

RECONSTRUCTING A SOCIETY: THEOLOGY AND THE LAW

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Abstract

Structural transformation also involves definite encounter between law and theology. The purpose is to balance individual and corporate values in order to facilitate the process of social renewal in South Africa. Reconstruction of a society primarily originates from life-giving values in the thought structures of its people. New Testament perspectives on an anthropology which believes in the potential of humans shed light on God's 'new' spiritual 'RDP' programme. The incarnation of Jesus Christ spells out God's intention to radically humanize society. This should work through in the promulgation of laws. The issue of capital punishment is mentioned to illustrate the new life-giving relationship between values and law in society.

1. Actuality of reconstruction

Theological reflection in South Africa is in need of a vision which goes beyond protest and which is also prepared to be constructive. Transition is recently taking place as structural transformations on all levels of society. This is because of a drastic shift of the power basis in society.

O'Donnell and Schmitter clearly indicate that such a transition, aimed to be a democratising and restructure process, manifests itself in three facets, namely liberalising society, democratising political institutions and socialising the democratised society concerning values (1986:142). The reigning elite lose their prescriptive position considering determining values and even laws. It follows as a matter of course that unrest, violence and power struggles God hand in hand with such transition. And democratising brings about the opportunity to participate, not only in voting, but also in debating crucial issues like for example the issue of capital punishment. The process of socialising consists of consolidating the democratised society on the level of values. A consensus on fundamental values and principles is very much needed in our situation to establish the necessary unifying symbols (cf Esterhuysen 1993:22). That is why this contribution aims at presenting a theologically founded statement on the issue of reconstructing the laws on capital punishment.

The point of departure is that reconstruction as a human effort to renew life and lifestyle in South Africa for all its people towards human respectability is necessary. Reconstruction is neither restoration nor revolution. It involves placing values and structures in position to facilitate the process of social renewal. The Archbishop of Smolensk, Kyril, made the following statement in this regard:

For without the co-operative efforts of believers and non believers it will be impossible to surmount the problems faced by society today. Therefore the response of the church must be formulated in language which is understandable not only to Christians. It is not acceptable for the church to refrain from participation in law-making and from the opportunity to influence the political process, where not only the church's own future but the future of the entire country is dependent upon laws and political decisions' (quoted

by Villa-Vicencio 1992;4). This means that theological voices should make real life values understandable to a broad constituency of people. The phase we are entering may be called a post-exilic period in which prejudices of race, class and sexism are to be broken down and an all inclusive democratic society is to be built upon new values. It would also mean to bridge the gap between ideals and reality with realism. The renewal and transformation of values will bring the birth of new laws as an integral part of a new generation. This will also have affect on the issue of capital punishment as one of the disputed issues on table. Berman is of opinion that law through its stability involves man's whole being (1974;30).

Theology is to cooperate with law to provide a life-giving sense of order and purpose to society (cf Villa-Vicencio 1992:11). Theology is also an scientist to transform law. That is the purpose of this contribution. The law helps society to gain structure and theology helps society to have faith to move towards god's goal for his people on earth, the recognition of his kingship on earth as it is in heaven.

Theological thinking must courageously pose uncomfortable questions about the structures in society, also the thought structures, like capital punishment. Reconstruction should lead to material as well as moral and spiritual transformation of god's people. In the following part we will focus on some New Testament perspectives concerning such spiritual transformation as foundation for a framework of justice in further legal reconstruction.

2. Some new testament spiritual perspectives

The incarnation of Jesus illustrates God's solidarity with humankind. In Jesus' acts, teachings and healings people were moved to the fullness of life. In Him man has become a 'new creature' (2 Cor 5:17) and a 'new person' (Gal 6:15; Eph 4:24). The saved are now members of the family of God, his own children. Salvation has brought liberation and a new freedom (Gal 5) as framework for a new ethos.

Lategan distinguishes between a low and high anthropology in Biblical interpretation (cf 1991;88-89). The low anthropology stamps humans as sinful creatures from whom not too much should be expected. And the high tradition articulates the almost limitless potential of the human being. The apartheid mindset is based on a low anthropology in which the sinfulness of people should discourage them to have too high hopes of themselves. The present world should only be endured while the expectations are to be focused on the next world. Such an interpretation inhibits a positive selfunderstanding. It is not strange that any human rights movement is rejected in these circles. Instead, we need a realistic interpretation of man in which sin is taken seriously but not as a permanent state of destruction. In Christ God is realising the given potential of humans (cf Rom 8:31-39). That should be the theological framework of mind in which also the promulgation of laws are drawn. Therefore, any decision on capital punishment should depart from a high anthropology in which the rehabilitation of humans, because of God's merciful realising of potential, plays a prominent role.

The New Testament describes the reconstruction of individuals as well as the kingship of God on earth as it is in heaven. The final aim is described in 1 Cor 15:28 '... and thus God will be all in all' (NEB). In broader sense, the emphasis falls on the progress from the 'old' to the 'new'. The old man is renamed to become what he/she should be through salvation. The restoration process of the post-exilic period and the rebuilding of a nation as god's 'RDP programme' can be seen as meaningful background for reconstruction in the New Testament.

The incarnation is the radical humanisation of God's reconstruction (cf Lategan 1991:91). The new creation does not abandon the first but awaits the future with a new approach. It is remarkable that Jesus started his ministry in Nazareth where He had been brought up according to Luke 4:14-23. After He read from Isaiah, emphasizing the situation of the poor, prisoners, the blind and other victims, He declared his introitus as follows: 'Today in your very hearing this text has come true' (Luke 4:21). He is fulfilling God's restitution and reconstruction. I took God to demonstrate the implications of his kingship to his people. The sermon on the mount (Matt 5-7) focuses on the new humanity being born at Golgotha. Jesus is not only radically humanizing the law but also brings a new framework for the understanding of those who long for justice, the social outcasts and the enemies in general. The pivotal focus of Jesus' reconstruction programme is that people are more important than traditional interpretations. He is not rejecting the law but fulfils its real meaning to include people's real need. In Matt 12;1-8 we read about the Sabbath laws being transgressed by the disciples. Jesus commentary was: 'I tell you, there is something greater than the temple here ... For the Son of Man is sovereign over the Sabbath'. The meaning is actually that the laws are made for the people and not the people for the laws. In that sense, we are to reconstruct reality to fit God's purpose with people.

Paul's innovative courage to reconstruct society nearly cost him his life. He did not propagate a Jewish way of life nor a anthropocentric *aretê* (virtue), but a new vision and new life in Christ realized through the Spirit. He emphasized *enkratia* (self-control) as a new self-discipline in all things.

Humanity has been placed in a new light. In Gal 3;28 cultural, class and sex differences are done away with. In the one body of Christ all secular categories are transcended, even distinctions inherent in the created order (cf Schrage :223). This change has social implications. We do not look at each other in the same way. 2 Cor 5:15 illustrates this point; 'His purpose in dying for all was that men, while still in life, should cease to live for themselves, and should live for him who for their sake died and was raised to life. With us therefore worldly standards have ceased to count in our estimate of any man; even if once they counted in our understanding of Christ, they do so now no longer'. The Christ story provides us with a new framework of estimating each other - a new understanding of social relationships.

Where can one find a better example of this new understanding of people through the new glasses provided by Christ, than in Paul's very short letter to Philemon. The run away slave Onesimus is convicted of an unlawful deed to have abandoned his master Philemon. However, this is not the issue but the reconstructed relationship when he was sent back as a brother 'in the Lord'.

Christ's incarnation as salvation has brought liberation as well as a new anthropology. And within this new mindset of understanding and judging each other, laws as structuring framework of an orderly society, with special reference to the penal regulations, should be reconsidered within a broader framework.

3. Regarding values and laws

The encounter between law and theology is a vital ingredient of a reconstruction process (cf Villa Vicencio 1991:51). The lawmaking process is an instrument of restitution and justice. Law need not be a negative reality but should be a meaningful incentive, inspiring a people to make progress to become what they ought to be. Villa-Vicencio puts it into words: 'A nation's constitution is a social vision of what that nation understands itself to be' (1991:52). Theology has the task to contribute towards the stimulation of a culture within

which the state can fulfil its constitutional obligations. The intersection between moral values and law should be rediscovered.

The challenge in recent South African reconstructive law-making is to balance individual freedom with corporate interest. In other words, to balance individual and common values. Villa-Vicencio distinguishes further and calls the previous law-making within the context of white parliamentary supremacy legal positivism. On the other hand, a value-based law ('natural law') strives to serve the common good (cf 1991:76, 82) of a particular society at a given time. Legal positivism concentrates on sovereign power to command. And the people are to obey. But people who are exposed to such tyrannous rule, turn away from legal positivism. 'This is why it is important that the essential values of the new society, which has emerged through the long years of struggle, be entrenched in a constitution as a basis against which a minimum moral foundation of law can be measured' (Villa-Vicencio 1991:98).

From Biblical perspective, the so-called law of Moses originated as a response to the liberating event of the exodus. And from the viewpoint of the centrality of the covenant, different people from a wide spectrum were bound together by the Ten Commandments (cf Harrelson 1980:74). Gottwald is of opinion that this Decalogue gives an unmistakable skeletal structure to the religion of Yahweh as the religion of a particular egalitarian social system (1985:59). In the same way as the Torah as response to the liberating exodus held the social Israelite system together, a new law system based on values is to constitute a new community in South Africa. To establish a new set of values, means also to appropriate existing laws and customs from all cultures and environments. Muslims, Christians and Jews are building upon the individual dignity of every person created in the image of God as part of a new social community. In the end we are sharing a common future. It was Bonhaeffer who said that we are to speak of our most fundamental values in a religiousless or secular way. Then, at least, it will be heard.

The integrated incorporation of human rights from the First and Third worlds provides a framework for meaningful law-making. The theological contribution to such a process is to focus on what it means to be human and to integrate that into the political and law-making ethos of a new nation.

4. An illustration: capital punishment

During the last ten years in South Africa (excluding Transkei, Ciskei, Venda and Bophuthatswana) 1774 death sentences have been handed down and 1088 people have been executed. A moratorium on executions was effective from 2 February 1990 until the promulgation of the Criminal Law Amendment Act on 27 July 1990. This Act introduced far-reaching changes to the imposition of the death penalty by South Africa courts (cf Keightley 1991:347-349). These statistics speak for themselves. According to Amnesty International in 1989 South Africa was only second after Iran for the most executions. Therefore, the need for a rethinking of the issue of capital punishment has become acute.

Different people from a variety of value systems are recently struggling with the law-making process concerning the death penalty. Arguments and standpoints for or against are an admixture of emotional, rational and theological positions. Some of the most prominent arguments are to be mentioned briefly because they are discussed elsewhere (cf Hoekema 1979; Ennis 1987; Van Wyk 1988; Du Rand 1995). The aim is to come to a brief discussion of a theological view built upon the Biblical message.

Most prominent in the argumentation for capital punishment is the principle of deterrence. That would prevent dangerous criminals from perpetrating their crimes against

humanity. In such a way capital punishment would be preventive and protective within society. Imprisonment of murderers for life in high security places would have the same function. Another argument in favour falls in the area of retributive justice. Society has a right to defend itself and to restore the balance because justice is violated and the social order is affected. Retribution is only fair. The criminal should be found truly guilty and the proportionality between offence and punishment must be above any doubt. The strongest argument against the feeble penalty is that any possibility of rehabilitation and reform is removed by the execution. Any human life, how unworthy it may be, because of frailty, still has dignity because God alone is the author of life.

But series of arguments for and against the death penalty from pragmatic and humanistic perspectives still leave the Christian theologian with discontentment. And when we analyse the Bible the task becomes even more difficult because the outcome lies within the scope of hermeneutics. The most important texts in the Bible being quoted to defend capital punishment are analysed elsewhere (cf Du Rand 1995) therefore, I would like to select only a few to come to a theological conclusion. Gen 9:1-7 is a well known passage to be quoted universally to defend the death penalty:

*He that sheds the blood of a man,
for that man his blood shall be shed;
for in the image of God
has God made man.*

The passage is told as part of the covenant with Noah, affecting all humankind. In the exposition, the historicity should be taken into consideration. It was meant to be a regulation within the context of the Israelite tribe period. During that phase, before becoming a state system, it was befitting for a tribe to protect its own pride by taking revenge (cf Ex 21:24) on a murderer. During that period Gen 9:6 definitely had divine sanction. It was a cultural measurement to protect the tribe and cannot be applied universally. The consequent implication would be also to comply with the regulation concerning the eat of flesh with the blood (Gen 9:3). And what about Cain and David who murdered people but who were not executed? According to 2 Sam 14-17 God is a God of mercy and not of revenge.

Jesus did not come to replace or reject the Old Testament commands but to fulfil them by emphasizing their full meaning in a new context (cf Matt 5:17; 21-22). Despite textcritical problems with the passage in John 7:53-8:11, it is told that Jesus took position between the woman caught in adultery and Her execution according to the laws although execution was very seldom carried out. Some exegetes find in Rom 13:4 a reference to capital punishment on grounds of the expression: '... they (authorities: JAdR) hold the power of the sword, for they are God's agents of punishment, for retribution on the offender'. The reference to 'sword' should probably be understood idiomatically, meaning symbolically that the state has the power to inflict punishment.

Isolated Bible text cannot provide us with a definite and absolute answer on the issue of capital punishment. It is too easy to be exegetically trapped in Biblicism or Fundamentalism. But from the perspective of Christian values, one can come to the following theological conclusion to my opinion.

The Old Testament references to possible capital punishment are to be understood contextually. God proclaimed instructions to protect Israel's identity as God's own people. And through the incarnation of Jesus Christ, God visited his people, the faithful, to make a new beginning. The acceptance of salvation, brought by Jesus through his death, put man in a new relationship to God, but also with each other. That is why Jesus took a stand between

the sinful woman and death according to John 8. Jesus' death and resurrection is decisive for mankind from a Christian perspective. We have to think anew about justice and punishment because of what God did through Jesus Christ. That doesn't mean that punishment is abolished as such. The measurement has become more humane. From the ethos of love, demonstrated by God, any punishment has to be seen and executed through new eyes. Therefore, the question can be asked whether capital punishment shouldn't be abolished in South Africa.