



# CAPITAL PUNISHMENT

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A SERVICE OF CATHOLICS UNITED FOR THE FAITH

## ISSUE

What is the Church's teaching on capital punishment?

## RESPONSE

The traditional teaching of the Church does not exclude recourse to the death penalty, so long as it is the only possible way of effectively defending human lives against an unjust aggressor.

The Church also affirms that non-lethal means of punishment are generally more in keeping with the good of society and the dignity of the human person. In today's society, the cases in which the execution of a criminal is an absolute necessity are very rare, if not practically nonexistent (Catechism, no. 2267).<sup>1</sup>

## DISCUSSION

Capital punishment has emerged as a significant social and political issue over the past 20 years. This development is largely the result of the serious problem of violent crime in the United States and the increased availability, under federal and state law, of the death penalty as at least a partial solution.

On this issue, Catholics are often divided along political lines: Political conservatives tend to favor capital punishment, while political liberals tend to oppose it. As will be developed below, the death penalty is not always and everywhere wrong. Whether our society can justly impose the death penalty is to a certain extent a prudential judgment on which there is room for some legitimate disagreement.

But are the Catholic Church's teachings on the death penalty so bland and/or confusing that our political affiliation should, by default, form our perspectives on the issue? It seems that much of our disagreement on the subject stems from the fact that we have not allowed ourselves to be formed by

the Church's teachings in their fullness and that, at times, we have received a distorted presentation of such teachings. While formation in the true Catholic teaching will not eliminate all disagreement, it will at least allow us to understand the parameters of authentic plurality and perhaps come to a deeper appreciation of God's plan for all humanity.

### TRADITIONAL TEACHING

To understand the "mind of the Church" on this matter, we must begin with the principle that the Church's Magisterium, as the authentic interpreter of Scripture and Tradition, has never taught that capital punishment is intrinsically evil. Moreover, the Church has always recognized that the state has the authority, in certain circumstances, to impose the death penalty on one who has committed a "capital" offense. This point immediately distinguishes capital punishment from acts such as abortion and euthanasia, which are intrinsically evil and thus ought never to be chosen (Pope John Paul II, *Evangelium Vitae*, nos. 62, 65), and certainly can never be legitimized by the state (*ibid.*, no. 73).

Note, however, that we are merely saying that there is not a moral equivalence between abortion and the death penalty. It should be self-evident, however, that fundamental truths concerning the dignity and inviolability of human life should inform our thought on both topics. The Catechism of the Catholic Church, despite its well-publicized opposition to the use of capital punishment, does not categorically condemn the practice. Rather, it affirms that in appropriate cases "the traditional teaching of the Church does not exclude recourse to the death penalty" (Catechism, no. 2267). This "traditional teaching" is found in the Roman Catechism produced following the Council of Trent (1545-63):

Another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and

incorporate the teaching from Pope John Paul II's 1995 encyclical letter *Evangelium Vitae* (The Gospel of Life), which was issued after the Catechism was promulgated.

<sup>1</sup> As modified in the official editio typica (1997) version of the Catechism. The 1997 modifications of Catechism, nos. 2265-67 do not reflect a doctrinal change, but an effort to

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death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of this power, far from involving the crime of murder, is an act of paramount obedience to [the Fifth] Commandment which prohibits murder. The end of the Commandment is the preservation and security of human life. Now the punishments inflicted by the civil authority, which is the legitimate avenger of crime, naturally tend to this end, since they give security to life by repressing outrage and violence.<sup>2</sup>

This teaching also draws support from the likes of St. Thomas Aquinas, who wrote that “if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good.”<sup>3</sup> This teaching in turn can be traced back to the Scriptures themselves. For example, St. Paul teaches that civil government bears the sword as the agent of God’s vengeance and therefore is “God’s servant for your good” (Rom. 13:3-4).

### GETTING AWAY WITH MURDER?

Recognizing that the Church, perhaps surprisingly to some, has always admitted that the death penalty can be a justifiable exercise of the state’s authority, we now examine how this teaching fits in with the entire body of Church teaching. Ironically, capital punishment is always discussed under the general heading of the Fifth Commandment (“Thou shall not kill”). Killing another human being as an act of human choice—as opposed to unintentional or accidental killing—is called murder, and is always wrong (Catechism, no. 2268). Since the criminal is indeed a human being, and his or her execution is an intentional act, it is fair to ask whether the execution is “murder.”

In recognizing the permissibility of capital punishment, the Church has always treated it as a species of self-defense. If, for example, the only way I can immediately prevent someone from killing me or another person is by killing the aggressor, then I am morally permitted to do so. In other words, it isn’t murder. But how can this be?

When a person kills another in self-defense, the immediate and proportionate good effect of saving one’s own life justifies the action, even though there is also the evil effect of taking another’s life (cf. Catechism, nos. 2263-64).

The Catechism provides that legitimate defense is not only a right but also a grave duty for those responsible for the common good of the state (no. 2265). As Pope John Paul II says in *Evangelium Vitae*, no. 56: “This is the context in which to place the problem of the death penalty” (original emphasis).

Catechism, no 2265 further recognizes that “the defense of the common good requires that an unjust aggressor be rendered unable to cause harm.” This means that, at least in principle, capital punishment can be justified when used to protect society from an unjust aggressor. Assuming there is such justification, society may execute the criminal for its own protection, but not because society desires the death of the criminal in itself. Why? Because it is never morally licit to choose evil so that some good may come about. In other words, a good end cannot remedy (or “justify”) evil means (cf. Catechism, nos. 1753, 1759).

As Pope John Paul II says in comparing capital punishment to abortion, “Great care must be taken to respect every life, even that of criminals and unjust aggressors” (*Evangelium Vitae*, no. 57). So the intended good effect is the protection of the common good (i.e., “making our streets and neighborhoods safe,” etc.), while the unintended—or at least tolerated—evil effect is the death of the criminal.

### CHANGING HEARTS

This understanding of the Church’s rationale for historically permitting the death penalty may come as a revelation to many. For example, some people hold that a person who commits a capital crime has forfeited his right to life, so the best he could hope for is the “clemency” of the state to stay the execution. There is indeed a sense of “forfeit,” just as an intruder has forfeited his right to life should I be forced to kill him to protect my family from being harmed. But in the latter case, this forfeit is not

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<sup>2</sup> McHugh, O.P. and Callan, O.P., trans., Catechism of the Council of Trent (South Bend, IN: Marian Publications, 1972), 421.

<sup>3</sup> St. Thomas Aquinas, *Summa Theologiae* II-II, q. 64, art. 2.

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absolute. If I am able to protect my family by less drastic means I should do so, and once the threat is over (e.g., the intruder is apprehended and in jail), I no longer have the right to use deadly force.

Likewise, in the case of capital punishment, it simply is not enough for someone to have committed a serious crime. If the preservation of the common good of society does not require it, then it cannot be justified because of the ever-present command, “Thou shall not kill.”

Further, we need to look at the primary reasons why we punish criminals. Our “culture of death” has largely given up on the possibility of reforming or rehabilitating (i.e., “converting”) the criminal, despite the fact that “as far as possible” punishment “must contribute to the correction of the guilty party” (Catechism, no. 2266).

While “it may be granted that the imminence of capital punishment may induce repentance in the criminal, . . . we should certainly not think that this threat is somehow necessary for God’s grace to touch and to transform human hearts.”<sup>4</sup> As American archbishops such as Chaput (Denver), Beltran (Oklahoma City), and Rigali (St. Louis) have affirmed in the aftermath of the McVeigh trial, the death penalty today only serves to perpetuate the cycle of violence and further diminish respect for human life, without providing authentic healing for the victims of crime.

Deterrence and retribution are legitimate reasons for punishment in general, but they do not necessarily provide compelling bases for capital punishment. It is indeed absolutely essential to redress the disorder caused by the offense and to ensure the safety of innocent citizens (cf. Catechism, no. 2266). But does capital punishment really do this?

The American bishops, while recognizing the historical validity of capital punishment, have consistently and outspokenly opposed capital punishment in the United States over the past 20 years, both individually and in documents such as Statement on Capital Punishment (1980), Confronting a Culture of Violence (1994), and their 1996 statement on political responsibility. However,

since this is largely a prudential judgment on the part of the bishops, many American Catholics have ignored or rejected their teaching. Some perceive the bishops’ stance as merely an expression of a “liberal ideology” rather than as a fair reading of the “sign of the times” in light of the Gospel.<sup>5</sup> This perception is magnified because the bishops’ stance aligns them—on the issue of capital punishment—with certain liberal factions that do not respect the sanctity of all human life, especially the unborn. The picture is simply too muddy to convince those Catholics who cling to the truth that capital punishment is not necessarily evil and may in fact be necessary to effectively address real societal problems.

### A CATHOLIC ISSUE

Herein lies the importance of Pope John Paul II’s encyclical *Evangelium Vitae*. Respecting the value and inviolability of all human life is not a “conservative” or “liberal” issue, but a Catholic issue. Of course, the Holy Father’s treatment of capital punishment in this encyclical is subordinate to the treatment of abortion and euthanasia. Yet all these subjects trace back to what the Holy Father calls the “Gospel of Life,” which involves the “proclamation of the incomparable value of every human person” (*Evangelium Vitae*, no. 2).

In *Evangelium Vitae*, no. 56, the Holy Father observes that “there is a growing tendency, both in the Church and in civil society, to demand that [the death penalty] be applied in a very limited way or even that it be abolished completely. The problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God’s plan for man in society.” He further provides:

Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfills the purpose of defending public order in ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated.

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<sup>4</sup> U.S. Bishops, Statement on Capital Punishment (1980).

<sup>5</sup> Cf. Vatican II, *Gaudium et Spes* (Pastoral Constitution on the Church in the Modern World), no. 4.

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It is clear that, for these purposes to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon and ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.

The Holy Father emphasizes that the state “ought not go to the extreme of executing the offender except in cases of absolute necessity . . . when it would not be possible otherwise to defend society.” The issue, then, is not merely the gravity of the crime. He doesn’t say “only in the case of especially heinous crimes,” or “three strikes and you’re out,” or “use a gun, get the chair.” Serious crimes obviously demand serious redress, but the death penalty, as the most extreme form of punishment, is reserved for those instances where society is unable otherwise to protect itself against the criminal. An example might be a serial murderer who regularly escapes from prison. But if society is able to protect itself without recourse to killing, is that not more in keeping with the civilization of life and love that our Holy Father is trying to promote?

After the release of *Evangelium Vitae*, Cardinal Joseph Ratzinger<sup>6</sup> commented that “[t]he encyclical is concerned with the sacredness of man, and that is why the Pope insists that [the death penalty] be applied only to the most critical cases, and fervently hopes that it will be eventually abolished.” Cardinal Ratzinger subsequently provided a further explanation of *Evangelium Vitae’s* teaching on the death penalty:

You ask about the correct interpretation of the teaching of the encyclical on the death penalty. Clearly, the Holy Father has not altered the doctrinal principles which pertain to this issue as represented in the Catechism, but has simply deepened the application of such principles in the context of present-day historical circumstances. Thus, where

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<sup>6</sup> Cardinal Ratzinger is the prefect of the Vatican Congregation for the Doctrine of the Faith, which assists the Magisterium in interpreting, teaching, and safeguarding the deposit of faith (cf. Catechism, nos. 84-7).

other means for the self-defense of society are possible and adequate, the death penalty may be permitted to disappear. Such a development, occurring within society and leading to the foregoing of this type of punishment, is something good and ought to be hoped for.<sup>7</sup>

In his 1999 visit to the United States, Pope John Paul II reiterated his plea that capital punishment be abolished: “I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.”<sup>8</sup>

The papal teaching on the death penalty found in *Evangelium Vitae* has been incorporated into the 1997 revisions of the Catechism without any modification of the relevant doctrinal principles.

The Holy Father, the Congregation for the Doctrine of the Faith, the Catechism of the Catholic Church, and the U.S. Bishops have provided us with consistent teaching that is true to the deposit of the faith and also responsive to contemporary circumstances. Three concluding observations:

First, our proclamation of the Gospel of Life must be inclusive, consistent, and ultimately magnanimous. What does this mean? We must proclaim in season and out of season the right to life of the unborn. But our advocacy doesn’t stop there. We also need to support mothers who, often through ignorance or seemingly unbearable circumstances, are tempted to consent to the killing of their own children.

We must defend the “right to life” of those in the abortion industry, converting hearts rather than taking our lead from the misguided few who have resorted to violence. If the woman is pregnant as a result of rape, we still affirm the human dignity and right to life of the child and offer support to the woman who has been victimized by this act of unspeakable violence. Part of being “pro-woman” in this instance means ensuring that the perpetrator of the crime is apprehended and punished.

And yet, we must go further and also recognize the human dignity—and capacity to be saved (cf. 1

<sup>7</sup> First Things (October 1995), 83-84 (emphasis added).

<sup>8</sup> Pope John Paul II, Homily at Trans World Dome, St. Louis, MO, January 27, 1999.

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Tim. 2:5)—of the rapist, who may well be the most difficult to love and the easiest for society to discard. Following the lead of the late Mother Teresa, we must look for the hidden Jesus in the womb, in the hearth, in the convalescent hospital, and even on death row (cf. Mt. 25:31-46).

Second, perhaps this teaching on the death penalty can assist our efforts in other parts of the pro-life movement. Abortion is often distinguished from capital punishment because the unborn child is an “innocent” person (cf. *Evangelium Vitae*, no. 57). Yet it must be recognized that the unborn baby may not be “innocent” in the sense that his existence, albeit through no fault of his own, may be causing an emotional strain, financial burdens, and other hardships for the mother. The unborn child is innocent, rather, in the sense that he has not placed himself in a situation that would justify his killing under the principle of self-defense. In other words, he is not willfully threatening the life of his mother or otherwise posing an immediate threat to society. The readers of this FAITH FACT are also “innocent” in this sense, in that presumably none of us is posing an immediate, serious threat to society. To kill anyone who is innocent in this sense is always gravely wrong (*Evangelium Vitae*, no. 56).

Yet when we emphasize the word “innocent,” we run a couple of risks. First, some might argue for a definition of “innocent” that would posit that the hardship or even inconvenience caused by an unwanted pregnancy disqualifies the baby from claiming “innocence.” Another risk is that we would come to see anyone who is not “innocent” as having lost his human dignity. It is easy to succumb to this error. Yet, as the Holy Father explains in *Evangelium Vitae*, no. 8, “Not even a murderer loses his personal dignity, and God Himself pledges to guarantee this. And it is precisely here that the paradoxical mystery of the merciful justice of God is shown forth.”

The lesson to be learned here is that the underlying basis for defending the right to life of the unborn baby is that he is a person created in the image and likeness of God and destined for eternal

life. In a singular way, by becoming man Himself, God has united Himself with every person and thus manifests the unique dignity and inviolability of all human life. The “innocence” of the unborn child, in that he is neither an aggressor nor one who has ever committed actual sin, certainly strengthens his claim for life, but ultimately the weight of his claim resides in his humanity, not in his “innocence.”

Third, we resist attempts to label us negatively. We are “pro-life,” which is much more profound (and accurate) than simply being “anti-abortion.” Similarly, it is not enough to be “anti-capital punishment.” The goal should be to convert the criminal to Christ, and not simply to obtain a reprieve from the governor. And certainly we are not anti-capital punishment at the expense of not punishing crimes or safeguarding our society.

Very few of us actually are called to engage in prison ministry, although perhaps we could remember those who are engaged in such ministry more fervently and frequently in our prayers. It also seems consistent with the dignity of all human persons that we create a legal justice system—from the way our legislation is written, to the way trials are conducted, to the way prisons are operated—that respects the human dignity of the criminal, even when the criminal does not respect it himself.

But even more fundamentally, all of us need to take a stand against the violence that so characterizes the “culture of death,” the violence that is largely the harvest of a society that has lost its sense of God. We need to reclaim our families, our streets, our neighborhoods, and especially our own hearts for Christ. If the Lord can make a wolf be a guest of the lamb and a leopard lie down with a kid (cf. Is. 11:6 et seq.), then can He not build solidarity between rich and poor, black and white, employer and worker, born and unborn, if only we let Him? At every turn, we must focus on the Prince of Peace, who has reconciled us through the Blood of His Cross and has established His Church as the sacrament of unity for the human race and of her union with God (cf. Catechism, no. 2305).

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