

UTAH'S PECULIAR DEATH PENALTY

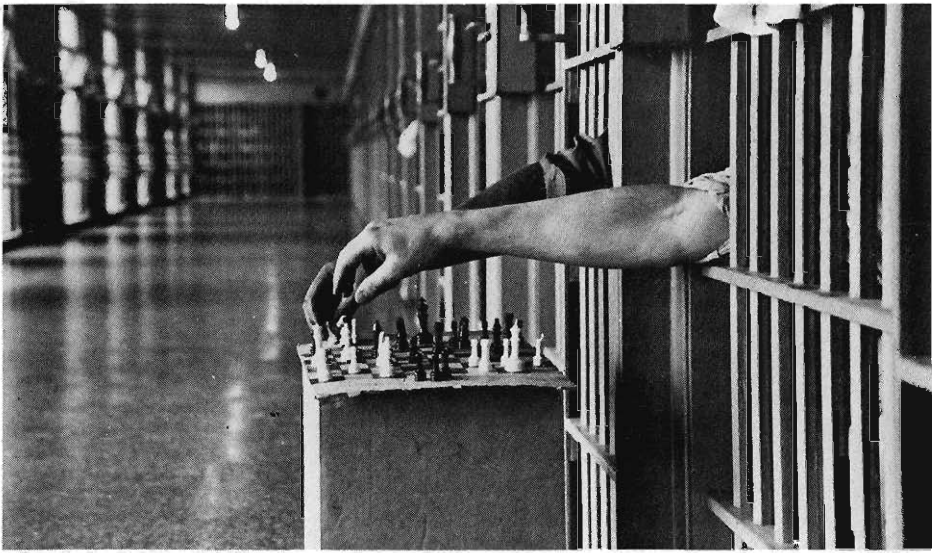
KEITH D. WILCOCK

I remember the warm Indian summer nights of 1959. I drove with both windows of my Volkswagon wide open so I could smell the burning leaves and autumn fields as I passed through Sandy and Draper on my way from Salt Lake City to the prison at the point of the mountain. The muffler on my Volkswagon had rusted through and the noise was, in its own way, magnificent, like a cement mixer. The inmates who were still awake on D block could hear me turn onto that "shortest highway in the state" which curves down to Tower 1. After checking in and greeting other officers who were assembling for a roll call of the graveyard shift, I went to work. Every night at midnight I would walk through the dim, empty halls, forever smelling of disinfectant, and ride the groaning, clanking elevator to my post — death row.

Mack Rivenberg and Jesse Garcia would usually be awake waiting for me. Both were condemned murderers and both had become my friends. From 1958 to 1962 the names of Rivenberg and Garcia were often in Utah newspapers. Both had been convicted of the brutal sex slaying of another inmate in an attic above the maximum security cell block. The truth of what really happened the night of August 24, 1958 will never be known. It is locked up in the dark, shame-tinged memories of the inmates who heard the victim's muffled screams, or saw his empty cell that night and knew why it was empty. Bits and pieces of the truth are known only to inmates who will forever remain silent because, according to the criminal code, to speak out is forbidden. But even without the garbled testimonies of inmates who appeared in court, there was enough solid evidence to convict Rivenberg and Garcia.

Mack Rivenberg often slept during the day so he could be awake and alert, waiting to play cribbage or chess when I came on shift at midnight. When my work was finished, we would fold a blanket lengthwise, place the chess board in the center, and slide it back and forth across an aisle of bars to make our moves. I eventually discovered that I could win simply by establishing a strong defense and waiting for his super aggressive attack to run out of gas. His chess game seemed to be an accurate reflection of his temperament. He was competitive, devious, adventurous, and, at least on the surface, confident of his own power. As time passed, I began to recognize elements of irrational hatred in him, and to realize that through his eyes the world was a corrupt network of plots and schemes, of bribes and lies, where only the crafty, powerful, and cruel survive.

It used to amaze me, as I talked with Rivenberg, to realize that he could have murdered a man and butchered the corpse the way he did. I would study him



carefully and search in his eyes for the beast that must be there. The crime was so cruel, so unreasonably heinous that photographs of the body made grown men turn away. And we talked, this human butcher and I, from midnight until morning. I listened to his stories and he to mine.

The experience had an unsettling effect on me. I had undergone several hundred thousand hours of Sunday School and television conditioning which had clearly taught me that there are good people and bad people, and I thought that the chances were pretty favorable that I was one of the good ones. Now, here was a murderer, the most evil of society's bad guys, the most corrupt of the Sunday School sinners, and I found that he was likeable. In spite of myself, I began to enjoy his company.

Mack was outgoing, sociable, tactful, and charming enough to successfully manipulate others. He tried his hand at painting and at writing, and often asked me to criticize his work. He taught me cribbage, soundly beating me for weeks, and when I would begin to get the knack, he would introduce new rules, new combinations, and cross countings. I rarely won at cribbage.

He told me stories about his past, and about some of his criminal acts. He tried to impress me with his daring, his fearlessness, his ruthlessness. It pleased him to think he shocked or frightened me. In accordance with the criminal ethic, he considered kindness and compassion symptoms of a weak character, and he subscribed religiously to his criminal code. He often swore he would never let "them" execute him. Deep somewhere in the core of him there was white hot hatred of authority and a smoldering militance.

There were many good things about Mack. One of them was his perceptive sense of humor. One evening I was feeling particularly depressed about his execution. When I told him how sorry I was he gave a half shrug and said, "Aw, it'll be O.K. Don't feel bad." Then we both realized that *he* was reassuring *me*. Somehow I had become the oppressed and he the counselor. We both laughed at the same time when we realized how ridiculous it would have appeared to some outside observer, the condemned man consoling his keeper.

I wanted Mack to live, in spite of his cruelty, his irrational hatred of authority.

I would not have been opposed to keeping him well insulated from society, but I felt that perhaps, in time, the flaming hostility would burn out, that he would mellow with age.

One night when I reported for work the prison was buzzing with news of an escape attempt. The death row officer on the afternoon shift had been careless. It was the practice in the afternoon to allow Garcia and Rivenberg out, one at a time, to shower in a small shower stall at the end of an aisle of bars near their cells. They had been given a heavy, homemade, metal paint-scraper to clean the shower stall and make it ready for a touch-up paint job. There was a small window, about a foot square, in the shower stall to allow surveillance.

The officer in charge of Garcia had forgotten about him being in the shower and had left death row for a few minutes to get some aspirin from the dispensary on the floor below. Garcia worked fast. He smashed the small window with the paint-scraper and managed somehow to squeeze through. His shoulders and hips were deeply scraped, but he made it. Then he crouched behind the T.V. set and waited for the guard to return. There had been three sets of bars to get through. Out of his cell into the shower took care of the first. Out of the shower into an outer court area took care of the second. There was still one row of bars left.

When the guard returned, Mack calmly asked him to come into the court area to change the channel on the T.V. set. The guard, who had responded to this request a hundred times, unlocked the door in the last row of bars. When he noticed the glass from the shower window scattered on the floor it was already too late. Garcia leaped at him, clubbing him with the paint-scraper until the guard, stunned from the blows, begged for his life. Garcia grabbed the death row keys. Mack screamed at him to unlock the other cells, but Mack had threatened to kill Garcia at one time so Garcia ignored his cries. Instead he unlocked a heavy iron door and vaulted down the stairs of the maximum security cell block. Had Garcia let the other inmates out, the officer's life as a hostage would have hung in a very delicate balance.

Somehow during the struggle, the guard had crashed the wall phone from its receiver, an act which touched off a red light alarm system in control room No. 1. In minutes, two officers hurried to death row to investigate. One of them carried a sawed-off shotgun.

Garcia heard the familiar jingle of keys as the officers approached and rushed back up the stairs. When the officers arrived they found Garcia crouched in a corner like a trapped animal, paint-scraper in hand. As he lurched into the beam of the flashlight the officer with the scatter gun leveled it and at point blank range squeezed the trigger; but the roar and the jolt never came — only a dead click. Had the shotgun not misfired, Garcia would have been torn apart by the blast.

After that, Garcia submitted. He was disarmed, his cell searched and stripped of its belongings, and he was herded back into it trembling, crying, more convinced than ever, now, that he would be executed.

It had been a fairly hopeless attempt at best. Although he had miraculously succeeded in escaping from death row, he could only have broken into the main prison area, with a complete new set of bars, walls, officers and security measures to overcome.

When I arrived on shift at midnight, Garcia was sobbing softly in his cell,

still wild-eyed and tortured with the disappointment of his desperate attempt. The guard had been taken to the hospital and, luckily, was on the road to recovery.

That night and the nights following were cool. Garcia had been relieved of his mattress, blankets, and clothing. I suppose it was official prison punishment. Several of the officers expressed vivid hatred for him, especially the one whose weapon had misfired. Three days later, when I returned to death row after my days off, I found Jesse pressed into a corner of his cell, still naked and shivering, trying to get some warmth from the cement walls. His clothes and bedding had not as yet been returned. He had somehow managed to snare some newspapers from outside his cell and tried to wrap up in them. I did what I think most people would have done. I tossed him some blankets. He didn't respond at first; he stayed in the shadows and avoided eye-contact, but he took the blankets as soon as I left and gave them back to me in the morning before I went off shift.

Then one day I forgot to retrieve the blankets before the day shift officer came on duty. The results were quite strange. Mack told the officers he had given Garcia the blankets. Mack was then punished for the offense. The T.V. set was taken away for a period of time. I suppose my act of kindness had created enough of an impression so that he felt a need to protect me.

Mack Rivenberg and Jesse Garcia spent several years on death row, living from one execution date to the next, and they received several stays of execution. An execution day came up only once during the six months that I worked with them. As I watched them, tormented with the agony of knowing their life was slipping away, the ticking of the clock took on a profoundly new meaning for me. The insight has never left me. Here were two young men with nothing to live for except to exist in a cell, a small cement cubicle. They had no hope for marriage or children; they would never be free to relax on a beach or in some beautiful canyon, or travel, or enjoy all the simple pleasures life has to offer — yet they struggled desperately to live! As cramped and limited as their future would be with a life sentence, they struggled for that life, hoped for it, dreamed about it.

In the comfort of my living room I had often thought how much better it would be to be executed than to spend life in prison. Now I imagined being pried from my home and put on death row. No more comforts, my family torn apart, my freedom restricted completely, with nothing to look forward to except growing old in a cell. All that made life precious to me destroyed, with only a month or two to live. Sentenced to death. Now I could see clearly, and for the first time, that even with nothing to live for, I would struggle to live. When death is imminent, life, existence, survival, being, is all that matters.

We often discussed philosophy and psychology. I would sometimes lend Mack books and even read aloud to him and Jesse on occasion. We discussed his case often. He claimed he had taken so many amphetamine pills that he was having paranoid hallucinations at the time of his crime and was therefore not responsible. He claimed he heard inmates plotting his death as he passed them in the hallways and on the night of the murder even saw the victim standing headless outside of his cell clinging with bloody hands to the bars. Recent evidence has confirmed that prolonged use of amphetamines in large doses does indeed cause paranoid delusions but in the late 1950's such evidence was not available.

One late Saturday night very near the day set for his execution, after he had learned to trust me, Mack told me much of what he remembered about the evening of the murder. It was a long story, told with feeling unbefitting the stoic he claimed to be. After it was over I dared ask the question that had been gnawing at me for months. "How could you have done such a thing?"

I remember clearly the reasons he gave.

He said the victim was just a big dumb Polack. He had been in trouble all his life. No one liked him. Worst of all, he was a homosexual, a "punk" in prison jargon.

I was told that at that time in the prison there had been a bitter rivalry for power between inmate gangs. Mack, who had been carrying a concealed ax, hoped to gain control by terrorizing rivals. The victim was to be "an example, a lesson to the other groups."

When I got off shift that Sunday at 8:00 a.m. I was troubled. The reasons he gave for the murder were fresh in my mind, the execution near at hand. As was my practice, I cleaned up when I got home Sunday morning and went directly to church. Somehow in Priesthood Meeting the discussion drifted to capital punishment. It was very much on people's minds in those days because of the newspaper coverage of the coming execution. I listened to the others speak, suppressing my feelings. Then an insidious parallel began to emerge. *My Mormon brethren, pillars of society, were justifying capital punishment with precisely the same arguments I had heard through the bars on death row two hours earlier.*

"Rivenberg would be an example — a deterrent. Society (our group) needed to protect itself from criminals (the rival group). Furthermore, Rivenberg was no good. He had been in trouble all his life. He was a homosexual and a thief."

Then blood atonement came up. It frequently did in those years when I discussed capital punishment with fellow Mormons. Historians apologize for the doctrine. Few people claim to fully understand it, but among Mormons I knew it was frequently used as a final argument in favor of the death penalty.

One of the elders stated that certain sins, such as murder, could only be atoned for if the offender voluntarily requested that his blood be shed. They correctly pointed out that Utah is the only state in the union which gives a condemned man a choice as to the method of his execution. The firing squad spills blood. The other choice, hanging, does not spill blood. They indicated that some of the more humane methods adopted by the other states such as electrocution and gas also do not shed blood, but since they would likely be chosen over the bloodspilling firing squad, Utah has not adopted them.

The argument seemed far fetched to me, particularly the notion that blood atonement concepts could still be exercising an influence, however subtle or unrecognized, over modern Mormon thought. Is blood atonement currently a part of Mormon theology? Would these concepts stand in the way of new legislation that would abolish capital punishment or introduce more humane methods of execution? I decided to investigate the matter.

One must turn over many stones of Mormon history to find out much about blood atonement. Most references to the doctrine quote speeches made by Church leaders during the late 1850's, a period of reformation and intense repentance. The following example is from a speech delivered by Jedediah Grant in the Bowery, September 21, 1856:

I say, that there are men and women that I would advise to go to the President immediately, and ask him to appoint a committee to attend to their case; and then let a place be selected, and let that committee shed their blood.

We have those amongst us that are full of all manner of abominations, those who need to have their blood shed, for water will not do, their sins are of too deep a dye.

You may think that I am not teaching you Bible doctrine, but what says the apostle Paul? I would ask how many covenant breakers there are in this city and in this kingdom. I believe that there are a great many; and if they are covenant breakers we need a place designated, where we can shed their blood.

He ended the talk with this statement:

Brethren and sisters, we want you to repent and forsake your sins. And you who have committed sins that cannot be forgiven through baptism, let your blood be shed, and let the smoke ascend, that the incense thereof may come up before God as an atonement for your sins, and that the sinners in Zion may be afraid.

These are my feelings, and may God fulfill them.¹

Was Grant advocating a mass killing of sinners? One envisions a bloody inquisition on Temple Square. But Grant was not alone in his views. On the same day, Brigham Young also made reference to the doctrine, using similar symbolism.

I do know that there are sins committed, of such a nature that if the people did understand the doctrine of salvation, they would tremble because of their situation. And furthermore, I know that there are transgressors, who, if they knew themselves, and the condition upon which they can obtain forgiveness, would beg of their brethren to shed their blood, that the smoke thereof might ascend to God as an offering to appease the wrath that is kindled against them, and that the law might have its course. I will say further I have had men come to me and offer their lives to atone for their sins.²

Another example of Brigham Young's thinking can be seen in a sermon he gave in the Tabernacle on February 8, 1857.

I could refer you to plenty of instances where men have been righteously slain, in order to atone for their sins. I have seen scores and hundreds of people for whom there would have been a chance (in the last resurrection there will be) if their lives had been taken and their blood spilled on the ground as a smoking incense to the Almighty, but who are now angels to the devil, until our elder brother Jesus Christ raises them up — conquers death, hell, and the grave. I have known a great many men who have left this Church for whom there is no chance whatever for exaltation, but if their blood had been spilled, it would have been better for them. The wickedness and ignorance of the nations forbid this principle's being in full force, but the time will come when the law of God will be in full force.

This is loving our neighbor as ourselves; if he needs help, help him; and if he wants salvation and it is necessary to spill his blood on the earth in order that he may be saved, spill it. Any of you who understand the principles of eternity, if you have sinned a sin requiring the shedding of blood, except the sin unto death, would not be satisfied nor rest until your blood should be spilled, that you might gain that salvation you desire. That is the way to love mankind.³

There are a great many other references to the doctrine of blood atonement

on record.⁴ There are also suggestions that Mormons may have actually practiced the doctrine.

Even if the doctrine of blood atonement was in the minds of Mormons at the time laws regarding executions were drafted, is there solid evidence that the doctrine influenced the law? Records clearly indicate that when Utah's earliest laws regarding the death penalty were enacted they included choices as to the method for execution. One of the first criminal laws passed by the General Assembly of the State of Deseret on January 16, 1851 stated:

Section X. Be it further ordained, that when any person shall be found guilty of murder, under any of the preceding sections of this ordinance, and sentenced to die, he, she or they shall suffer death, by being shot, being hung or beheaded.⁵

Joseph Fielding Smith provides a confirming opinion which strongly supports the notion that blood atonement concepts influenced the establishment of Utah's laws.

In pursuance of, and in harmony with this scriptural doctrine [blood atonement], which has been the righteous law from the days of Adam to the present time, the founders of Utah incorporated in the laws of Territory provisions for the capital punishment of those who wilfully shed the blood of their fellow men. This law, which is now the law of the State, 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 . . .

This law was placed on statutes through the efforts of the Mormon legislators, and grants to the accused the right of jury trial.⁶

The opinion suggests that Utah's peculiar death penalty is indeed rooted in blood atonement doctrines of Mormon theology. Today, in 1972, the law reads:

Section 77-36-16: 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 the making of this sentence must declare the mode and enter the same as part of the judgment.⁷

There has been only one hanging in Utah's recent history. It is a horrible way to die and is rarely selected by those on death row. The condemned man was a Mormon. I have been told by inmates and officers who knew him that his behavior often appeared to be an active attempt to blacken his family name and shame his parents. He chose hanging as a final defiant gesture, fully aware that he was not choosing the alternative that might atone for his crime.

I am opposed to capital punishment. When the dust has settled in all the arguments, pro and con, a few practical facts remain. Those who eventually get executed are largely the poor and the uneducated.

Successful criminal lawyers, when one can afford them, often have outstanding records of acquittals. F. Lee Bailey is a current example. Is this because they defend only innocent clients? If not, then one must accept the disturbing possibility that the due process of law can be altered by lawyers talented in the art of persuasion. Until convictions and acquittals are based on fact, and the accuracy of legal judgments improve, I shall be opposed to sentences which are irreversible.

Then there are ethical arguments. My personal view is that capital punishment has no place in the compassionate, forgiving, nonjudgmental, service-oriented ethic of Christ. Of course, one can weave intricate scriptural networks in support of capital punishment, but Christ's example seems clear, simple and difficult to refute. When the adulterous woman was about to receive the legal death penalty prescribed by Jewish law, Christ intervened. The ethic was clearly and eloquently defined. "Let him who is without sin cast the first stone."

One can also be accused of taking Christ's words too literally. But such an argument can erode and alter His simple ideal principles until anything is permitted with moral sanction. His principles of "judge not" becomes "it is permissible to judge." His principle of "love your enemies" becomes "it is permissible to wage war," and His principle of forgiveness becomes "it is permissible to perform executions." More than permissible, it soon becomes morally *correct* to wage war and judge and shed blood.

Of course, neither Rivenberg or Garcia were aware of the roots of Utah law which gave them a choice as to how they would die. Since neither were Mormons, they were also unaware of the controversy within the Church regarding them. Many Mormons who had never met them thought they should live. Many others wanted them dead.

One evening when Rivenberg and Garcia's last appeal had run its course and the day for execution was drawing near, I received a telephone call at home from Rivenberg's mother. She had to be desperate to call me. I was only a guard, a very low man on the totem pole. She cried and pleaded with me just as she must have with all the judges and lawyers and wardens and Board of Corrections members who would listen. I suppose each in his own way felt he could do nothing against the system. As I listened to her I was hurting inside because I too was helpless. State employees are expected to do their job and not get involved with matters that are rightly the responsibility of higher authority, but I promised her I would do what I could.

Knowing that Rivenberg and Garcia could be granted clemency, I wrote to a member of the Board of Corrections in an attempt to influence their decision. But my letter had no effect. On September 13, 1962, the night before the scheduled execution, Rivenberg committed suicide. He took an overdose of barbiturates smuggled to him by an inmate hospital aid. The Board of Corrections met the next day and commuted Garcia's sentence to life imprisonment. Their decision is worthy of praise from all compassionate men.

When prison officials found out about the letter I had sent, I was given a reprimand and was required to work for a period of time without pay. I had accumulated so much overtime that the reprimand had little actual effect on me. They could have fired me. To some extent Warden Turner had no other recourse than to punish me and he chose a method that I considered fair.

For me the story is still not over. My experience convinced me that there is a clear, profound, almost polar difference between blood atonement doctrines and the ethic taught by Christ. Members of the Church should recognize the difference, reject the barbaric blood atonement doctrines which boiled to the surface in those zealous turbulent years of Church history and support reforms in the death penalty throughout the nation that are more in keeping with Christian ideals. They should encourage legislators to recognize that the legal system is imperfect. They must modify the law and do away with capital punish-

ment. When they do this in Utah, I will return the call to Mrs. Rivenberg and see how she is getting along and tell her how much I liked her son.

¹*Journal of Discourses*, I, 72-73.

²*Ibid.*, IV, 53-54.

³*Ibid.*, IV, 219-220.

⁴Also see *Journal of Discourses* Vol. I., pp. 82 and 83; Vol. II., pp. 165-166; Vol. III., pp. 226, 235, 236, 241, 246, 247, 249, 279, and 337; and the *Deseret News*, March 21, 1854.

⁵*Journal History*, 1851, Jan. 16, page 3.

⁶*Doctrines of Salvation*, Vol. I., pp. 136-137.

⁷Utah Code Annotated 1953, Vol. VIII., p. 371.

**Man is not defined by what denies
him, but by that which affirms
him.**

— ELIE WIESEL
