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The Death Penalty: On the Changes Made to the Catechism of the Catholic Church, No. 2267

In a 1 August 2018 document styled, *Letter to the Bishops Regarding the New Revision of Number 2267 of the Catechism of the Catholic Church on the Death Penalty*, the Congregation for the Doctrine of the Faith (CDF) announced that Pope Francis approved a change to the Catechism of the Catholic Church (Catechism). The CDF published the text of the change the same day. The change reflects the Pope's presentation on the death penalty. On 2 August 2018, a very broad segment of Catholic and secular news outlets in the United States published articles and commentary on the change. The news precipitated a large number of responses from a wide spectrum of organizations. Many of the responses and comments focus on the doctrinal weight of the change or the authority of the Pope to proscribe doctrine.

The change has caused confusion. Both Catholics United for the Faith (CUF) and The Saint Joseph Foundation (SJF) have received many questions on the matter and requests for clarification. The issue continues to be a topic of discussion on a wide variety of professional gatherings and social media platforms. CUF and SJF present the following response in hopes of advancing a proper understanding of the situation, encouraging more fruitful discussions, and offering answers to specific questions already posed.

Context

Before one can understand the impact of the change, one must understand several points regarding authority in the Catholic Church and how doctrines and disciplines are developed. Losing sight of one or more of these elements serves to increase confusion and encourage error. There are three common errors to be avoided when evaluating a document issued by the Teaching Office of the Church.

Error 1: The source of a teaching statement determines the doctrinal weight of that teaching. For example, many wrongly believe that if the Pope makes any statement on faith or morals, that statement must be held as though there is no room for debate on the matter.

Error 2: The type of document used to express a teaching determines its doctrinal weight. For example, the belief that papal bulls, encyclicals, or dogmatic constitutions always contain definitive statements on faith and morals is erroneous.

Error 3: All statements made by the Pope or a bishop must be accepted and acted on with the same level of intellectual submission or obedience.

Many of the responses and attitudes expressed in response to the Catechism change contain one or more of these errors, either implicitly or explicitly. Some responses focus on one aspect or another without an express understanding of the theological and canonical dynamics at work. Worse, many responses seem to be a reaction to a Pope that is liked or disliked, whichever the case may be. This article will address each error, explain how to evaluate magisterial statements, and answer specific questions related to the change. By providing this clarity and answering the questions, this presentation will demonstrate the thesis: **The recent change to the Catechism, no. 2267 represents a disciplinary focus intended to challenge modern culture on its use of the death penalty.**

Errors Refuted

Error 1: The source of a teaching statement determines the doctrinal weight of that teaching.

Response: The term “source of a teaching statement” refers here to the authority that issued the statement. Some distinctions are in order. All the baptized share in the Prophetic (aka: Teaching) Office of Christ.¹ Canon 204 of the Code of Canon Law (CIC) summarizes this point.

*The Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God. For this reason, made sharers in their own way in Christ’s priestly, prophetic, and royal function, they are called to exercise the mission which God has entrusted to the Church to fulfill in the world, in accord with the condition proper to each.*²

This being true, individual lay members of the Church do not make authoritative teaching statements. Rather, authoritative statements come from the ordained; specifically, those who are consecrated as bishops. The identities of authoritative sources for teaching statements include the Pope, the College of Bishops, and individual bishops in full communion with the Holy Father. Sources also include the various groupings of bishops, such as particular councils, conferences of bishops, or synods of bishops.

A careful review of the Church’s Canon Law identifies at least five levels of magisterial weight given to a statement issued by those holding an authoritative Teaching Office in the Catholic Church. Each level demands a different response by the faithful, ranging from “*must believe with divine and catholic faith*”³ to “*reverence toward their pastors*”⁴. The first leaves no room for disagreement or discussion; the latter allows for contrary opinions to be discussed respectfully and conscientiously. All other levels of intellectual submission and willful obedience fall between these two.

To explain these different levels of magisterial weight and the response required is not the purpose of this article. What is important to recognize is that teaching authorities in the Church make pronouncements with different levels of authoritative weight, including the Pope. Not everything the Pope says is infallible. Not everything he says is a joke. Most of what he says falls between these two wildly divergent poles. His making a change to the Catechism does not, in and of itself, also mean that a teaching of the Catholic Church has changed, or that the Catechism change requires a change in our level of submission or obedience.

Error 2: The type of document used to express a teaching determines its doctrinal weight.

Response: The Church uses a multitude of document styles to communicate her teaching to the faithful. They include letters, apostolic letters, decrees, declarations, constitutions, encyclical letters, papal bulls, and a good many more. While the style used by the author may give us some indication of how important the matter is to the ecclesiastical authority issuing it, the style of communication does not determine the doctrinal weight. For example, Pope Francis used an encyclical to communicate his concerns about the environment.⁵ No part of that encyclical included a definitive statement on faith and morals. On the other hand, Pope Saint John Paul II used an apostolic letter to definitively close the

¹ C.f. *Lumen Gentium* (LG) 9-17; 31, 34-36; Catechism, art. 1241; Rite of Baptism for Children, no. 62, *et al.*

² Code of Canon Law: Latin-English Edition, Canon Law Society of America, 1999. See also Canon 759, “*By virtue of baptism and confirmation, lay members of the Christian faithful are witnesses of the Gospel message by word and the example of a Christian life; they can also be called upon to cooperate with the bishop and presbyters in the exercise of the ministry of the Word.*”

³ CIC, Canon 750§1, and Code of Canons for the Oriental Churches: Latin-English Edition (CCEO), Canon Law Society of America, 1992, Canon 598.

⁴ CIC Canon 212 and CCEO Canon 15.

⁵ Pope Francis, “On the Care of Our Common Home” (*Laudato si*), 18 June 2015.

question on whether women could be ordained priests.⁶ Pope Francis' choice to use an encyclical letter reflected the importance he was placing on the matter, and to communicate his desire that the faithful take the matter seriously; but he did not make a definitive statement on faith and morals that would bind us to believe with catholic and divine faith. Pope Saint John Paul II used a document style not usually associated with doctrinal definitions. This is possibly because it was an expression of the Ordinary and Universal Magisterium; a position held by all bishops throughout history. It was neither new nor an unexpected position on the matter. It was definitive and requires the assent of faith.⁷

Error 3: All statements made by the Pope or a bishop must be accepted and acted on with the same level of intellectual submission or obedience.

Response: As noted in the response to Error 1 above, there are various levels of doctrinal weight that can be attached to a specific declaration made by the Church's Magisterium. Each level demands a different response by the faithful, ranging from "*must believe with divine and catholic faith*" to "*reverence toward their pastors*". The first leaves no room for disagreement or discussion; the latter allows for contrary opinions to be discussed respectfully and conscientiously. All other levels of intellectual submission and willful obedience fall between these two.⁸ While this is commonly understood among theologians and canon lawyers, it is not so commonly understood—or explained—on the street.

All authority in the Church has its limits, including the Pope's. Understanding those limits allows us to understand the level of intellectual submission and willful obedience that is owed a particular act. This nuance is important because so much of what the Church teaches is part of a process known as "doctrinal development." No one, not even the Pope, has the power to change Truth. The power of the Church's Magisterium is to transmit faithfully the Truth as given by God. In doing so, the Church often repeats herself but never contradicts herself. This Truth is called the Deposit of Faith, and is synonymous with the Word of God, which is both written (the Bible) and unwritten (Tradition).⁹

The term "doctrinal development" does not refer to changes made in Church Teaching. The term refers to the development of understanding associated with a particular Truth related to faith and morals. Doctrinal development excludes innovation that alters a particular teaching on faith and morals. Think of it as building a house on a foundation. The foundation (Truth) never changes. What we see change is not what already exists, but rather what is added to give shape to the house. When our understanding becomes mature enough that there is no further room to debate the academics of it all, a definitive statement—infallible teaching—can occur. Fundamental to a definitive statement is the Truth itself; that which is held to be true by the Church long before the definition was written down. This foundational belief, rooted in the Word of God—the one Deposit of Faith—cannot be usurped in any way by a declaration from Church authority. Rather, the Church's Magisterium is limited to declaring that which is known to be true and explaining it without compromise.

Let's look at an example. If the Pope issued an encyclical letter and claimed that the consecrated host and wine are not the Body, Blood, Soul and Divinity of Jesus Christ, such a statement would have no magisterial weight whatsoever. He would be attempting to change a fundamental teaching, and he has no power to change a teaching. We would be obligated to reject the claim. On the other hand, if he wrote an encyclical letter explaining the spiritual benefits of the Blessed Sacrament and encouraged the faithful to frequent Holy Communion and join themselves to the Body of Christ, he would be

⁶ Pope Saint John Paul II, *Ordinatio sacerdotalis*, 22 May 1994.

⁷ Congregation for the Doctrine of the Faith, "Concerning the Teaching contained in *Ordinatio Sacerdotalis Responsum ad dubium*", 28 October 1995.

⁸ CUF's FAITH FACT, *No Bull: Papal Authority and Our Response*, explains this in relation to the Pope.

⁹ C.f. CIC Canon 750§1, *Lumen Gentium* 25, *et al.*

exercising his Authentic Magisterium. We have an obligation to respond by embracing his exhortations and trying to put the teaching into practice.

Evaluating the Catechism Change

To evaluate any magisterial statement, one must carefully review it in text and context; that is, the words used to express the pronouncement and the motivations for the pronouncement. Considering the text of a magisterial statement, it is critical to understand if the text is concerned with discipline, doctrine, or a mix of both. If discipline is involved, even as it may be mixed with doctrine, the motivation for the discipline becomes significant as it can determine efficacy. To understand this point, we have to consider motivations for magisterial statements.

For doctrinal statements, there must be a historical foundation consistent with the Deposit of Faith. Doctrinal statements cannot change anything already recognized as Divinely revealed. For disciplinary statements, the motivation must be true in and of itself. Not all motivations for discipline are derived directly from the Deposit of Faith. They could be historical, circumstantial or cultural. The motivations preceding a doctrinal definition will represent the majority of the document that provides the definition. They provide a context connecting the definition historically to the Deposit of Faith. Nonetheless, whether the motivation for a doctrinal definition is long or short, if the definition itself is consistent with the Deposit of Faith and clearly states what is intended, there is no room for dissent. The dogma is, in and of itself, efficacious and must be embraced because it is the Truth.

If the statement involves discipline in any way, the motivations are evaluated and responded to somewhat differently. Disciplines of the Church are intended to protect the Truth and encourage right living. They order the Church society. If motivations for a discipline are in error, the efficacy of the discipline itself becomes questionable. A discipline poorly motivated still demands obedience if the act of obedience does not cause more harm than good. Because a discipline does not demand assent of the intellect, and obedience to the discipline can be withheld legitimately if a true good would be harmed, understanding the motivation is critical for understanding the discipline.

Practically speaking, authoritative teaching statements implicitly contain an element of discipline. That discipline is an expression of our assent to the Truth. Express disciplines attached to a teaching are intended to protect the Truth. Over time, that discipline may change, either with stricter obligations identified or penalties attached to a violation of the Faith. Though the discipline associated with the particular element of Truth changes, the teaching itself does not. For example, the 1983 Code of Canon Law removed a good number of automatic excommunications associated with canonical crimes. Those changes did not alter the authoritative weight of the teachings protected by the discipline, but the changes did alter how penal law is applied in the Church.

Before we apply these points to an evaluation of the Catechism change, there are several principles of evaluation that must be understood.

1. Always evaluate a magisterial act in good faith.
2. Contradictions that seem to exist may represent our own, personal misunderstandings of the text or context. Because of this, one must try to be aware of personal attitudes and how they influence one's understanding.
3. Contradictions that actually exist must be reconciled with the Deposit of Faith, that is, the Word of God. If they can be reconciled, good faith demands that one believe the author of the statement expected the reconciliation. If it cannot be reconciled, teachings on conscience that go beyond the parameters of this article should be followed.
4. The context of a specific text includes the identifiers from the document itself. That is, the placement of the text under specific sections, headings, and titles helps us understand what the Magisterium intends by the specific statement in question.

With this in mind, let us examine the Catechism change. Let's start with a historical context. Pope Saint John Paul II promulgated the original Catechism in 1994. Number 2267 is located in Part III: *Life in Christ*; Section II: *The Ten Commandments*; Chapter Two: "*You Shall Love Your Neighbor as Yourself*"; Article 5: *The Fifth Commandment*; Heading I: *Respect for Human Life*; sub-heading: *Legitimate Defense*.

There were five numbered paragraphs under the sub-heading of *Legitimate Defense*, nos. 2263-2267. These five paragraphs placed the death penalty within this context. Number 2263 establishes the difference between murder and a death occurring by self-defense. Number 2264 placed self-defense in the context of the proper love one must have for self that also allows one to love thy neighbor. Number 2265 identifies self-defense and the legitimate defense of others as an obligation. Number 2265 in the 1994 Catechism edition was short and implied the obligation of using force to defend a country from an unjust aggressor. Number 2266 was the longest of this sub-heading and included two parts. The first part provided the doctrinal statement: "...*the traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty.*" In 1994, no. 2267 simply provided:

If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of person, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.

Clearly, the original Catechism, no. 2267 was a disciplinary norm giving parameter to the doctrinal statement found in no. 2266. Stated another way, the 1994 Catechism no. 2267 explained how to apply no. 2266.

Three years after promulgating the 1994 Catechism, Pope Saint John Paul II made certain revisions to this presentation on *Legitimate Defense*. He had promulgated his encyclical, *Evangelium Vitae* in March 1995. It became the source text for changes he would make to the Catechism in 1997. Under the sub-heading *Legitimate Defense*, the 1997 changes retained the text of nos. 2263 and 2264. Changes to no. 2265 seem intended only to make the language more clear. The big changes came in nos. 2266 and 2267.

Catechism number 2266 (1997) went from two sections to one. Importantly, specific reference to the death penalty within the doctrinal statement cited above was removed. That statement was changed to read: "*Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense.*" This new statement does not prohibit the use of the death penalty, but emphasized the need to consider proportionate punishment. It remained a doctrinal statement, but expressed differently. Explicit reference to the use of the death penalty was moved to no. 2267. This final presentation on *Legitimate Defense* was expanded from one to three parts and provided the following:

2267 The traditional teaching of the Church does not exclude, presupposing full ascertainment of the identity and responsibility of the offender, recourse to the death penalty, when this is the only practicable way to defend the lives of human beings effectively against the aggressor.

"If, instead, bloodless means are sufficient to defend against the aggressor and to protect the safety of persons, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.

"Today, in fact, given the means at the State's disposal to effectively repress crime by rendering inoffensive the one who has committed it, without depriving him

*definitively of the possibility of redeeming himself, cases of absolute necessity for suppression of the offender 'today ... are very rare, if not practically non-existent. [John Paul II, Evangelium vitae 56.]*¹⁰

As in 1994, the 1997 presentation of no. 2267 expressed a discipline; how to apply the doctrine found in no 2266.

Three points about the previous Catechism presentation on the death penalty must be kept in mind. First, both the 1994 and the 1997 versions identified the use of the death penalty as a right of secular authorities and, if grave circumstances warrant, a duty. This right was placed squarely in the context of Divine Law as an appropriate response in grave circumstances to defend human life. As such, this is an inviolable right as it pertains to Divine Law. This is a doctrine recognized to be part of the Deposit of Faith. Second, though legitimate authorities have the right to use capital punishment, both the 1994 and the 1997 Catechism texts placed great emphasis on the need to consider human dignity and take recourse to capital punishment only in great necessity. That necessity was equated with a need to protect innocent life. Finally, a key point to remember is that the text of no. 2267 in 1997 used both doctrinal and disciplinary language. Being expanded from one section to three, it incorporated doctrinal language in the first section and offered moral parameters to be considered for the use of the death penalty in the following two sections.

The changes made by Pope Francis represent a second change to Catechism 2267. Key to understanding how to interpret the Magisterial weight of the change is understanding the text and context itself. Unlike his predecessor, Pope Francis did not make substantial changes to the sub-heading of *Legitimate Defense*. The entire text of the 1997 Catechism text 2263-2266 remains unaltered. This includes the doctrinal statement from 2266 that recognizes, “*Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense.*” Nor did he change the other doctrinal and disciplinary portions of 2266 that demand a determination of punishment in light of specific factors related to a guilty party’s disposition toward the crime and the ability to protect the public good. Pope Francis did provide the following change:

The death penalty

2267. Recourse to the death penalty on the part of legitimate authority, following a fair trial, was long considered an appropriate response to the gravity of certain crimes and an acceptable, albeit extreme, means of safeguarding the common good.

Today, however, there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, at the same time, do not definitively deprive the guilty of the possibility of redemption.

Consequently, the Church teaches, in the light of the Gospel, that “the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person”,^[1] and she works with determination for its abolition worldwide.

[1] Francis, [Address to Participants in the Meeting organized by the Pontifical Council for the Promotion of the New Evangelization, 11 October 2017: L’Osservatore Romano, 13 October 2017, 5.](#)¹¹

¹⁰ Catechism 2267 as provided on the Vatican webpage: http://www.vatican.va/archive/ENG0015/_P7Z.HTM. Footnote included in the text.

A careful examination of the change reveals some interesting points.

1. All reference to doctrine and Natural Rights has been removed from the first sentence of no. 2267.
2. With the exception of the last sentence in no. 2267, the language employed is language used in disciplinary statements, not doctrinal, and the motivations mentioned do not reference a foundation emanating from the Deposit of Faith. The motivations emanate more from circumstances that may or may not exist in a particular society. They are motivations of discipline to be evaluated on a case-by-case basis to determine whether they are true in each case. For example, not every country has first-world development allowing foolproof incarceration of deadly criminals. Such motivation identified in the Catechism would not apply in those places.
3. The only context provided in the change is a footnote to a statement Pope Francis gave during a private audience in 2017. The full text of that audience reveals nothing of a doctrinal change but focuses on a need for disciplinary measures to curb the use of capital punishment worldwide.
4. The qualifiers in the final sentence of the new 2267, namely, the words, “*Consequently, the Church teaches, in the light of the Gospel*”, seem contradictory to the doctrinal presentation in 2266 and in the Word of God itself (C.f. Gen. 9:6, *et al.*). Therefore, we must reconcile the contradiction with the means identified above. Most importantly, we must keep in mind that the Church cannot contradict herself in her Teaching Office. She repeats herself with varying words in varying times and places, but she never contradicts herself. This charism of the Church not only gives us certainty of Faith but allows us greater ease in resolving the seeming contradictions of words.

Reconciliation

We know that Divine Positive Law admits the use of the death penalty by commandment from God given to Noah (Gen. 9:6). Interestingly, if one reads this passage of Sacred Scripture in context, one finds that God attributed the use of the death penalty as a protection for the intrinsic dignity of man. Specifically, the motivation for God to command the use of the death penalty was a protection of His image and likeness given to man. Put another way, God commanded the use of the death penalty because of the intrinsic dignity of man. We also know that God did not exact the death penalty on Cain, though the wording of the passage implies that Cain accepted responsibility for the murder of his brother. Furthermore, there were very few people in the world and he willingly settled away from them (Gen. 4:13-15). As this passage suggests, Divine Law demands consideration of the ability to protect others from potential harm as a factor to consider before imposing the death penalty. This passage from Genesis 4 also provides two other mitigating factors before imposing the death penalty: a consideration for the responsibility taken by a criminal and his subsequent remorse. Most interesting, it seems that Genesis 4 imposes the death penalty on those who would take Cain’s life. Certainly, this passage does not consider capital punishment inherently evil, but it does provide Divine Law parameters for its use.

We also know that God ordered the annihilation of whole nations when Israel entered the Promised Land (Deut. 7:2), and that the Prophet Elisha cursed the boys who mocked him and they suffered death in the name of God (II Kings 2:23-25). There are other instances of the death penalty being inflicted, both in the Old and New Testaments. Further, Jesus did not condemn its use, only encouraging those who imposed the penalty to judge themselves first (John 8:6-8). All these instances give us a better understanding of what a judge should consider before imposing the death penalty, but in no place of

¹¹ CDF, ‘NEW REVISION OF NUMBER 2267 OF THE *CATECHISM OF THE CATHOLIC CHURCH* ON THE DEATH PENALTY – RESCRIPTUM “EX AUDIENTIA SS.MI”’, 1 Aug. 2018, footnote included, as found on the Vatican Webpage: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20180801_catechismo-penadimorte_en.html.

Sacred Scripture does God remove it as a possible means of punishment. In fact, it was He who commanded its use.

Throughout the history of the Church, her constant doctrinal position has admitted the use of the death penalty when warranted. “When warranted” has always been debated, both in courtrooms when the accused faces the possibility of death and in theological circles. Admittedly, the question of when the death penalty is warranted is not something that can be ascertained before a specific case presents itself. There are many layers to the question, and those layers include elements identified in Catechism nos. 2263-2266, as well as those identified in the Pope’s 2017 private audience address. Some of those layers pertain to the conscience of the judge making the decision. Some of those layers are disciplinary; some pertain to doctrine. What is important to understand is that there is a distinct difference between debates on whether the death penalty should be used in a particular instance and whether it is a tool that can be legitimately used in principle. Because God ordained its use, the possibility of its use is not something that can be abolished by a Pope. Because God is merciful, and demands that we judge justly, use of the death penalty must be debated and the Magisterium of the Church should give guidance on how and when such a penalty could be applied.

Because God ordained its use, the Pope cannot declare it “inadmissible to Catholic doctrine.” To do so would contradict the Word of God. And, for the record, the Pope did not write that. When he used the words, “*the Church teaches...*” in the first sentence of the new 2267, one should interpret the word “*teaches*” loosely as an expression of a disciplinary norm. In the last sentence of the Catechism change, the Pope wrote that the death penalty is “inadmissible”. He does not say what it is inadmissible to. Keeping in mind that the Catechism is a systematic summary of teaching, we must view the change within the context of nos. 2263-2266, his 2017 private audience, and perennial teachings on conscience and the dignity of man. When we do this, we understand that the death penalty is “inadmissible” as a punishment when a deadly criminal can be kept safely locked up without fear of break-out; when there is hope for redemption as in the case of Cain; when a despot uses the punishment unjustly; when society has the means to rehabilitate and the person is willing to be rehabilitated; when there are less extreme means to legitimately defend others. In other words, he changed words without changing doctrine or discipline.

Interpreting the change in any other way only encourages an unnecessary polarization in the Church. There are many who do not like the Pope and there are many who believe he can do no wrong. Regardless of how confusing this change is to one group or another, if it is used as a pretense to criticize the Pope or advance a doctrine contrary to Divine Law, the Church will suffer. The proper response is to pursue an understanding of how the words in the change can be interpreted in light of the Deposit of Faith.

Therefore, the development found in the change to Catechism 2267 reflects a wording our Pope considers to be helpful in understanding how and when to apply the death penalty today; not whether its use is allowed by Divine Law.

Questions Answered

This change has resulted in questions such as the following:

1. *Can the Pope change the Catechism?*
2. *Is the Pope saying that capital punishment is inherently evil? Is this change a “Development of Doctrine”, a “Break with Tradition”, or a “Change in Church Discipline”?*
3. *Is the new passage in the Catechism contradicting Scripture and established Church Teaching?*
4. *What happens if I disagree with this change?*

Using the principles identified above, the following answers may help faithful Catholics navigate the murky waters of this and other potential Catechism changes.

Q: *Can the Pope change the Catechism?*

A: *Yes, the Pope may change the Catechism, because it is a document he promulgated. He cannot change the doctrines found in the Catechism.*

The Catechism of the Catholic Church is a comprehensive, systematic presentation “*of the Church’s faith, and of catholic doctrine, attested to or illumined by Sacred Scripture, the Apostolic Tradition, and the Church’s Magisterium*”.¹² It includes both doctrine and discipline, though it is not a comprehensive presentation of the Church’s discipline.

While the Catechism was initially written as a collegial work, “*canonically, it falls under the special jurisdiction of the Pope, inasmuch as it was authorized for the whole Christian world by the Holy Father in virtue of the supreme teaching authority invested in him*”.¹³ As both the one responsible for its promulgation and as the Pope, he has the authority to make changes to it. In fact, Pope Saint John Paul II had already made changes to the same Catechism sections in 1997.

Q: *Is the Pope saying that capital punishment is inherently evil? Is this change a “Development of Doctrine”, a “Break with Tradition”, or a “Change in Church Discipline”?*

A: *No to all these questions. The change to Catechism no. 2267 should not be understood as any of the above. It does not define capital punishment as inherently evil. That would take a definitive statement using very different language. It does not develop doctrine because it does not provide a new way to understand a known Truth. It merely restates the same ideas with different words. It cannot and does not break with Tradition, nor does the wording suggest such a thing. It does not change discipline, though it does express the discipline in a way Pope Francis deems better than how Pope Saint John Paul II had already stated.*

As Catholics we know that the Holy Spirit guides the Magisterium of the Church.¹⁴ The Holy Spirit safeguards the Pope and the Magisterium, from teaching erroneously with regards to faith and morals. Those teachings that are solemnly defined as being Divinely revealed are infallible and the definition is unchangeable. We know them to have the certainty of Truth. A change of the Church’s teaching on capital punishment as being a Divinely revealed right of legitimate authority to one that considers it an inherent evil would be contrary to the Church’s teaching. Such an absurd proposition would be an assertion that the previous doctrine was erroneous.

The Church has not and does not consider capital punishment to be inherently evil. Further, it does not equate capital punishment with the killing of innocents found in the atrocities of abortion and euthanasia.¹⁵ The just application of capital punishment recognized by the Church as a form of legitimate defense is a teaching that is rooted in Scripture¹⁶ and Tradition.

The traditional understanding of the Church’s teaching does not exclude recourse to the death penalty. The Church acknowledges the State’s legitimate authority to execute criminals. In recent times, the Church has encouraged the State to use it as a means of last resort (see CUF FAITH FACT: *Capital Punishment*). We see evidence of this in the development of the Catholic Church’s Catechism

¹² *Catechism of the Catholic Church: Revised in Accordance with the Official Latin Text Promulgated by Pope John Paul II*, 2nd ed (Vatican City: Washington, DC: Libreria Editrice Vaticana ; United States Catholic Conference, 1997), no. 5.

¹³ Benedict and Christoph von Schönborn, *Introduction to the Catechism of the Catholic Church* (San Francisco: Ignatius Press, 1994), 26.

¹⁴ Catholic Church, *Catechism of the Catholic Church*, nos. 78, 688.

¹⁵ “To Participants in the Meeting Promoted by the Pontifical Council for Promoting the New Evangelization (11 October 2017) | Francis.”

¹⁶ “A Biblical Perspective on The Death Penalty,” accessed August 24, 2018, <https://www.prisonfellowship.org/resources/advocacy/sentencing/the-death-penalty/>.

presentations on how to apply the death penalty, beginning with the Council of Trent and proceeding to the present.

Catechism of the Council of Trent:

Another kind of lawful slaying belongs to the civil authorities to whom is entrusted power of life and 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 this Commandment [the Fifth Commandment] which prohibits murder...¹⁷

Baltimore Catechism:

Q. 1276. Under what circumstances may human life be lawfully taken?

A. Human life may be lawfully taken:

- 1. In self-defense, when we are unjustly attacked and have no other means of saving our own lives;*
- 2. In a just war, when the safety or rights of the nation require it;*
- 3. By the lawful execution of a criminal, fairly tried and found guilty of a crime punishable by death when the preservation of law and order and the good of the community require such execution.*

Catechism of the Catholic Church:

Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.

If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity to the dignity of the human person.

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm - without definitely taking away from him the possibility of redeeming himself - the cases in which the execution of the offender is an absolute necessity "are very rare, if not practically nonexistent."¹⁸

In his Encyclical, *Immortale Dei*, Pope Leo XIII reminds us that God has established two governing powers on Earth, the ecclesiastical and the civil. Pope Leo XIII speaks to us of the importance of *Communitas Perfecta* (two perfect societies) and the balance in society that is born from these two powers.

The Almighty, therefore, has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human, things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right. But, inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing-related differently, but still remaining one and

¹⁷ Catholic Church, John A McHugh, and Charles J Callan, *Catechism of the Council of Trent* (Fort Collins, CO: Roman Catholic Books, 2002), 421.

¹⁸ Catholic Church, *Catechism of the Catholic Church*, no. 2267.

*the same thing-might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author of these two powers, has marked out the course of each in right correlation to the other. "For the powers that are, are ordained of God."! (Rom.13:1) Were this not so, deplorable contentions and conflicts would often arise, and, not infrequently, men, like travelers at the meeting of two roads, would hesitate in anxiety and doubt, not knowing what course to follow. Two powers would be commanding contrary things, and it would be a dereliction of duty to disobey either of the two.*¹⁹

In this balance of powers, we recognize that the State has a duty to provide for the common good and necessary order of its citizens, while the Church has a duty to guide man to Salvation. This connection between Church and State: *"may be compared to the union of the soul and body in man."*²⁰

As we arrive again at Pope Leo XIII's crossroads, in this case the issue of capital punishment, we realize the anxiety and doubt that he speaks of. We are in a situation that has caused a division in society. The previous versions of Catechism no. 2267 acknowledged the Divine Law right of authorities to use capital punishment, but also pressed for a limited application of the penalty. Understanding the 2 August 2018 change in a manner that ignores the Divinely given discretionary power of the State to employ a judicious use of capital punishment is an error.

The just use of capital punishment is revealed to us in Scripture, its proper application is formed by Natural Law and refined by Church Tradition. The State, an institution created by God, has certain duties to protect its people. To do this, God gave it the tools it needs to ensure the defense and protection of its citizens. The just use of capital punishment is one of these tools.

The Church may influence the State in the performance of its duties and the application of its methods, but the Church may not prohibit the State from carrying out legitimate duties or using tools given to it by God. The Catechism change is intended to influence the State's performance of its duty. It does not change what Pope Saint John Paul II provided in the previous version; Pope Francis just uses his preference of words. For many, both the change and the wording are confusing. That is regrettable. Nonetheless, the Pope believed it necessary to make the change and he has the discretionary authority to do so.

Q: Is the new passage in the Catechism contradicting Scripture and established Church Teaching?

A: As explained above, no. It must be read in text and context, and the doctrine of the Church in this regard remains enumerated in no. 2266. It merely restates the previous discipline found in the 1997 Catechism no. 2267 in different words.

Q: What happens if I disagree with this change?

A: Strictly speaking, nothing. The proper response to the change by a faithful Catholic is enumerated in Canon 754 of the Code of Canon Law.

All the Christian faithful are obliged to observe the constitutions and decrees which the legitimate authority of the Church issues in order to propose doctrine and to proscribe erroneous opinions, particularly those which the Roman Pontiff or the college of bishops puts forth.

To answer the question, one needs to ask, "What is to be observed?" The change can only be understood in the context of Catechism nos. 2263-2266, which sets forth the doctrinal understanding for what constitutes murder and legitimate self-defense. We understand the norm of 2267 to be a specific, disciplinary application of that doctrine. Those in secular authority with the power to impose

¹⁹ "Immortale Dei (November 1, 1885) | LEO XIII," no. 13, accessed August 22, 2018, http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_01111885_immortale-dei.html.

²⁰ "Immortale Dei (November 1, 1885) | LEO XIII," no. 14.

capital punishment should weigh its application against the presence or non-presence of the factors identified in Sacred Scripture and enumerated in Catechism nos. 2266 and 2267. Those of us not possessing this power should use the opportunity presented by this change to prayerfully evaluate our attitudes and biases. We should search Sacred Scripture and adjust our personal understanding as necessity dictates. And, we should use opportunities of circumstance to influence secular authorities in the right application of capital punishment. In this way, we will be obedient to the legitimate authority that promulgated the Catechism change by way of observing the disciplines found in it.

Practicalities

Realistically, many more questions will arise because of this change. Those listed above were asked directly to CUF or SJF. When additional questions are posed to us, we will answer. The final question to be considered in this paper concerns how this discussion of the death penalty should affect the actions of Catholics. Particularly, what should Catholics who are associated with public office do? If one wishes to be faithful and apply the authentic teaching of the Church on capital punishment in justice to protect the dignity of man, what can be done? How do we search our hearts and check our attitudes on this teaching that the Pope has considered important enough to highlight with a change in the Catechism?

As noted above, the application of the Catechism no. 2267 hinges on the existence of certain circumstances present at the time of sentencing. It would be prudent and conscientious to do two things. These two general directives should in turn drive very specific action in different places as circumstances warrant.

1. Develop objective data focused on the presence of circumstances that could mitigate the application of the death penalty.

Often, in debates about the use of the death penalty, proponents and opponents of the practice arguing past each other. Proponents of capital punishment focus on principles of retributive justice, the protection of the innocent, and the rights of victims. In contrast, opponents focus on restorative and distributive justice, the dignity of the accused, and the possibility of rehabilitation. If we recognize that the Virtue of Justice is revealed in natural law and reflective of God, we also recognize that the Virtue of Justice is intrinsically consistent. Stated another way, justice cannot contradict itself. Retributive, restorative, and distributive justice are all facets of the same virtue. For justice to be virtuous, these different facets must provide a check and balance for each other. If they don't, the virtue is reduced to personal desires and political whims.

The debate needs to be redefined with objective data that is recognized and shared by all. The circumstances identified by Sacred Scripture and explained by the Church as factors to consider when a judge is weighing the use of capital punishment should be actively and objectively studied. That is, objective data needs to be accumulated, such as:

- a. The programs of rehabilitation that exist in local and regional prison systems;
- b. The effectiveness of these programs;
- c. The rate of remorse among criminals subject to the death penalty;
- d. What factors effect the development or lack of development of that remorse, and how that remorse is expressed;
- e. The effectiveness of prison security to keep violent criminals in jail;
- f. Whether the violent person is able or willing to contribute to society in a meaningful way while in prison (e.g. work in compensation for the harm caused).

This type of information will differ from place to place. It will be different from one state to another and from one country to another. Cultural and geo-political circumstances will affect this data both directly and indirectly. As objective data is recognized and accepted by all involved in

the debate, there will be a greater chance for all involved to understand whether a particular ideology or approach is effective.

2. Using the objective data, develop specific initiatives aimed at increasing those circumstances in a particular case.

For opponents of the death penalty, the objective data will allow them to develop initiatives to address the shortcomings of current circumstances and decrease the need for capital punishment in their region. For example, if the data shows that rehabilitation techniques have a very low success rate, a reasonable initiative would be to develop better rehabilitation programs. If the proportion of violent criminals who show remorse is low, the reasons for this should be explored. This will give opponents of the death penalty the ability to argue practical results derived from their ideology, and increase the likelihood of success in particular cases.

On the other hand, proponents of capital punishment should want the same data. Authentic retributive justice is not revenge. If its application is vengeful, it violates the limits of human justice (Deut. 32:35, Rom. 12:19). Rather, it must principally intend the protection and restoration of the moral order. If doing so can also be achieved without recourse to capital punishment, both Sacred Scripture and the Church teach that capital punishment should be withheld. That is authentic justice; but to get there, we must have practical, objective information on whether the circumstances that allow a mitigation of capital punishment actually exist. We must reach a point where a common ideology is accepted by all, and in which the only debatable point is whether the proper circumstances exist as identified by God and His Church.

This starts with objective data made available to those with the power to judge life and death and argued with honesty and a comprehensive understanding of the Virtue of Justice.

Conclusion

The Catholic Church still teaches, in recognition of the Divine Law, that judicious use of capital punishment is a legitimate tool of the State to protect the common good (cf. Catechism no. 2266, *et al.*). Catholics are not required to support the use of the death penalty in specific cases, nor are we encouraged to use it. The application pertains to those with legitimate authority to impose it and is left to that individual's own conscience and discretionary authority. In her wisdom, the Church has always advocated for a tempering and limitation of its use, but still acknowledges that occasions existed where it was necessary. Even before Pope Francis, Pope Saint John Paul II appealed to secular authorities to work toward a point where the use of capital punishment is no longer needed in society. The continued change in the attitude of the Church must be viewed as an evolution of Church Discipline (how to apply), not Doctrine (what to believe).

Edit Date: 24 September 2018
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