

Capital Punishment and the Just Society

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Few issues today arouse such moral passion as capital punishment. Unlike more abstruse theological disputes of ages past, capital punishment elicits opinions not only from the academy, but also from dentists, housewives, taxi drivers, accountants, and hairdressers. This nearly universal interest in the death penalty shouldn't lead us to suppose, however, that any sort of unanimity has been reached. Far from it. With equal vehemence and subjective certitude will one argue in defense of capital punishment and another for its abolishment. And though the scales of public conscience seem to be tipping ever more in favor of the abolitionists, as yet neither side has secured an uncontested claim to the moral high ground.

Modern sensibilities clearly lean toward the prohibition of capital punishment.¹ There was a time, not long ago, when people and nations considered the death penalty useful, moral, and necessary as a punishment for serious crimes. This is no longer the case. There has been a fundamental shift in attitudes regarding the death penalty in the last fifty years. Since the Second World War nearly all democratic countries have outlawed capital punishment except in military law. On the global scene, ninety-nine countries have abolished the death penalty (by law or at least in practice), and for the first time in history, countries without capital punishment outnumber those that still permit the practice.²

In the ubiquitous debate on the death penalty theological propositions are often thrown together with philosophical, historical, political, juridical, emotional, and pragmatic arguments, resulting in an almost-anything-goes salmagundi. The incommensurability of these levels of reasoning (or feeling) snarls discussion and makes reaching any conclusion a formidable project.

Furthermore, among Catholic thinkers the death penalty presents particular difficulties not found in other contemporary areas of controversy. In the case of abortion, contraception, or women's ordination, for example, lines are clearly drawn between theologians loyal to the Magisterium and those who dissent from Church teaching. Regarding capital punishment, on the other hand, such black and white categories do not exist. By drawing on centuries of theological reasoning from monumental figures such as St. Augustine and St. Thomas Aquinas, one can mount an impressive case for the legitimacy of the death penalty. Others, however, would compare capital punishment to issues like slavery, formally

¹ The United States, where a majority of citizens favor the death penalty, stands out as an anomaly among democratic countries.

² See M. Marazziti, “Perché non uccidere?” in *Non uccidere: Perché è necessario abolire la pena di morte*, Guerini e associati, Milan, 1998, p. 7.

condemned by the Church only recently, and for centuries tacitly accepted, and even defended by many theologians. Such thinkers point to recent pronouncements of Pope John Paul II—just last year the text of the *Catechism of the Catholic Church* concerning capital punishment was modified to incorporate the Pope’s words on the subject in his encyclical *Evangelium Vitae*—and forecast still further evolution in Catholic doctrine, to the point of proscribing the death penalty altogether.³

As in the case of many other moral quandaries the road to a solution may lie in getting the question right. Maybe—as Walker Percy would say—the wrong questions are being asked. At very least we must recognize that in the area of capital punishment a variety of questions could be asked, and answers will correspondingly vary.

In this essay I propose to focus on the three questions I consider most important for a proper ethical analysis of capital punishment: the questions of justice, of legitimacy, and of opportuneness. Though these three questions overlap, each involves particular nuances and merits a separate inquiry.

Just Desserts

A recent issue of *Commentary* magazine carried an article by David Gelernter, bearing the provocative title “What Do Murderers Deserve?” Taken at face value the question requires little deliberation: Murderers deserve to die. They have willfully taken the life of another and to restore the balance that justice demands, they must suffer a similar fate. Anything short of death cannot possibly satisfy the requirements of strict justice. Indeed, after several pages of rumination this is precisely the conclusion Mr. Gelernter reaches.

Such moral reasoning forms part of the patrimony of human civilization. The adage “Let the punishment fit the crime” echoes the Old Testament injunction “An eye for an eye, a tooth for a tooth.” The actual expression used by Scripture is still more explicit: “Anyone who maims another shall suffer the same injury in return: fracture for fracture, eye for eye, tooth for tooth; the injury inflicted is the injury to be suffered” (Lev 24:19-20).⁴ As a principle of justice, and taken by itself, this logic seems to make perfect sense.

Yet such reasoning gives rise to several problems. First of all, do we really seek absolute justice? Would we like to see all crimes, sins, and offenses (including our own) punished as they truly deserve?

³ Fr. Gino Concetti, OFM, for one, a professor of moral theology at the Pontifical *Antonianum* Athenaeum who frequently writes for *L'Osservatore Romano* holds this opinion.

⁴ Deuteronomy similarly states: “Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Dt 19:21), and Exodus specifies that for injury “you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe” (Ex 21: 23-25).

In a typical passage from Scripture, the Psalmist, reflecting on the universality of guilt and the consequent universal need for pardon, writes, "If you, O Lord, should mark our guilt, Lord, who would survive?" (Ps 130). Who, indeed, we may ask, is free from moral evil? Who among us deserves no punishment? Similar reflections have been capsulized in the First Eucharistic Prayer: "*Do not consider what we truly deserve*, but grant us your forgiveness." In these words of the Roman Canon, we entreat our Lord not only to refrain from *applying* the punishment we truly deserve, but even from *considering* it. The fact is, as we acknowledge in the preceding line of the Canon, we are indeed sinners, and therefore worthy of punishment. Clearly this argument in and of itself would not rule out the death penalty, but as Christians it should give us pause when we seek to exact full retribution for others' sins.

When in the 4th century St. Ambrose was questioned by a civil magistrate as to his opinion on capital punishment, the imperial prefect-turned-archbishop of Milan replied by making reference to Jesus' conduct with the adulterous woman (Jn 8) as the example to follow. Jesus doesn't address the question of the woman's guilt or the appropriateness of the Mosaic prescription of stoning, but instead invites her zealous accusers to examine their own innocence before meting out the prescribed penalty.

Secondly, must punishment necessarily correspond to the crime committed? If this were the case, the use of prisons would be limited to those who detain others against their will. As it stands, the practice of incarcerating thieves, rapists, and drunk drivers reflects our understanding that punishment, in order to be just, need not be of the same species as the crime committed. As long as the penalty is proportionate to the gravity of the crime, it satisfies the demands of justice.

Many of our contemporaries deem it a genuine advance in human civilization that public authority no longer retaliates against criminals along the lines that strict justice would seem to mandate. For instance, the penalty of mutilation, still practiced in certain societies, is commonly considered to be a vestige of more barbarous times.

The opinion that murder, especially when premeditated and particularly cruel, necessarily requires the death penalty as the only commensurate chastisement, cannot be sustained. Commensurability is relative, not absolute. Justice demands a certain proportion between punishment and crime, but justice will always be approximate and imperfect in this life. There are crimes qualitatively or quantitatively worse than a single murder, such as certain forms of torture, mass murder or serial killing, which could not be redressed absolutely even by the death of the perpetrator.

Thirdly, can justice be taken as the sole criterion in dealing with malefactors? Is the restoration of equilibrium sufficient unto itself as a principle to guide human action in dealing with others' misdeeds?

On the one hand we recognize that “legitimate public authority has the right and duty to inflict penalties commensurate with the gravity of the crime.”⁵ The moral sense of mankind has always insisted that good actions merit praise and reward, while evil deserves reprobation and punishment. It likewise offends our sense of justice to think that all crimes should receive equal punishment, or that greater offenses should not receive correspondingly greater penalties. On the other hand we shun certain punishments as unworthy of truly human society. In so doing we implicitly invoke another standard to temper the principle of justice: the principle of respect for human dignity.⁶ Thus Pope John Paul II insists that public authority should limit itself to bloodless means whenever possible, since they “are more in conformity to the dignity of the human person.”⁷

The Second Vatican Council noted with approval the “growing awareness of the exalted dignity proper to the human person,”⁸ together with his universal rights and duties. The question of the dignity of the person commands supreme importance, because from this dignity spring man’s natural rights, the most basic of which is the inalienable right to life.⁹ Does this dignity, and hence this right, perdure in the criminal, or does he somehow forfeit his dignity? Does one’s crime effectively alienate the inalienable right to life?

In this regard St. Thomas argues to the affirmative. According to Aquinas, by sinning man loses the dignity of his humanity and falls into the state of the beasts. “Hence,” he concludes, “although it be evil in itself to kill a man so long as he preserve his dignity, yet it may be good to kill a man who has sinned, even as it is to kill a beast.”¹⁰ As Germain Grisez points out, Aquinas’ reasoning here is flawed.¹¹ Carried to its logical conclusion such a postulate would lead to moral chaos. Whereas according to Catholic doctrine man falls from grace by any mortal sin, and thus makes himself worthy of hell (which, fortunately, the State cannot impose), he does not thereby efface the image of God in his soul, which lies at the base of his personal dignity.¹² As St. Thomas rightly says, by sinning man “departs from the order

⁵ *Catechism of the Catholic Church (CCC)*, 2266.

⁶ The *Catechism* condemns torture as a means to punish the guilty as “contrary to respect for the person and for human dignity” (*CCC*, 2297).

⁷ *CCC*, 2267.

⁸ *Gaudium et Spes*, 26.

⁹ See *CCC*, 1930, 1935, 1944, 1945, 1956, 1978.

¹⁰ *Summa Theologiae*, II-II, q.64, a.2, ad 3.

¹¹ G. Grisez, *Living a Christian Life*, Vol. 2 of the series *The Way of the Lord Jesus*, Franciscan Press, Quincy, IL, 1993, p. 893, footnote 107.

¹² The *Catechism*, citing the declaration of the Congregation for the Doctrine of the Faith, *Donum Vitae*, speaks of the inalienable rights of the person which “belong to human nature and are inherent in the person by virtue of the creative act from which the person took his origin” and specifically mentions “every human being's right to life and physical integrity from the moment of conception until death” (*CCC*, 2273).

of reason,” but this departure does not destroy his inherent resemblance to his Creator nor his personhood.

If things were otherwise we could rightly treat anyone in a state of sin (which, in any event, we can never ascertain with certainty) with the same impunity with which we treat animals. Not only would murderers be liable to the death penalty, but under the right conditions, so would adulterers, heretics, fornicators, and those who willfully miss Mass on Sunday. Moreover there could be no further talk of “humane” punishment for such perpetrators; they could be dispatched like a lame horse or a blind dog. Punishment itself, in fact, would lose all retributive meaning, since the very concept implies a free and willing wrongdoer, and consequently personal dignity.

Personal sinfulness, therefore, does not abrogate the sanctity of the life of the sinner nor his dignity as a person. In his encyclical *Evangelium Vitae* Pope John Paul speaks of the “great care [that] must be taken to respect every life, even that of criminals and unjust aggressors.”¹³ Likewise, when in recent months the Pope has issued appeals for clemency in the cases of Karla Faye Tucker and Joseph O’Dell, he has made no reference to the verdict of the court or of the possible innocence of the plaintiffs. Rather he has appealed to the sanctity of all human life, which belongs to God and not to man.

In 1960, long before becoming Pope, Karol Wojtyla expressed what he called the “personalist principle,” which states that “the person is a good towards which the only proper and adequate attitude is love.”¹⁴ That goes for good persons, bad persons, saints, and criminals. “To be just,” writes Wojtyla, “always means giving others what is rightly due to them. A person’s rightful due is to be treated as an object of love.” In this sense, he continues, “it can be said that love is a requirement of justice.”¹⁵ Obviously this love takes different forms, not excluding punishment, but it is incompatible with willfully taking another’s life. Love necessarily seeks the good of the other, and the first good is existence itself.

In summary we conclude that capital punishment corresponds to a certain strain of justice, but a justice which is insufficient as a principle for ordering society because it fails to take into account the dignity of the person. For such a right ordering of society justice must be tempered by love. In his 1980 encyclical letter *Dives in Misericordia*, Pope John Paul wrote that “[t]he experience of the past and of our own time demonstrates that justice alone is

¹³ *Evangelium Vitae (EV)*, 57.

¹⁴ Karol Wojtyla, *Love and Responsibility*, translated from the original Polish *Mi! o! ! I Odpowiedzialno! !* (Krakow, Wydawnictwo, Znak, 1960) by H.T. Willetts, William Collins Sons & Co. Ltd, London: 1995, p. 41.

¹⁵ *ibid.* p. 42.

not enough, that it can even lead to the negation and destruction of itself, if that deeper power, which is love, is not allowed to shape human life in its various dimensions.”¹⁶

The Question of Legitimacy

As we see, the matter of strict justice does not exhaust the problem of capital punishment, and perhaps it is not even the most important question. A second area of inquiry could be expressed as follows: Is it licit for public authority to execute criminals? Here our interest centers on the juridical question, on what is permissible and what is forbidden. Once again, besides responding to this particular question, we must also explore the appropriateness of the question itself.

To set the stage, a brief historical analysis is necessary. We must examine—albeit in a sketchy fashion—what Sacred Scripture, theology, and the Church’s Magisterium have taught regarding the legitimacy of capital punishment.

As regards Biblical teaching on the matter, we have already touched on the Old Testament understanding of retributive justice. For centuries many have defended the legitimacy of the death penalty based on its practice in the Old Testament, especially when tied to an important text from the New Testament, namely from Paul’s letter to the Romans. In this letter Paul states,

“Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer.” (Rom 13:1-4).

Nevertheless, though Jesus came “not to abolish the law... but to fulfill [it]” (Mt 5: 17), in many cases provisions of the Old Law were in fact supplanted by the New Law. In this regard we should bear in mind that the Old Testament not only contemplated the death penalty in the case of murder, but also for blasphemy (Lv 24:16), idolatry (Ex 22:19; Nm 25: 5), working on the Sabbath (Ex 31:15; 35:2), kidnapping (Ex 21:16), homosexuality (Lv 20: 13), bestiality (Ex 22:19; Lv 20:15-16), sorcery (Ex 22:18; Lv 20:27), striking or cursing one’s parents (Ex 21:15, 17; Lv 20:9), and adultery (Lv 20:10). We have already seen how Jesus himself declined to apply this prescription in the case of adultery (Jn 8:13). Moreover,

¹⁶ *Dives in Misericordia (DM)*, 12.

the ethical finality of capital punishment in the Old Testament theocracy (safeguarding Israel's fidelity to the covenant with Yahweh) differs radically from its understood purpose in the modern State (protection of society and promotion of the common good).

Opponents of capital punishment frequently indicate God's dealing with Cain after his crime of fratricide as a counter-example to the mandate of the death penalty in the Pentateuch. Not only does God not punish Cain's crime with death, he also prohibits others from harming him. "Then the Lord said to him, '... Whoever kills Cain will suffer a sevenfold vengeance.' And the Lord put a mark on Cain, so that no one who came upon him would kill him" (Gn 4:15).

Nor does the above citation from Paul's letter to the Romans legitimate capital punishment, but only upholds the authority of civil government and its power of coercion in general. In regard to this passage and specifically to the "sword borne by public authority," Pope Pius XII taught that Paul was referring to "the essential foundation itself of penal power and of its immanent finality," and not to the content of "individual juridical prescriptions or rules of action."¹⁷

For its part, theological reflection has generally affirmed the legitimacy of capital punishment, though this was not so from the beginning. In the first centuries of Christianity the Mosaic precept against killing was interpreted literally and without exceptions. Capital punishment was considered irreconcilable with the faith, and such occupations as judge and soldier were excluded from licit professions for Christians, in order to avoid having to pronounce or execute the death sentence. Among those who taught in this vein were Lactantius,¹⁸ Tertullian,¹⁹ St. Cyprian,²⁰ and St. Ambrose.²¹ In tongue-in-cheek fashion, St. Cyprian writes: "A homicide committed for private interests is a crime; committed in the name of the State it is a virtue."²²

From St. Augustine on, however, capital punishment was seen in a different light. In his *City of God*, for example, Augustine speaks of certain exceptions to the divine law forbidding killing of a human being, including "for the representatives of the State's authority to put criminals to death, according to law or the rule of rational justice."²³ As a rationale for these exceptions, Augustine refers to agents of authority as "a sword in the hand" of God, and

¹⁷ Pius XII, Address to the Italian Association of Catholic Jurists (5 February 1955), *AAS* 47 (1955) 81, *Catholic Mind* 53 (June 1955), 381.

¹⁸ Lactantius, *Divinarum Institutionum*, V, 20, PL 6, 707-708.

¹⁹ Tertullian, *De Idolatria*, 17, PL I, 763-764.

²⁰ Cyprian, *Epist.* 56, 4, PL 4, 362.

²¹ Ambrose, *De Officiis*, 3, 4, PL 16, 161; *Epist. 25 ad Studium*, PL 16, 1083-1086.

²² Cyprian, *Epist. ad Donatum*, 4, PL 4, 208.

²³ Augustine, *De Civitate Dei*, I, 21, PL 41, 35.

cites a series of examples from the Old Testament where men are justified in killing in obedience to God.

St. Thomas Aquinas' argument takes a slightly different tack. In the *Summa Theologiae* Aquinas affirms that the individual person is to the community as a part to the whole. Thus, just as a decayed member of the body may be excised for the good of the whole, so too "if a man be dangerous and infectious to the community... he may be killed in order to safeguard the common good."²⁴ Theologians after St. Thomas by and large followed his line on the death penalty, and alternative interpretations only began to surface in the late 18th century.²⁵ It should be noted that many of these theologians who argued in favor of capital punishment employed the same reasoning to justify public whipping and mutilation as well.²⁶ Such penalties were defended on the grounds that they are necessary for preserving the common good and safeguarding society.²⁷

Finally, as regards the teaching of the Magisterium of the Church, until fairly recently the overall tenor of the scattered papal pronouncements or allusions to capital punishment tended toward acceptance of a practice firmly ensconced in society and in civil law, and commonly defended by theologians.

The first Pope to take a stand in favor of the death penalty was Innocent I in the year 405, who in response to a query from the bishop of Toulouse bases his favorable position on Paul's letter to the Romans. Innocent writes, "In regard to this question we have nothing definitive from those who have gone before us. It must be remembered that power was granted by God, and to avenge crime the sword was permitted; he who carries out this vengeance is God's minister (Rm 13:1-4). What motive have we for condemning a practice that all hold to be permitted by God? We uphold, therefore, what has been observed until

²⁴ Thomas Aquinas, *S. Th.*, II-II, q. 64, a. 2, *respondeo*. St. Thomas' approach based on the protection of the community from a dangerous member of society resembles the modern application of legitimate defense. His analogy of individual to community as part to whole, however, must be attenuated. In speaking of the limits of public authority over the physical being of citizens, Pope Pius XII distinguished between a physical organism, which "has a unity subsisting in itself," and whose members have no sense or finality outside the whole organism, and the moral community which "is not a physical unity subsisting in itself and its individual members are not integral parts of it" (Pius XII, *Address to the First International Congress of Histopathology of the Nervous System* (14 September 1952), *AAS* 14 (1952), 786-7).

²⁵ The first non-theological work was a small volume entitled *Dei delitti e delle pene*, written in 1764 by Cesare Beccaria. Among theologians the first to write against capital punishment was the abbot Cesare Malanima, who in 1786 published *Commento filosofico critico sopra I delitti e le pene secondo il gius divino*.

²⁶ See, for example, Giovanni Bucceroni, *Institutiones Theologiae Moralis*, Rome, 1898, p. 301.

²⁷ Logically, if the preservation of public peace were an absolute value, not only the death penalty, but also torture and other "efficient" measures would be acceptable to achieve it. In focusing solely on ends the consequentialist argument fails to take sufficiently into account the intrinsic moral quality of the means to be employed. This same defect can be found in arguments for the deterrent efficacy of capital punishment. Leaving aside the highly debated results of studies on the topic, pragmatic arguments based on deterrence beg the more fundamental question of the morality of executing criminals.

now, in order not to alter the discipline and so that we may not appear to act contrary to God's authority."²⁸

In the year 866, however, Pope Nicholas I adopted a different angle in his letter to the newly converted Bulgarian Christians. Nicholas urges the neophytes to promote life both of body and soul, and to "rescue from death not only the innocent, but also the guilty."²⁹ As grounds for his argument, Nicholas appeals to the example of Christ, who had saved the Bulgarians from their imprisonment to death and brought them to eternal life.³⁰

After the turn of the millennium came another milestone in the Church's reflections on capital punishment. In dealing with Waldensian heretics who sought reentry into the Catholic Church, Pope Innocent III required the pronouncement of a profession of faith which included the statement: "The secular power can without mortal sin carry out a sentence of death, provided it proceeds in imposing the penalty not from hatred but with judgment, not carelessly but with due solicitude."³¹

The basic acceptance of the legitimacy of capital punishment continued through more recent pontificates, though usually in the form of indirect reference. In his letter to the bishops of the Austro-Hungarian Empire, *Pastoralis Officii*, Leo XIII wrote of the prohibition by divine and natural law of killing or wounding a human being, "except for a public cause [that is, by public authority] or in the necessity of defending one's own life."³²

Pius XII presented a more explicit defense of the lawfulness of capital punishment. He states that "as long as a man is without guilt, his life is untouchable," and adds that "God is the sole lord of the life of a man not guilty of a crime punishable by the death penalty."³³ The Pontiff provides the moral reasoning behind his thought on capital punishment in an address to a congress of doctors: "Even in the case of the death penalty the State does not dispose of the individual's right to life. Rather public authority limits itself to depriving the offender of the good of life in expiation for his guilt, after he himself, through his crime, has deprived himself of the right to life."³⁴

²⁸ Innocent I, *Epist.* 6, c. 3. 8, *ad Exsuperium, Episcopum Tolosanum*, (20 Feb. 405), PL 20, 495.

²⁹ Nicholas I, *Epist.* 97, 25: *Responsa ad Consulta Bulgarorum*, PL 119, 991.

³⁰ Some affirm that Nicholas did not intend to take a stand on the principle of the death penalty, but only the excessive facility with which recourse was had to such punishment. See, for example, Lino Ciccone, «Non uccidere»: *Questioni di morale della vita fisica*, Edizioni Ares, Milan, 1984, p. 79.

³¹ DS 795/425.

³² Leo XIII, *Pastoralis Officii* (12 September 1891), *ASS* 24 (1891-92), p. 203.

³³ Pius XII, *To the San Luca Medical-Biological Union*, (12 November 1944), VI, 191.

³⁴ Pius XII, *Address to the First International Congress of Histopathology of the Nervous System* (14 September 1952), XIV, 328. It should be borne in mind that in this address Pius was seeking to underscore the narrow limits of State sovereignty over the lives of citizens, and not to articulate a theory of justification of the death penalty.

Despite these instances of support for the legitimacy of capital punishment on the part of the Magisterium, many theologians do not see in these pronouncements an unreformable teaching, at least prior to the publication of *Evangelium Vitae*. There has been considerable agreement that the received position on capital punishment was generally taken for granted but never formally declared by the Magisterium. As a representative example, Anselm Günthör wrote in 1979 that, regarding capital punishment, “the statements of the ecclesial Magisterium are occasional assertions and do not represent a fully definitive position; we must not undervalue them, but nor should we consider them to be unchangeable and perennially valid Magisterial statements.”³⁵

Here it is worth recalling the teaching of the Second Vatican Council regarding the interpretation of Magisterial statements. *Lumen Gentium* proposes three factors by which the “manifest mind and intention” of the Roman Pontiff can be known, namely “by the character of the document in question, or by the frequency with which a certain doctrine is proposed, or by the manner in which the doctrine is formulated.”³⁶ In the case of capital punishment, the Magisterium has consistently upheld the legitimacy of the death penalty in principle, though with variance as to the underlying reasons and to the limits of its application. The pronouncements, however, were infrequent, and of a less than solemn character and formulation, which has led to some theologians’ speculation that the Magisterium has not intended to offer a definitive teaching on the question.

As we saw earlier, reflections on the legitimacy of capital punishment have stepped up particularly in the second half of this century. The publication of the encyclical *Evangelium Vitae* in 1995 marked a watershed in the debate on this issue, both because of its authority (*EV* is the first papal *encyclical* to deal with capital punishment, and thus the weightiest Magisterial statement on the subject to date) and because of the teaching it offers regarding the justification for the death penalty. This teaching warrants special attention.

The first element to be noted regards the *contextual placement* of the discussion on capital punishment. Pope John Paul expressly states that the problem of the death penalty is to be placed in the context of legitimate defense. The Holy Father goes on to say that recourse to the death penalty should be limited to “cases of absolute necessity: in other words, when it would not be possible otherwise to defend society.”³⁷ The only legitimating factor for

³⁵ A. Günthör, *Chiamata e risposta: Una nuova teologia morale*, Vol. III, Edizioni Paoline, Alba, 1979, pp. 557-558.

³⁶ *Lumen Gentium*, 25. This teaching was recently restated by the Congregation for the Doctrine of the Faith in its June 29, 1998 “Doctrinal Commentary on the Concluding Formula of the *Professio fidei*,” issued as a companion to the *motu proprio* apostolic letter *Ad Tuendam Fidem*. The Commentary reads: “As examples of *doctrines belonging to the third paragraph*, one can point in general to teachings set forth by the authentic ordinary Magisterium in a non-definitive way, which require degrees of adherence differentiated according to the mind and the will manifested; this is shown especially by the nature of the documents, by the frequent repetition of the same doctrine, or by the tenor of the verbal expression” (no. 11).

³⁷ *EV*, 56.

capital punishment, therefore, is the actual threat from an aggressor who cannot be rendered harmless by any other means.

When would these cases of “absolute necessity” come about? John Paul affirms that because of steady improvements in the organization of the penal system, today “such cases are very rare, if not practically non-existent.”³⁸ That is to say, governments today nearly always have other means at their disposal to “defend the lives of human beings effectively against the aggressor.”³⁹ One can call to mind extreme situations—for example small, underdeveloped countries with a weak, unstable government, corrupt officials, and powerful organized crime—where no other solution seems viable. There have been cases in recent years where drug lords have been captured but have continued to direct their operations and issue death sentences from their jail suites.

An important corollary to the placement of capital punishment in the context of legitimate defense is the protection of the absolute character of the commandment against taking human life and the preservation of the inherent dignity of the human person. In *Evangelium Vitae* the Pope speaks of a “genuine paradox” in which “the right to protect one’s own life and the duty not to harm someone else’s life are difficult to reconcile in practice.”⁴⁰ In other words, the criminal [aggressor] forfeits neither his dignity as a human person nor his right to life. Rather, in a confrontation of two irreconcilable values the right to protect one’s own life (or the “grave duty for someone responsible for another’s life”) outweighs⁴¹ the duty not to harm someone else’s life.

To wrap up, then, we can summarize the Church’s teaching regarding the legitimacy of the death penalty as follows: in case of absolute necessity, when no other means is sufficient to render harmless an unjust aggressor who threatens the life of citizens, the death penalty may legitimately be applied. Though in theory these findings furnish the data we need to form our Christian conscience concerning the death penalty, once again it would seem that this conclusion doesn’t fully satisfy our desire to grasp the deeper meaning of what is at stake.

Towards a Civilization of Justice and Love

The Second Vatican Council called for a renewal of moral theology, whose presentation should “throw light upon the exalted vocation of the faithful in Christ and their

³⁸ *ibid.*

³⁹ *CCC*, 2267.

⁴⁰ *EV*, 55.

⁴¹ The Pope intentionally uses the term *absolute* when describing the value and inviolability of innocent human life, a term he does not apply to the unjust aggressor. See *EV*, 57.

obligation to bring forth fruit in charity for the life of the world.”⁴² This renewal is exemplified in the focus of the third part of the *Catechism of the Catholic Church*, which deals with man’s vocation to life in Christ. Instead of limiting moral theology to a juridical system of the permissible, the forbidden, and the obligatory—which, nonetheless, form a necessary part of morality—we are invited to fix our attention on our exalted Christian vocation, to move daily toward a greater conformity and union with Christ, our life.

What is true for the individual is, *servatis servandis*, true for society at large. In *Evangelium Vitae* Pope John Paul encourages the faithful to view the death penalty “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 and society.”⁴³ This sentence, I think, contains a profound truth which must not be overlooked.

In an interview with the Italian daily *Avvenire* last September, the theologian of the papal household Fr. Georges Cottier affirmed that the development of the Church’s teaching on capital punishment as reflected in the modifications to the Catechism “illustrate how throughout history the Christian conscience becomes more aware of the demands of the Gospel and their consequences.” He further explained that “Christianity arose in a society which included slavery, the death penalty, and many other practices that today we consider aberrant. Christianity didn’t invent them. Little by little, an awareness of the demands of the Gospel and their application in the field of morality have profoundly matured, through theological reflection.”⁴⁴

A larger and more complete question on capital punishment, which embraces but transcends the issues of justice and legitimacy, is the question of opportuneness. Rather than stop at what is permissible, we should look to our ideal and take effective steps to move towards it. What sort of society are we striving to create? Would the “civilization of justice and love” envisioned by the Holy Father include the death penalty? We must not ingenuously disregard the cold facts of crime and the sad state of fallen human nature. We must not succumb to utopian musings that perhaps one day mankind will outgrow his need for a system of laws and public chastisement. At the same time this solemn realism must not lower our gaze nor deter our pursuit of what is most noble and blessed.

As Christians we are called to point out the greatness to which man is called, and to challenge our contemporaries to bring human society into conformity with our true dignity. Pope John Paul goes so far as to place the promotion of the dignity of the person at the heart of the Church’s mission. “To rediscover and make others rediscover the inviolable dignity of every human person makes up an essential task, in a certain sense, the central and unifying

⁴² *Optatam Totius (OT)*, 16.

⁴³ *EV*, 56.

⁴⁴ *ZENIT News Service*, September 15, 1997.

task of the service which the Church and the lay faithful in her are called to render to the human family.”⁴⁵

In 1980 the National Conference of Catholic Bishops in the United States published a statement on capital punishment in which they urged Christians and all Americans to support the abolition of the death penalty. Their convincing line of reasoning follows the “opportuneness” argument. Rather than attempt to prove that capital punishment is unjust or illicit, the bishops indicate values to be pursued. “We maintain,” the bishops wrote, “that abolition of the death penalty would promote values that are important to us as citizens and as Christians.” The document proceeds to enumerate four key values that would be advanced by the prohibition of the death penalty.

“First, abolition sends a message that we can break the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime....

“Second, abolition of capital punishment is also a manifestation of our belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image and likeness of God....

“Third, abolition of the death penalty is further testimony to our conviction, a conviction which we share with the Judaic and Islamic traditions, that God is indeed the Lord of life. It is a testimony which removes a certain ambiguity which might otherwise affect the witness that we wish to give to the sanctity of human life in all its stages....

“Fourth, we believe that abolition of the death penalty is most consonant with the example of Jesus, who both taught and practiced the forgiveness of injustice and who came ‘to give his life as a ransom for many’ (Mk 10:45).”⁴⁶

The abolition of capital punishment would clearly not remedy our social ills. Its effects on the crime rate would likely be negligible. But this isn’t the point. To bring about the culture of life, a culture “ever more in line with human dignity and... with God’s plan for man and society,” Christians must proclaim the truth of the human person. Such a proclamation demands a concerted effort at the level of the family, schools, the media, and the Church to attack the root of crime and moral decay. But it also includes an unswerving affirmation of the value and sanctity of all human life.

Some would argue that with the serious social and moral problems we face, most especially the scourge of abortion, with all the truly innocent victims of violent crime and the modern tendency to turn criminals into victims and vice-versa, efforts to abolish capital punishment are wrongheaded, or at least misdirected. While accepting the premises of such an argument I would refute the conclusion. We must indeed fight against the heinous crime of

⁴⁵ *Christifideles Laici (CL)*, 37

⁴⁶ National Conference of Catholic Bishops, “Statement on Capital Punishment” (November 1980), 2.10-13, in *Pastoral Letters*, ed. Nolan, 4:430-31.

abortion with all the moral means at our disposal. We must indeed extend our pity and support first and foremost to innocent victims of crime, and guilt must be recognized and punished. Yet these causes do not preclude attention to capital punishment as well. Taking Pope John Paul's lead, in all sectors of society and in all our decisions, public and private, we must proceed with consistency, without lowering our standards or betraying the cause of Christ.