will suffer *spiritual death*. They are the "sons of perdition"<sup>42</sup> who will receive "no forgiveness in this world nor in the world to come" and will be unable to overcome the "second death."<sup>43</sup> Interpreting "die" in Section 42:19 to mean *spiritual death* would thus be consistent with other Doctrine and Covenants passages.<sup>44</sup>

Verses 18 and 19 of Section 42 are addressed to the "church." To read verse 19 as requiring capital punishment of murderers would imply that the *Church* would be obligated to take life. Verse 79 of Section 42 specifically prohibits such action: "If any persons among you shall kill they shall be delivered up and dealt with according to the laws of the land; for remember that he hath no forgiveness; and it shall be proved according to the laws of the land." Thus the obligation of the Church is to turn murderers over to secular authority. There seems to be nothing in Section 42 necessarily committing the Church or church members to advocate capital punishment.

Unlike Genesis 9:6 ("Whoso sheddeth man's blood, by *man* shall his blood be shed," emphasis added), Doctrine and Covenants 42:19 ("he that killeth shall die") makes no mention of human agents playing any part in the "death" of the murderer. Thus Genesis 9:6 appears to be a stronger basis than Section 42 (other things being equal) for capital punishment because the Genesis scripture is rather clearly describing the *physical*, not the *spiritual* death of murderers.

In his Inspired Version of the Bible, Joseph Smith makes some additions to Genesis 9:6 which suggest that capital punishment of murderers might sometimes be justified in God's sight in order to prevent further murder. The text of Genesis 9:12–13 of the Inspired Version reads, "And whoso sheddeth man's blood, by man shall his blood be shed; *for man shall not shed the blood of man. For a commandment I give, that every man's brother shall preserve the life of man . . .*" (Smith's additions emphasized). This text suggests that the reason the blood of murderers should be shed is to prevent subsequent murder, "for man shall not shed the blood of man." A utilitarian theory of capital punishment is implied, possibly as a means of deterring others from murder or incapacitating murderers prone to murder again. But Smith's text also establishes a primary obligation to preserve life—even the lives of murderers if possible. Thus capital punishment might be justified if it is the only sanction (or even if it is the most effective sanction) which will prevent murder; it is justified only if absolutely necessary.<sup>45</sup> While it might have been necessary to execute murderers in the days of Noah, when imprisonment was not available, capital punishment is not necessarily justified today. Other Old Testament scriptures indicate that the early prophets did not always interpret Genesis 9:6 as a commandment to take the lives of murderers.<sup>46</sup>

Any attempt to buttress current Mormon support for capital punishment by appealing to the numerous references to the death penalty in Mosaic law is also difficult. For example, capital punishment in the modern secular state finds little support from a legal system which treated as capital the crimes of witchcraft, sabbath desecration, disobedience to parents, blasphemy and propagation of false doctrines.

Turning finally to the Book of Mormon, one finds a variety of passages that may seem to suggest that murderers should suffer the death penalty. Second Nephi 9:35 provides, "Wo unto the murderer who deliberately killeth, for he shall die." But when this verse is read in the context of the rest of the chapter, it becomes clear that as with the Doctrine and Covenants, *spiritual*, and not physical death is being discussed. For example, 2 Nephi 9:28, 38–39 provides,

O that cunning plan of the evil one! O the vainness, and the frailties, and the foolishness of men! When they are learned they think they are wise, and they hearken not unto the counsel of God, for they set it aside, supposing they know of themselves, wherefore, their wisdom is foolishness and it profiteth them not. And they shall *perish*.

And, in fine, *wo unto all those who die in their sins*; for they shall return to God, and behold his face, and remain in their sins.

O, my beloved brethren, remember the awfulness in transgressing against that Holy God, and also the awfulness of yielding to the enticings of that cunning one. Remember, to be carnally-minded is *death*, and to be spiritually-minded is life eternal (emphasis added).

Similarly 2 Nephi 26:32 says,

And again, the Lord God hath commanded that men should not murder; that

they should not lie; that they should not steal; that they should not take the name of the Lord their God in vain; that they should not envy; that they should not have malice; that they should not contend one with another; that they should not commit whoredoms; and that they should do none of these things; for whoso doeth them shall perish.

Man "perishes," suffers *spiritual* death, when he murders or commits other sins.

Other verses in the Book of Mormon seem to recognize capital punishment as a reality of ancient society. Alma 1:18 provides: "And they durst not steal for fear of the law, for such were punished; neither durst they rob, nor murder, for he that murdered was punished unto death." Similarly Alma 42:19–20 provides: "Now if there was no law given—if a man murdered, he should die—should he be afraid he would die if he should murder? And also, if there was no law given against sin men would not be afraid to sin." These verses give no indication that the divine will is to impose capital punishment for murderers. Assuming that the verses are speaking of physical death through capital punishment, at most they are recognizing the fact of capital punishment in Book of Mormon society and not speaking of it as God's commandment. The verses seem to be discussing a deterrence theory of punishment.

Other scriptures in the Book of Mormon indicate that personal atonement through capital punishment of murderers may be inconsistent with Christ's atonement. Alma 34:10–12 provides,

For it is expedient that there should be a great and last sacrifice; Yea, not a sacrifice of man . . . for it shall not be a human sacrifice; but it must be an infinite and eternal sacrifice.

Now there is not any man that can sacrifice his own blood which will atone for the sins of another. Now, if a man murdereth, behold will our law, which is just, take the life of his brother? I say unto you, Nay.

But the law requireth the life of him that murdered; therefore there can be nothing which is short of an infinite atonement which will suffice for the sins of the world (emphasis added).

The scripture recognizes the reality of capital punishment for murder in ancient society but says nothing about capital punishment being required by either God or by principles of justice. The reference to "just law" seems to refer to the well-recognized principle of justice forbidding criminal punishment of those who obey the law. Justice demands that only the culpable be punished. The scripture thus does not say that justice requires capital punishment, but that any punishment be a consequence of personal blameworthiness.

Without the traditional justification implicit in the abandoned notion of blood atonement, there exists insufficient scriptural authority to support a continuing Mormon commitment to capital punishment. Nor do authoritative declarations from church leaders give theological support to such an independent commitment.

#### *CURRENT MORMON DOCTRINE AND CAPITAL PUNISHMENT—AN ASSESSMENT*

The recent statement on capital punishment makes it clear that the Church

takes no position as to modes of inflicting capital punishment. Thus, Mormons should not use religious grounds to block reform of Utah's methods. Given the doubtful doctrinal base for a commitment to capital punishment, enlightened Latter-day Saint opinion on the death penalty should be formed only after careful examination of the full range of secular and religious considerations on this difficult problem.

#### Notes

<sup>1</sup> Mormons in Utah tend to favor capital punishment at a greater rate than do non-Mormon Utahns. In a 1973 poll, 87 percent of the Mormons and 76 percent of the non-Mormons polled favored the death penalty. *Salt Lake Tribune*, Dec. 16, 1973. How much of this difference in Mormon and non-Mormon attitude is due to religious belief is uncertain.

<sup>2</sup> See Ingram, "The Keystone of Our Penal System," p. 55; E. Taylor, "The Death Penalty," p. 21; and G. Taylor, "Capital Punishment—Right and Necessary," p. 45; in *Essays on the Death Penalty*, ed. Ingram (1963).

Religious appeals are also often invoked to support the abolition of capital punishment. See Carpenter, "The Christian Context," in *The Hanging Question*, ed. L. Blom-Cooper, p. 29, (1969); and Livingston, "The Crime of Employing the Punishment of Death," p. 15; Rush, "Abolish the Absurd and Unchristian Practice," p. 1; and Spear, "Thou Shalt Not Kill," p. 78; in *Voices Against Death*, ed. P. Mackey, (1976).

<sup>3</sup> "About 55 percent of American and Canadian subjects who approve of capital punishment would approve of it even if it had no greater deterrent effect than imprisonment. Most of these subjects indicated as the justification for capital punishment the idea of 'just desserts' and Biblical ideas of retribution." Kohlberg & Elfenbein, "The Development of Moral Judgments Concerning Capital Punishment," *American Journal of Orthopsychiatry*, 45:614, 616 (1975).

<sup>4</sup> C. Penrose, *Blood Atonement*, p. 21 (1916).

<sup>5</sup> *Ibid.*, pp. 11, 12.

<sup>6</sup> Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints (DHC)*, 5:296 (1949).

<sup>7</sup> *Ibid.*, 1:435 (1951).

<sup>8</sup> Young, "The People of God Disciplined by Trials," "Atonement by the Shedding of Blood etc.," *Journal of Discourses (JD)*, 4:51, 53, 54 (1856).

<sup>9</sup> Grant said, "But if the Government of God on earth, and Eternal Priesthood, with the sanction of High Heaven, in the midst of all his people, has passed sentence on certain sins when they appear in a person, has [sic] not the people of God a right to carry out that part of his law as well as any other portion of it? It is their right to baptize a sinner to save him, and it is also their right to kill a sinner to save him, when he commits those crimes that can only be atoned for by shedding his blood. If the Lord God forgives sins by baptism, and . . . certain sins cannot be atoned for . . . but by the shedding of the blood of the sinner, query, whether the people of God be overreaching the mark, if they should execute the law . . . We would not kill a man, of course, unless we killed him to save him." *Deseret News*, July 27, 1854, p. 2, col. 1. For Kimball's views on blood atonement, see *JD* 7:16, 20 (1860) and 4:374, 375 (1857).

<sup>10</sup> T. O'Dea, *The Mormons*, pp. 100-110 (1957). See also Larsen, "The Mormon Reformation," *Utah Historical Quarterly*, 26:45 (1958).

<sup>11</sup> Quoted in J. Walters, *A Study of Execution in Utah*, p. 14 (1973).

<sup>12</sup> B. H. Roberts, *A Comprehensive History of the Church (CHC)*, 4:136, 137 (1957).

<sup>13</sup> Cited in a letter from Bruce R. McConkie to Thomas B. McAfee (October 18, 1978) from a letter from Wilford Woodruff to the editor of *Illustrated American* (January 9, 1891). (McConkie letter is on file at the University of Nebraska College of Law.)

<sup>14</sup> Penrose, pp. 11, 12, 21.

<sup>15</sup> *Ibid.*, pp. 21, 22.

<sup>16</sup> *Ibid.*, pp. 19, 20, 23; and *DHC* 6:253 (1950).

<sup>17</sup> See the sermons of Heber C. Kimball and Jedediah M. Grant, *JD* 7:16, 20 (1860) and 4:49-51 (1857).

<sup>18</sup> Despite extreme statements by some leaders, the Church never authorized an ecclesiastical practice of blood atonement. Larsen, "The Mormon Reformation," *Utah Historical Quarterly*, 26:45, 62 (1958) ("The church did not officially condone taking life other than through legal process," and "Responsibility for any . . . blood shedding must rest upon fanatical individuals."). Brigham Young made it clear that the teaching referred to the distant past and the millennial future. Young's remarks about blood atonement for adultery make clear that he is not claiming present Church authority to execute adulterers: "The time has been in Israel under the law of God, the celestial law . . . that if a man was found guilty of adultery, he must have his blood shed, and that is near at hand. But now I say . . . that if this people will sin no more, but faithfully live their religion, their sins will be forgiven them without taking life." Young, "To Know God is Eternal Life," "Atonement By the Shedding of Blood," *JD* 4:215, 219 (1857). See also Doctrine and Covenants (D & C) 134:10 for an official doctrine precluding ecclesiastical authority to take life.

<sup>19</sup> See D & C 42:79, 134:10. See also the denials by the Church of any extralegal blood atonement in *CHC* 4:136, 137 (1957).

<sup>20</sup> Blood atonement seems to have assumed a quasi-sacramental status so far as the crime of murder was concerned, Cannon's statement to the contrary notwithstanding. While most Mormon ordinances require priesthood authority to make them efficacious, executions of murderers by the state were apparently seen as religiously significant exercises that perhaps bestowed spiritual blessings upon the offender. See Penrose, p. 23. (Capital punishment by the state should not be abolished because it allows the shedding of blood as atonement for sin according to God's law.) Blood atonement through state execution thus takes on the character of a religious ordinance.

<sup>21</sup> J. Allen & G. Leonard, *The Story of the Latter-day Saints*, p. 253 (1976).

<sup>22</sup> K. Hansen, *Quest for Empire*, pp. 126-130 (1967).

<sup>23</sup> *Ibid.*, pp. 136, 137.

<sup>24</sup> *Utah Code Ann.* § 77-36-16 (1953).

<sup>25</sup> See N. Teeters, *Hang by the Neck*, pp. 95, 461 (1972); Bedau, "General Introduction," in *Capital Punishment*, ed. J. McCafferty, p. 21 (1972).

<sup>26</sup> The last execution in Britain by decapitation was in 1747. G. Scott, *The History of Capital Punishment*, p. 179 (1950).

<sup>27</sup> See note 25. Nevada was the only other state even to use the firing squad, but its employment of shooting arose after Utah had adopted that method and lasted only briefly. See W. Bowers, *Executions in America*, p. 9 (1974).

<sup>28</sup> Morgan, "The State of Deseret," *Utah Historical Quarterly*, 8:67, 108 (1940).

<sup>29</sup> For example, on March 3, 1849, the council discussed the cases of Ira West and Thomas Byres who had committed crimes serious enough to arouse Brigham Young to say, "I want their cursed heads to be cut off that they may atone for their sins, that mercy may have her claims upon them in the day of redemption." On the following day the council agreed that Ira West had "forfeited his Head." Hansen, p. 70.

<sup>30</sup> Joseph Smith stated that he was "opposed to hanging," the execution mode of the Gentiles (see notes 6 and 7). Later Mormon spokesmen have expressed similar opinions: "We do not believe in hanging. We think that if a man sheds blood, his blood should be shed by execution." George Q. Cannon, quoted in Walters, p. 14. See also Penrose, p. 21.

<sup>31</sup> Hyde, "The Wolves and the Sheep," *JD* 1:71, 73 (1854).

<sup>32</sup> Skidmore, "Penology in Early Utah," *Utah Humanities Review*, 2:145, 146 (1948).

<sup>33</sup> *CHC* 4:129 n. 41.

<sup>34</sup> Joseph Fielding Smith, *Doctrines of Salvation*, 1:136, 137 (1954). Others agree, see H. Andrus, *Joseph Smith and World Government*, pp. 106, 107 n. 50 (1963). It would appear that Bruce R. McConkie also believed that the firing squad was religiously significant in Utah law. See McConkie,



*Mormon Doctrine*, 2d ed., p. 93 (1966). McConkie has apparently reconsidered these views, however, in his recent letter cited above.

<sup>35</sup> For an indication that blood atonement was a factor in the minds of those prosecuting Gary Gilmore, see the interview with Deputy Attorney General Michael Dreamer on file at the Utah Historical Society, pp. 48–51.

<sup>36</sup> See Wilcock, "Utah's Peculiar Death Penalty," *Dialogue*, 7:32 (1972).

<sup>37</sup> *CHC* 4:128, 129.

<sup>38</sup> *Doctrines of Salvation* 1:136.

<sup>39</sup> *Mormon Doctrine*, p. 92.

<sup>40</sup> *Ibid.*, p. 314 (1st ed. 1958).

<sup>41</sup> Letter from McConkie to Thomas B. McAfee (October 18, 1978) on file at the University of Nebraska College of Law.

<sup>42</sup> James E. Talmage, *Articles of Faith*, p. 60 (12th ed. 1924).

<sup>43</sup> *D & C* 76:34, 37.

<sup>44</sup> A general statement of the Church's views on crime and punishment is found in *D & C* 134:8. While this theory is essentially retributive, there is no necessary commitment to capital punishment even for the crime of murder. The commitment instead seems to be to support a just legal order whatever the content of its system of punishment might be.

<sup>45</sup> Such a showing of the necessity of capital punishment is difficult, if not impossible, to establish. See F. Bedau, *The Courts, The Constitution and Capital Punishment*, pp. 44–58, 108 (1977); Baldus & Cole, "A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment," *Yale Law Journal*, 85:170 (1975); Passell, "The Deterrent Effect of the Death Penalty: A Statistical Test," *Stanford Law Review*, 38:61 (1975).

<sup>46</sup> See Genesis 34:30, 44:6, 7; 2 Samuel 11, 12:1–13; 1 Kings 2:10. See also Spear, "Thou Shalt Not Kill," in *Voices Against Death*, ed. P. Mackey pp. 78, 82, 83 (1976).

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