

Death Penalty: Magisterium vs. Left and Right

Mark P. Shea



When it comes to the death penalty, the Church teaches:

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, nonlethal 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 are 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. (2267)

Now, among the sundry subcultures of the Church there are certain "universes of discourse" where one can say this and receive varying replies. When citing the above passage, one will (depending on the subculture you are addressing) receive anything ranging from a shrug, a nod of affirmation, a plea to equate abortion and the death penalty, or a passionate denunciation (as, for instance, from folks like [these guys](#)). What interests me is how these universes of discourse work: what is and is not permissible, how the red flags go up and down, and who gets marked as "in" and "out" when discussing some square peg of Catholic teaching that does not fit in the round hole of ideological and tribal commitment.

And so, whenever the [death penalty](#) gets mentioned [here](#) and [there](#) at St. Blogs, two basic sorts of people come out of the woodwork to argue with each other and the Church.

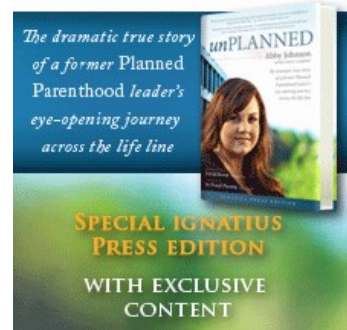
The first sort of person one often hears from is the guy who assumes that the death penalty, war, and abortion are morally equivalent issues. Mention the death penalty and these folks show up faster than you can say "[pro-life hypocrite](#)" (a favor term of theirs). The problem is that it is not, strictly speaking, hypocrisy to be "pro-war" or "pro-death penalty" (depending on the circumstances) while always opposing abortion. If



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one favors an unjust war or an unjust application of capital punishment while still claiming to be pro-life, then the epithet "hypocrite" is accurate. But if one truly believes a war is just (meaning, among other things, that one is reluctant to prosecute it but has no other choice), then one is no more a hypocrite than a surgeon who reluctantly cuts into living flesh to save a patient is the moral equivalent of Jack the Ripper.

Likewise, with the death penalty, as the Catechism makes clear, the Church has always recognized that Caesar may use the sword to punish serious crime (Rom 13). In contrast, abortion is always the taking of *innocent* human life, which can never be justified for any reason. So the notion that a pro-lifer who backs a particular application of the death penalty is *ipso facto* a hypocrite is likewise bunk. Pope John Paul II was as pro-life as they come, but he never declared that the death penalty was intrinsically immoral.

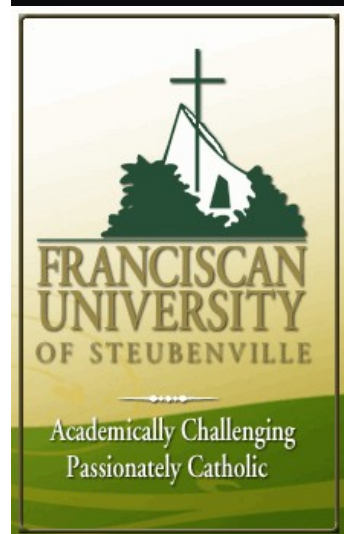
Having cleared that elementary point out of the way, however, we then run into a second sort of difficulty: what I call "death penalty maximalism." This is a species of reactionary dissent from magisterial teaching that seeks to pick, cafeteria style, from the Church's teaching and listen to the Church only insofar as her teaching is useful for upholding the proposition that the maximum number of people possible ([including minors](#)) should be subjected to capital punishment.

The reason I use the term "death penalty maximalist" is that such a position stands at the far end of the scale from the clear and obvious teaching of the Church articulated in the Catechism's passage above. It is a difference of emphasis from the Church's position, rather than two polar opposites or a Manichean division of black and white. That's because the Church does not and cannot say that the death penalty is intrinsically immoral, nor can the maximalist insist that it is absolutely immoral *not* to apply the death penalty.

The reasons for this are found in Scripture itself. Just as Romans 13 places the sword in the hand of Caesar to execute judgment on capital criminals under certain circumstances, so it also clearly shows us instances where criminals guilty of capital crimes (e.g., the adulterous murderer King David in the Old Testament and the woman taken in the very act of adultery in the New Testament) have been spared the extreme penalty. In short, despite the fundamentalist readings of Genesis 9:6 ("Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image"), constantly provided by enthusiasts for capital punishment, the Catholic tradition has *always* regarded the death penalty with flexibility. The Church has never said that merely because the death penalty *may* be inflicted, it *must* be inflicted. It cannot be otherwise, since God Himself has never inflicted the death penalty with rigidity. God's mercy does not always inflict, even on the richly deserving capital criminal, the punishment he or she deserves. Paul, who was accessory to the lynch murder of a completely innocent man, was not only *not* given his just desserts as a blasphemer and a violent man, he was shown such great mercy that he became an apostle of Christ. So while the Church has never fallen into the foolish game of making the death penalty the moral equivalent of abortion, she also tells us that, wherever possible, clemency is preferable to death.

This development of magisterial teaching seen in the Catechism above (for development it is, and not John Paul's dismissible personal opinion) means that, on the spectrum of possible applications of the death penalty, the Church's basic posture is that the onus is on Caesar to show that execution is necessary, not on the human person to show why his dignity makes him worthy of not being killed. The point is that the dignity of the human person derives not from his works, whether good or ill, but from the God who made him in His image and likeness. The Church does not deny that Caesar, for the sake of the common good, *may* execute a capital criminal. But the Church does suggest that if the common good is not threatened by a criminal behind bars, then mercy rather than strict vengeance for the crime is the better course. And in the First World, including here in the United States, that means that the practical result is that Catholics should [work for the abolition of the death penalty](#).

This seems reasonable to me, and I am therefore, following the Magisterium, a death penalty minimalist. That is, while I do not concede that the death penalty is the moral equivalent of abortion, I still think its application should be restricted to absolute necessity and do not see any real necessity for it when we have the technology to keep the offender from harming again. Indeed, it seems *a fortiori* reasonable with a [penitent brother or sister](#) who not only is no longer a threat to others but who now seeks to serve Christ. So, with the Church, I think the best course is life in prison and, in particular, for penitents of capital offenses to serve a life sentence rather than be put to death. That's the minimalist position in a nutshell.



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For the maximalist, the Catechism (2267) is wrong, not merely in saying that "the cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent" (which is a practical judgment based on things like prison safety). No, for the maximalist it is wrong *in principle*: The death penalty is not merely applied to protect the community but to serve (allegedly) justice! And since it is a matter of principle (allegedly), then it follows that we *must* execute as many capital criminals as possible so that justice may be served as completely as possible. For the maximalist, the onus is on the Church to show why a capital criminal should be spared, not on Caesar to show why he should be killed. And so, for the maximalist, the Church has allegedly both betrayed the Tradition and has overstepped into Caesar's realm.

On a Catholic site, then, when this matter gets raised there will inevitably arise those maximalists who show up to do a number of things at once:

1. [denounce the developed Magisterial teaching as actually contradictory of the Tradition](#);
2. cite sundry theological authorities pre-dating the development of the Tradition in order to show that the Magisterium has no right to opinions St. Thomas does not share (being sure to [spam every discussion of the death penalty anywhere](#), from Buddhist to Catholic to Anglican to sundry political blogs to foreign and domestic. The whole world needs to hear the good news of death). Such arguments tend to ignore the fact that St. Thomas would be horrified at being pitted against the teaching of the Church, and that Thomas is not infallible;
3. quote Scripture like a fundamentalist (especially [Genesis 9:6](#)) and oppose it to *Evangelium Vitae*, [declaring things like](#), "JP2's humanist personal opinions do not equal magisterial teaching even if they're printed in a Catechism. The Pope has no power to redefine Catholic Moral Doctrine in a way that contradicts the constant teaching of the Church. Read your Vatican I";
4. denounce death penalty minimalists or abolitionists, not merely as Catholics who are making a different prudential judgment from a different part of the spectrum of possible applications of the death penalty, but as heretics, cowards, weaklings, moral posturers, heartless fiends who mock the suffering of victims, etc.; or
5. occasionally, throw in non sequiturs like, "Opposition to the death penalty is really just an attempt to divert our attention from abortion," or, "Not that many people get executed and they are mostly probably guilty, so it's no big deal." This sometimes happens when overheated people make the "abortion=war=death penalty" moral equivalences.

Bottom line: For the dedicated death penalty maximalist, if you aren't in favor of maximum death for the maximum number of criminals, you are a Bad Catholic. [To quote one Catholic](#) who recently warmly applauded the death of the penitent Teresa Lewis and rebuked those who were not eager to slay her:


In more balanced ages, men did not so easily arrogate to themselves the right to spare murderers, et. al. They knew, both as Christians and as members of true cultures, that such reprobates were to be offered the assistance and gifts of the Church, and then to be sent out of this world forthwith, to seek mercy from God. It is, I often think, an insidious side effect of the creeping disease of Modernism (which is far from defeated) that some of us Catholics fear death so much that we dare not trust even the likes of this Teresa scoundrel to it.

The notion that Christian piety is best demonstrated by "trusting" somebody else to death is a curious one and is echoed by other opinions one encounters with [alarming frequency in the conservative Catholic blogosphere](#):

Don't any of you self-righteous death penalty opponents ever read the Bible? As he was hanging on the cross Jesus promised Paradise to the felon who confessed the justice of the death penalty (cf. Luke 23: 39-43).

The strange conflation of dogmatic death penalty maximalism with some sort of core doctrine of Catholic faith is a classic illustration of how a tribal shibboleth can get fuddled with the heart of the faith. For, of course, the actual biblical teaching is that Jesus promises paradise *to the one who placed his faith in Him*, not to those who place their faith in the death penalty. Indeed, Jesus Himself, presented with an open-and-shut case of capital guilt under the law of Moses -- a woman taken in the very act of adultery -- did not inflict the death penalty when, according to legal rigorism, He should have. Instead, He, like the Church that followed Him, saw that the extreme penalty did not *have* to be inflicted and chose mercy instead.

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 your comments

Those who denounce the Magisterium's death penalty minimalism as "modernism" never seem to realize that, if we are to hold to their fundamentalist take on the death penalty, then we need to be consistent. The Good Thief regards not merely capital punishment but *crucifixion* as just. Do those who have just asserted the novel theory of "salvation by faith in the death penalty" therefore assert that *crucifixion* is a just form of capital punishment? If not, why not? If so, then why don't those basing their demand for capital punishment on Scripture likewise demand that we re-institute crucifixion in these United States as just punishment for thieves or terrorists?

Nor do flat-footed appeals to biblical fundamentalism stop there. For if the Magisterium's teaching is heretical when it comes to the capital punishment Scripture supposedly demands for murder, then what about all the other capital crimes in Scripture besides murder? Why such a consistent failure by maximalists to mention them?

For, of course, most death penalty maximalists do indeed neglect to demand that we put homosexuals, adulterers, cross-dressers, and sassy teenagers to death. You also don't hear too much about the need for America to get back to witch burning or pressing idolaters, blasphemers, or atheists to death. Yet all these crimes are likewise seen as offenses against the Ten Commandments in the Church's tradition and were, at one time, as subject to the death penalty as murder. Yet death penalty maximalists almost never go there.

The reason they don't is simple: The Church is right. Mercy is preferable to mercilessness, and our culture suffers from a major case of bad conscience that demonstrates that maximalists are haunted by this fact every day. That is why even most maximalists do not want to be really so maximal as all that.

A death penalty maximalist is consistent when he simply points out that those who regard abortion and the death penalty as morally equivalent do not know what they are talking about. Maximalists have the backing of the Catholic tradition insofar as they make that point. But, unfortunately for maximalists, they then go further and try to dissent from the Church's guidance by denouncing the bishops and John Paul as "wrong" for their minimalism, while being unable to account for the radical inconsistencies in their own maximalist position. They want to have the maximalist cake and eat it.

So they call for the death penalty as a deterrent, but not so loudly that somebody might reinstitute public guillotines and hangings with blood spurting, heads leaping from the block, and women, teenagers, and a disproportionate number of poor people kicking and struggling at the end of a rope. They labor to maintain the status quo of our present insane system that yaks about "deterrence" while keeping the whole thing private, sterile, and utterly out of the public eye. They appeal to the Good Thief's views on the acceptability of capital punishment, yet do not appeal to his views of the acceptability of crucifixion. Indeed, maximalists studiously avoid talk of stoning adulterers while denouncing, say, Iranians as barbarous for imposing such penalties. They appeal to the Bible to demand the death of (some) capital criminals, yet seem none too eager to call for the deaths of the many in our culture who would have been executed in ancient Israel.

Some might call that hypocrisy. I call it the recognition that this is not ancient Israel, and that the leaven of mercy in the Church leavens culture as well. I also call it a sort of residual prudence that seems to know, somewhere in the back of its heart or mind, that urging the power to kill undesirables into the hand of a rapidly de-Christianizing and increasingly barbarous culture is rather like a delegation of ancient Christians going to Diocletian and demanding that he do something to crack down on all those weird new religions infesting the Empire. We Christians may get a lot more than we bargained for. The death penalty is not dogmatically defined by the Church as intrinsically immoral. So what? Neither is playing in traffic. It's still a bad idea, and the Church still urges us to oppose it. I, for one, agree.

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Comments (167)



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Thank you warmly, Mark, for this clear discussion of the various points of view. It puts things in perspective and has helped

me to understand the arguments from both sides and where they are coming from. Now I can return in peace to my Canadian and Catholic way of thinking about this matter and turn my attention to other subjects of discussion.

Marthe Lépine , January 18, 2011



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The two camps are not the death penalty maximalist and the death penalty minimalist. Rather, they are the death penalty maximalist and the death penalty abolitionist, which dishonestly tries to assert that that "very rare, if not practically nonexistent" provision means "never permissible." But the abolitionist is as wrong as the maximalist.

While it is true that 99.99 percent of the time, life in prison will be sufficient, sadly, there are occasions where locking an offender in a maximum security prison is not enough to ensure the public safety. Such prisoners have, in fact, injured, maimed, and killed fellow prisoners and guards notwithstanding what should be airtight security. And then there is the possibility of them, maybe not directly killing themselves while in prison, but arranging for someone else to kill, as in the case of a mob boss.

For example, would Saddam Hussein have remained an on-going threat to public safety in Iraq had he not been executed? Maybe. Maybe not. Or maybe it wasn't worth the risk to find out.

Should we capture Osama bin Laden alive, would he remain a danger if we were to lock him in a prison for the rest of his life, would he continue to wage war against the United States from inside his prison cell? Or would he pose more of a danger to execute him?

The minimalist approach is the right approach, and the one most consistent with Church teaching. But too many people are not minimalists -- they are either maximalists or abolitionists.

Bender , January 18, 2011



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I think that Bender is asking the right questions and agree with his approach.

What appears to be at the heart of the tradition is that the civil magistrate is bound and entitled to protect the public against unjust aggressors, by necessary and proportionate means. What those are, is a matter of prudential judgment and depends on the resources available to him.

I can well see how the death penalty may be necessary and justified to forestall or repress a Coup d'état or widespread popular insurrection; to maintain discipline in an army in the field; to keep order in a beleaguered city. I have difficulty in seeing how it can be justified, in the case of an offender, who can be safely confined in prison for years, whilst his fate is being decided.

To hold that moral principles (the duty of rulers) are absolute does absolve us from the responsibility of using prudence to determine their application in particular cases.

Michael PS , January 18, 2011



Death Penalty

I fail to see how the paragraph from the Catechism is really any sort of development. To be a development, it would have to deal with the other reasons (not just protection of society) the Church has allowed capital punishment, such as restoration of the moral order, retributive justice, and a chance for the criminal to expiate his sins. This has nothing to do with wanting the maximum number of people executed or the manner in which they are executed. Rather, one aspect seems to be a one-sided understanding of mercy, as if the only way to show a murderer mercy is to not execute him.

God's mercy is not in conflict with His justice. If a criminal has murdered deliberately, it certainly can be a mercy to set an execution date to let him know he will die on that day and that he ought to prepare himself to meet his Maker. Knowing the day of your death is actually a good thing. Further, if he accepts his penalty, as the thief on the cross did, it is an opportunity for him to expiate his sins. Further, the death penalty does restore the moral order rent asunder by the offender, and can bring closure and justice to the victim's family as well as to society.

Brennan , January 18, 2011



Death to Red Beard Heretics!

What do you mean "Thomas isn't infallible"! Someone gather the kindling while I prep the stake!

Seriously, great article. When I work with pro-life groups I always ask about their anti-death penalty activities. Usually, their focus is on anti-abortion work--naturally--but I rarely find significant resistance to adding in some work against the death penalty.

Just a little autobiography here: before I came into the Church, I was pro-choice and anti-death penalty. It was my opposition to capital punishment that eventually changed my mind about abortion. Ah, consistency! Of course, as you mention, the two are not morally equivalent. . .but recognizing that death is not a viable solution to our problems was a first step.

Where to begin?

Let's start with your dismissive comment about the "*fundamentalist readings of Genesis 9:6*" by which I assume you mean "accepting the plain meaning of the words." That's not a complicated sentence and, whatever may be true about other passages, I'm not sure how else to understand this one other than "it means what it says." This, along with Gn 9:5, are directly referenced in the Roman Catechism and have always been the basis of the Church's teaching on capital punishment.

What you have done by focusing solely on 2267 is not only to ignore everything else the Church has taught on the subject but to dismiss it all as irrelevant, but 2267 is not even consistent with other passages within that same section of the Catechism. How, for example, do you explain 2260, which quotes Gn 9:5-6, adds the helpful explanation that "blood" was a sign of life, and concludes by saying "This teaching remains necessary for all time."?

Declaring that Gn 9:6 means something other than what it says is surely necessary if you're going to oppose capital punishment, but there is no indication that the Church ever understood it as you imply, and in the Catechism of Trent she shows that she took it to mean exactly what it says.

Ender , January 18, 2011

first two Popes since 1253 AD to call the death penalty "cruel"....

The current de facto death penalty position which even contradicts ccc #2267 ...actually is the position that calls the death penalty "cruel" for the media to hear....JPII 1999/Benedict-Autumn's Kentucky intervention. This "cruel" dp position is the product of two Popes neither of whom believes that God gave in the First person imperative the violence directives that Scripture says He did give in the First person imperative. Keep in mind, on John Paul II's watch, Fr. Raymond Brown served on the Pontifical Biblical Commission and Brown likewise did not believe that Mary ever really said the Magnificat. That is why they are calling "cruel" something God repeatedly gave...even as Mark points out in Romans 13:4. Mark calls all changes by Popes...."development" by the Church. He forgets that Pope Nicholas I condemned torture and Pope Innocent IV reinstituted it and therefore....there are "developments" in the Church and there are "regressions". All change is not "development" by definition. Negative changes whether of a hard type (burning heretics) or of a soft type (hedging in the dp inordinately) are regressions not development.

As Cardinal Avery Dulles once noted, God gave about 36 death penalties in Scripture.... John Paul II from an opposite position said such death penalties were an as yet unrefined sense of the value of life...ie they really came from man not God. But then he notes that is superceded by the sermon on the mount while JPII never cites Romans 13:4...anywhere in EV.

John Paul in Evangelium Vitae...section 40:

"Of course we must recognize that in the Old Testament this sense of the value of life, though already quite marked, does not yet reach the refinement found in the Sermon on the Mount. This is apparent in some aspects of the current penal legislation, which provided for severe forms of corporal punishment and even the death penalty."

Benedict who has literally repeated John Paul II's wording "cruel" twice now (which again logically contradicts ccc #2267) also has this absolutely brand new hermeneutic regarding whether God in this case really gave the dooms of the Canaanites..

..section 42 Verbum Domini by Pope Benedict XVI:

*.. " Revelation is suited to the cultural and moral level of distant times and thus describes facts and customs, such as cheating and trickery, and acts of violence and **massacre** without explicitly denouncing the immorality of such things."*

So for Benedict's hermeneutic that perhaps he ingested from Fr. Raymond Brown of the PBC, God didn't order the massacres.....they were immoral like cheating and violence. Pardon me folks but if God did not command the massacres of the Canaanites then large swathes of the Old Testament are not inspired and should be removed from the canon by the Church.....e.g. the entire 12th chapter of Wisdom which says that God first punished the Canaanites "bit by bit that they may have space for repentance" and then when they continued to ignore God and to sacrifice their children to Baal in "cannibal feasts", then God commanded the Jews to doom them which was simultaneously to protect the Jews from their sinful culture. The Jews were later exiled by God precisely because of their continued adultery with Baal worship.

Two Popes....John Paul II and Benedict.....both call the death penalty "cruel" despite Cardinal Dulles point that God gave the dp 36 times. Both Popes have a brand new hermeneutic that deletes the first person imperative from the Bible when God orders the violent. And both Popes by the use of the word "cruel" are contradicting the more traditional idea they both affirmed in ccc # 2267.

bill bannon , January 18, 2011 | [url](#)

Regarding 2267

Regarding 2267 you stated: "*for development it is, and not John Paul's dismissible personal opinion.*" You also wrote, however: "*...the cases in which the execution of the offender is an absolute necessity are very rare, if not practically*

nonexistent" (which is a practical judgment based on things like prison safety)." I can't tell if this is your opinion or something you are attributing to "maximalists", but the claim made in the third part of 2267 is undeniably an opinion, and opinions, even of popes, are not doctrine and do not require our assent.

As for the first part of 2267, it is simply incorrect: the traditional teaching of the Church never made the use of capital punishment dependent on whether or not it was needed for protection; there is nothing to support this claim.

The second part of 2267, which is really the heart of the matter, claims that non-lethal means are *"more in conformity to the dignity of the human person."* As you pointed out, the dignity of man derives *"from the God who made him in His image and likeness."* (Apparently only the second part of Gn 9:6 is to be taken literally.) In basing the argument for non-lethal means of punishment on the dignity of the individual, however, the meaning of Gn 9:6 has been reversed. What it actually says is that the life of the murderer is forfeit because the life of the victim was sacred; the "dignity" argument turns this around to say the life of the murderer is protected because his life is sacred.

2267 is a complete muddle. Fortunately there is every reason to believe it is also prudential and not doctrine.

Ender , January 18, 2011



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I find the extent to which discussion of this subject focuses on the death penalty for murder shifts attention from the public utility of the dp to questions of personal culpability and dessert.

Many cowards and deserters might well prefer the comparative safety of the stockade to the risks of combat, especially, if they hope for a post-war amnesty. Likewise, spies and saboteurs have little to fear from imprisonment, if they expect their victorious forces to liberate them. That was why the UK passed the Treachery Act in 1940, under which enemy sympathizers were executed, without appeal or delay; something I believe that, with the threat of imminent invasion, was eminently justified.

Any application of the dp should focus, not on the past, which is beyond remedy, but on the present and the future.

Michael PS , January 18, 2011



Ender....

you are correct. JP11 reversed what God actually said in Gen.9:6. God gave the death penalty there because murder was like sacrilege in that a person, an image of God, was murdered. JP11 never mentions that in all of EV....because it would be the death knell for his theory.

bill bannon , January 18, 2011 | [url](#)



St. Thomas and the Death Penalty

" Such arguments tend to ignore the fact that St. Thomas would be horrified at being pitted against the teaching of the Church, and that Thomas is not infallible;"

But why was St. Thomas, and many other saints before and after him, wrong? Punishment was always part of the Church's sanctioning of the death penalty. To just focus exclusively on protection of society, without even addressing the punishment aspect, is intellectually dishonest.

This theory of "development by omission" is a dangerous one. Progressive Catholics love the idea of dispensing with Church teachings without having to justify their new and improved teachings.

Brian English , January 18, 2011



Thanks Mark, Bender, and Michael

I'm a dyed-in-the-wool conservative -- Catholically and politically. I've been on the other side from Mark on a number of topics including so-called torture. Here, however, I feel Mark has done a great job of both framing the dp discussion, and staking out his "minimalist" position. Quite a few years ago I strode into the anti-dp camp and put up my tent. I knew in my heart of hearts that if, God forbid, someone I loved were heinously murdered I might be incapable of remaining in the tent. But hard cases can make bad law.

Unfortunately for my complacency, both Bender and Michael PS pose legitimate challenges to my smug position. A live, imprisoned Saddam as a rallying point for his followers? Could well be. Deserters, spies and saboteurs? We might need a more muscular form of deterrence than the stockade.

I'm not yet ready to decamp from the antis, but appreciate the kicks to my system. As for the theological and philosophical posts contra Mark, they just don't seem to hold much water. Mark's article largely anticipated the objections, and the subsequent posts seem to me to be trying to win by shouting louder and with highbrow sarcasm. Not convincing at all.

Mark, I sometimes feel that you contort yourself to be able to claim some imagined middle ground -- neither Rep nor Dem, con nor lib, etc. -- in this piece, however, you nicely take a stand in the clear light of the opposing arguments. Or, perhaps I only feel that because I largely agree...

Tradition

What was the traditional teaching of the Church on this topic? Prior to at least 1969 the Church had never objected to it in principle or conditioned its use on anything other than reasonableness: *"Concerning secular power we declare that without mortal sin it is possible to exercise a judgment of blood as long as one proceeds to bring punishment not in hatred but in judgment, not incautiously but advisedly"* (Innocent III, 1210)

The traditional understanding goes back at least to Innocent I in 405 who wrote in answer to this specific question: *"Why should we condemn a practice that all hold to be permitted by God? We uphold, therefore, what has been observed until now, in order not to alter the discipline and so that we may not appear to act contrary to God's authority."*

This position was accepted unchallenged in the catechisms of Baltimore, Pius X, Trent, and St. Thomas. It was directly addressed without change by a half dozen popes and of course *"the Fathers and Doctors of the Church are virtually unanimous in their support for capital punishment."* (Cdl Dulles)

You appear to have dismissed all of this by stating it is just *"sundry theological authorities pre-dating the development of the Tradition."* I am confused. If by *"pre-dating the development of the Tradition"* you mean everything the Church had ever said on the subject prior to the publication of Evangelium Vitae in 1995 then I would agree with you. It's where you imply *"the Tradition"* that started fifteen years ago is what matters and the first 1995 years of traditional teaching are therefore irrelevant that we disagree.

Ender, January 18, 2011






The objectives of punishment

Michael PS wrote: *"Any application of the dp should focus, not on the past, which is beyond remedy, but on the present and the future."* This is not what the Church teaches, although based on 2267 it is understandable why someone would believe this.

"The purposes of criminal punishment are rather unanimously delineated in the Catholic tradition. Punishment is held to have a variety of ends that may conveniently be reduced to the following four: rehabilitation, defense against the criminal, deterrence, and retribution." (Cdl Dulles)

Of these four, three look to the future and one to the past: which is most important? The Church teaches that retribution is the primary objective of punishment: *"The primary scope of the penalty is to redress the disorder caused by the offense."* (CCC 2266) That is, it is precisely the repair of the disorder of the past that punishment must seek to accomplish, and the only way this can be done is by retributive justice, which obliges the State *"to inflict penalties commensurate with the gravity of the crime."* (CCC 2266)

By focusing solely on the protection of society 2267 focuses on a secondary objective of punishment while ignoring its primary purpose, leading to confusion about the very nature of punishment itself.

Ender, January 18, 2011






...

Bill Bannon wrote:

"As Cardinal Avery Dulles once noted, God gave about 36 death penalties in Scripture"

Yes indeed. And its a free ice cream Sunday for the first person who can articulate what differences (if any) there are between the authority of Almighty God and the authority of a random circuit court judge in Texas.

sd, January 18, 2011






sd.....

Have you read Romans 13:4 at all wherein God gives the executioner role to precisely the state....and did so during the Roman Empire which was non Christian and which had life sentences in the damnata ad metallum....alternate bloodless means?

bill bannon, January 18, 2011 | [url](#)





ps

that Latin means damned to the mine.....they worked for life sentences in the mines.

bill bannon, January 18, 2011 | [url](#)





36 times

36 times in what, 3,000 years? I dare say our rates are a little higher.

My understanding in Texas is that only a jury (not a circuit/trial court judge, appellate justice or Court of Criminal Appeals justice) can impose the death penalty. In fact, a judge can only overturn a jury's imposition of it, he cannot overturn a jury's not imposing it.

c matt , January 18, 2011



c matt

The 36 times is the number of individual death penalty laws given by God.....not executions. The papal territories for the 1st half of the 19th century had over 500 executions (see wiki for papal executioner, Buggati). Texas in that same time frame had less.

bill bannon , January 18, 2011 | [url](#)



...

During 2008, there were 16,442 murders in the U.S. and 37 who were executed. Now, if we take into account that some of the murderers actually killed more than one person, it would probably be safe to assume that there were at least 10,000 individual murderers during that year. If "minimalist" can not be defined as accepting that fewer than 1/2 of 1% of murderers finding their way to the business end of a lethal injection, how should "minimalist" be defined? The only answer is abolitionist -- as Bender suggested.

For those who contemplate why so many pro-lifers don't spend more time focusing on the 37 guilty rapists and murderers, and less time on the more than 3700 innocent babies murdered every day -- that would be because we didn't fail math, ehthics and logic.

Mark , January 18, 2011



Fundamentalist readings of Scripture

When I speak of Fundamentalist readings of Genesis 9:6, I mean the kneejerk assumption that, when the Church's reading of a text differs from one's own, why then the Bible obviously means what *I* take it to mean and the Magisterium is wrong. Bill Bannon, for instance, indulges in this when he declares, pronounces and defines that "JP11 reversed what God actually said in Gen.9:6."

In fact, of course, the Pope did nothing of the kind. What Bill assumes is that Genesis 9:6 is a command. What JP11 understands is that Genesis 9:6 is a permission, a concession to human weakness, just as the Moses' "command" permitting divorce was not a benediction on divorce but a concession due to our hardness of heart. "From the beginning it was not so." That is why the murderers Cain and Lamech are not subjected to death not matter how much combox theorists lecture God on how wrong he was to neglect his duty to Justice.

Fundamentalist scriptural interpretation does not mean "accepting the plain sense of Scripture". It means "spitting on the Magisterium's understanding of Scripture and exalting one's own 'plain reading' despite the Church's warning that you don't know what you are talking about". The breezy way in which several commenters here dismiss two Popes as heretics and modernists (not to mention the overwhelming majority of the world's bishops) as they develop the Church's teaching makes it clear that contempt for the Magisterium is not found just on the Left side of the Cafeteria. One can argue that there are prudential reasons not to abolish the death penalty. Maybe prisons aren't as safe as the bishops suppose, etc. But when you move from there to arguing that the popes are heretics and perverts of the Tradition (which is what claims like "The Pope reverses the teaching of Holy Scripture" mean), then there's a word for that: "Protestant".

Been there. Don't that. I prefer to remain Catholic.

Mark Shea , January 18, 2011



Huh?

For those who contemplate why so many pro-lifers don't spend more time focusing on the 37 guilty rapists and murderers, and less time on the more than 3700 innocent babies murdered every day -- that would be because we didn't fail math, ehthics and logic.

Since you didn't fail logic, surely you know that this is a red herring fallacy -- throwing out an irrelevant point in the hope that the argument will steer there instead of the actual subject.

Surely the death penalty isn't given the same consideration by many pro-lifers, and priorities may steer attention towards abortion more often. We're not talking about "not attacking the established death penalty," though. We're talking about *actively defending its maximum possible use*, as many conservatives do.

Andy , January 18, 2011



Just Punishment

So in other words, Mark, you completely ignore the just reasons that others have brought up here for the Death Penalty, and only focus on public safety?

Once again you have succeeded in painting Catholics who are legitimately confused by the development of the Church's

treatment of this subject as "Protestants." Congratulations, you have once again used your famous "reductio ad Traditionalist".

Marc , January 18, 2011



Gen 9:6 and Matthew 26:52

If we take Genesis 9:6 to be an authoritative order to put murderers to death, why don't we take Matthew 26:52 as a similar command to execute armed combatants?

Both of these passages seem to me to be more of a warning: if you spill man's blood, you're likely going to be put to death; if you live by the sword, it stands to reason that you're going to die by it; and so forth.

I'm a death penalty minimalist, too--most of the time I think justice is satisfied by a life sentence, provided it really means a life in prison and not a couple of decades, and further provided that the inmate isn't killing his fellow prisoners, who also deserve to be protected. So while I might not be willing to work actively for the total abolition of the death penalty, I think it's used too indiscriminately to be just at present, and would have no problem with more legal restrictions as to when it can even be considered.

The death penalty, **not** being intrinsically evil, should be safe, legal, and rare to the point of virtual nonexistence. Keep it on the books in case an evil homicidal genius thwarts all attempts to keep him safely incarcerated and actively threatens his fellow prisoners with murder, if we must, but don't fall into the trap of thinking of the act of putting someone to death as something innocuous, or worse, worthy of celebration.

Erin Manning , January 18, 2011 | [url](#)



I wish people *would* express confusion

"Once again you have succeeded in painting Catholics who are legitimately confused by the development of the Church's treatment of this subject as "Protestants.""

No. I have said that Catholics who deliver themselves of cocksure dogmatic statements that the Magisterium is heretical are Protestants. Bill Bannon's dogmatic statement that JP II "reverses" the teaching of inspired Scripture is not an expression of confusion. It is an expression of cocksure certitude that he is right and the Magisterium is heretical. I wish people who are confused *would* express confusion. You know: "Lead kindly light" or "I believe. Help my unbelief". That would be humble. But simply sweeping away the teaching of the Magisterium with flat declarations of "The Church is wrong and I am right" is arrogant, not a humble expression of confusion.

Mark Shea , January 18, 2011



By the way...

I said nothing in this piece about "Traditionalists" for a very good reason: contempt for the Church's teaching on this point is not confined to Traditionalists but is also popular with neoconservatives who attend the Paul VI rite.

Mark Shea , January 18, 2011



Fundamentalist? Not exactly

Your assertion that JP II interpreted Gn 9:6 as permission to employ capital punishment is not supported by any evidence, and given that the passage is in fact written as a command and not a suggestion, such an interpretation is pretty weak. To further suggest that this permission is merely a concession given because of our "hardness of heart" trivializes the reason God himself provided: *"Because man is made in the image of God."*

As far as the charge that by disagreeing with 2267 we are therefore "spitting on the Magisterium's understanding of scripture", this is a bit extreme as well. 2267 is almost surely prudential, which is relevant given that: *"...prudential judgment, while it is to be respected, is not a matter of binding Catholic doctrine. To differ from such a judgment, therefore, is not to dissent from Church teaching"* (Dulles).

Cardinal Dulles also explained his understanding of 2267: *"The Pope and the bishops, using their prudential judgment, have concluded that in contemporary society, at least in countries like our own, the death penalty ought not to be invoked, because, on balance, it does more harm than good."* Agreeing with Cardinal Dulles ought to be considered a bit more respectable than "spitting on the Magisterium's understanding."

Ender , January 18, 2011



Reply to Gn 9:6 and Mt 26:52

The question was asked: *"If we take Genesis 9:6 to be an authoritative order to put murderers to death, why don't we take Matthew 26:52 as a similar command to execute armed combatants?"* and I think the answer is fairly simple: that is how the Church understands the passage in Genesis and not how she understands that passage in Matthew. It is the Church herself who references Gn 9:6, but I am unaware of any reference to Mt 26:52 in this context. It is not that I or any other individual has singled out a particular passage to support our position: this is the passage the Church uses.

If the Pope were to deny that the death penalty could be an exercise of retributive justice, he would be overthrowing the tradition of two millennia of Catholic thought, denying the teaching of several previous popes, and contradicting the teaching

Ender, January 18, 2011



Mark...Cain was protected from being killed by family...there was no king until

Nimrod ..."the first potentate" in Gen. 10:8 when and only when there could be the government stewardship of execution given in Gen. 9:6...even if those governments watched over a personal avenger and denoted cities he could not kill in. John Paul conflated the family period with the nation period....not a heresy....a mistake.

I never used the word heretic....you did....there can be no heresy unless a topic is clearly infallibly settled which hermeneutics is not (positions on that topic are not clearly infallible so as to satisfy canon 749-3) and there cannot be heresy as Aquinas and Augustine held until there is fraternal correction by Rome as a first stage which is how Rome deals with all such cases.

Material error as Karl Rahner noted in an essay is something different and widespread but is not the same thing as heresy if an area is undefined. Hence Trent's catechism posited delayed ensoulement in the section on the Incarnation....an area that is still not of Divine and Catholic Faith...needed for real heresy.

But you yourself know that Popes have had material error. Most Popes from 1253 til 1816 affirmed torture and John Paul II condemned it...either he or they are wrong. Cultural context is irrelevant since John Paul said it was intrinsically evil. If this were 1520 AD right after Exsurge Domine, the Pope and virtually the entire Church held against Luther that heretics could be burned at the stake. If you as a Catholic writer at that time publically talked then as you talk now, you would be the unfortunate subject of an involuntary barbeque. Unless Mark....you are so Magisterium oriented that you would have believed in torture then because they said so.....and had God given you Methusaleh's life span, you later agreed with the Pope in 1816 who stopped it....and then later still under John Paul II with your expanded lifetime, you become a firebrand against the thing you affirmed in 1520. Is that being "faithful" to the Magisterium or is it self preservation?

On to your apples and oranges: divorce was permitted in the Old Testament to non baptized people then overturned by Christ in the New Testament....in Petrine cases, the OT permission perdures for the unbaptized party whose consent must be obtained.

death penalty commanded and later affirmed both in the Old Testament and the New....see the difference? Never overturned....reaffirmed in Rom.13:4 as you pointed out.

On image of God use by JP II, read entirely EV sections 39,40,53.

bill bannon, January 18, 2011 | [url](#)



Retributive Justice

"Keep it on the books in case an evil homicidal genius thwarts all attempts to keep him safely incarcerated and actively threatens his fellow prisoners with murder, if we must, but don't fall into the trap of thinking of the act of putting someone to death as something innocuous, or worse, worthy of celebration."

But this approach ignores the retributive justice aspect of the death penalty that Ender cites Cardinal Dulles for above.

In addition to the situation you describe, where society is still in danger, I think the death penalty can be imposed in especially heinous crimes in which there is not a scintilla of doubt about the defendant's guilt.

If you are going to abolish the use of the death penalty for the purposes of punishment, I think there has to be some explanation of why the Church and some of its greatest thinkers were wrong for 2,000 years.

Brian English, January 18, 2011



Gen 9:6 is not an order but a concession to human weakness

The question was asked: "If we take Genesis 9:6 to be an authoritative order to put murderers to death, why don't we take Matthew 26:52 as a similar command to execute armed combatants?" and I think the answer is fairly simple: that is how the Church understands the passage in Genesis and not how she understands that passage in Matthew.

Um. The reason we are having this little chat at all is because the Church does *not* understand Gen 9:6 to be an *order* to put murderers to death, but a *concession* that they may be put to death if absolutely necessary. Bender, Ender, Bill Bannon and even Cardinal Dulles (who would *never*, unlike some voice in cyberspace, have called the Magisterium heretical) are not "the Church" but private individuals. If we want to discover that the Church has to say, we should apply to the Magisterium and its teaching instrument, the Catechism. It says not that we are ordered by God to execute every murderer we can get our hands on, but "If, however, nonlethal 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 are more in conformity to the dignity of the human person."

So it is false to say that "the Church" calls Genesis 9:6 an "order" to execute murderers. That is what some dissenting sectarians within the Catholic communion say in order to characterize the Church's teaching as heretical and exalt their private opinion as the Will of God.

Mark Shea , January 18, 2011



A Request for Clarification

Dear Mr. Shea,

I read this piece with interest. I'm afraid, however, that on at least one point I am unable to establish that your position maintains coherence. My difficulty arises from the following two statements:

"God's mercy does not always inflict, even on the richly deserving capital criminal, the punishment he or she deserves"

"This development of magisterial teaching seen in the Catechism above (for development it is, and not John Paul's dismissible personal opinion) means that, on the spectrum of possible applications of the death penalty, the Church's basic posture is that the onus is on Caesar to show that execution is necessary, not on the human person to show why his dignity makes him worthy of not being killed. The point is that the dignity of the human person derives not from his works, whether good or ill, but from the God who made him in His image and likeness. "

The first statement seems to imply that a capital criminal can deserve capital punishment. The second passage quoted, however, says that a person's dignity is not dependent upon what someone does and can never be lost. If dignity cannot be lost because of works done, then how can the works of a capital criminal ever make him deserving of capital punishment? One might respond that the defense of society must be considered. Yet, we do not consider it just to counter aggression with whatever means will end the aggression- that is to say, the mean utilized for defense must be fitting for the resolution of the evil encountered.

I do not intend this post as a sort of "gotcha" comment. I have been in many debates about the death penalty, and I am eager to see some resolution to the problems that have been raised in them.

Best regards,
A Nomad

A Nomad , January 18, 2011



Two Popes calling the death penalty " cruel" equals Church....

when from 1253 til Pius XII, Popes used or affirmed it. Here is Pius XII in 1952:

Pope Pius XII, Sept. 14, 1952: "When it is a question of the execution of a man condemned to death it is then reserved to the public power to deprive the condemned of the benefit of life, in expiation of his fault, when already, by his fault, he has dispossessed himself of the right to live."

Pius had modern penology. In fact he probably had less murders by lifers than we now do.

bill bannon , January 18, 2011 | [url](#)



...

"They labor to maintain the status quo of our present insane system that yaks about "deterrence" while keeping the whole thing private, sterile, and utterly out of the public eye."

Sounds just like those who say abortion should be "safe, legal, and rare". Excellent article.

My one caveat: What do we do with criminals who continue to murder behind bars? I contend that right now there is no crime that merits the death penalty, but if one continues to murder behind bars (even if the original crime was not murder), maybe the society should be able to execute this person as well. After all prisoners ideally return into society, murdering one deprives society of someone who has done there time. A murder could also kill a guard, someone who even more truly represents the average citizen, and killing them directly harms society.

Your thoughts?

Maxime , January 18, 2011



not only that

Maxine, the NY Times some years ago noted that prison ordered murders out on the streets of California numbered in the hundreds for a ten year period largely by gangs within prison. John Paul II no where seems aware if such things because some Euro prisons are nothing like the Americas. There was a Serb prison on public TV wherein prisoners were allowed knives for eating to be kept in their rooms because Serbs are one nationality and in prison act more like family. Great and yet impossible in the US.

bill bannon , January 18, 2011 | [url](#)



...

Does it really matter? Ted Kennedy voted pro-choice for decades and was given a grand catholic funeral by Cardinal Sean O'malley.

I don't think the church is really serious about life issues any longer.

Roland Menhker , January 18, 2011



...

Very good article! Loved it.

I'll say right upfront that I am both pro-life and anti-death penalty and, besides the very good reasons mentioned by Mark above, I have one more and it has to do with the soul of the person in prison: it looks to me that what God wants is our conversion, he wants us to know him and love him and a life sentence opens the door to that conversion much more than a lethal injection.

The conversion of one soul - especially a sinner - will bring much rejoicing into heaven.

Plus, let's be practical too, a true repentant Christian who is serving his life sentence within the walls of the prison will do much good to all around him. So really, it's a win-win situation!

That's my 2 cents.

Michele Szekely , January 18, 2011 | [url](#)



I'm with ya, Mark, except...

where you wrote:

And in the First World, including here in the United States, that means that the practical result is that Catholics should work for the abolition of the death penalty.

I don't see how that follows from the requirement that we use the death penalty sparingly. There are in fact cases even in very modern times in which society cannot be kept safe by nonlethal means. Prisoners who murder in prison are not a terribly rare breed; haven't prisoners a right to live free of harm? I for one have other duties and responsibilities to carry out, causes to promote, and precious few tears to shed for serial killers. That said, I'd like to share a few observations about the nuttiness of the "death penalty maximalist" position (and oh, does it exist!):

(1) The death penalty is an excellent agent of self-righteousness; I mean, we never want the death penalty imposed for sins and crimes that we ourselves commit. There was a time, after all (and I mean in modern history), in which what we would call petty (or grand, if it matters) thefts were rewarded with hanging - I mean even as recently as Victorian England or the post-Civil War U.S.

(2) Until JP II, the Church never batted an eye at the death penalty, but she never viewed it as an unqualified good. It has been always a sometimes necessary remedy. That was all fine while governments were basically Christian (or, well, let's settle for sane and human). But now as we move into an era in which governments are increasingly anti-Christian, insane, and inhuman, we face a new dilemma. One could argue that hanging for a loaf of bread is a bit much, but at least it was punishing a real crime. Since the advent of the modern period - and especially in the last 70 years as modernism and its promises crumble into postmodern nihilism, we have increasingly seen governments punish goodness. The Hitlerian, Stalist, and Maoist regimes provide obvious examples, but so shall soon our own country if once doctors are required to perform abortions and priests to perform gay marriages. In such days will we want to have trained and coaxed Caesar into the art of hangings and firing squads again? Or will we perhaps be grateful that we disarmed him in this way? Remember that our late Holy Father, John Paul II of blessed memory, endured first the Hitlerian regime and then the Stalinist. We can all imagine the death penalty used abusively against the guilty; he lived through days in which it was used vindictively against the innocent. We should be careful in advocating such things. While I commented above that I have better things to do then defend the causes of Timothy McVeigh and Ted Bundy, I will not gloat over their deaths, nor call for more of the same.

As a last word, I believe that the cost to provide a livelihood for prisoners should be mitigated through the simplification of their living conditions and their own hard labor. While in seminary I had a weekly field education in a maximum security penitentiary, where funny as it sounds, I met many fine violent criminals in the choir, catechism classes, and RCIA. The degree of their conversion could be marked by their acceptance of responsibility for their crimes, their willingness to make amends, and their eagerness to learn useful skills and to work. Others were serving out life sentences while insisting they only deserved ten or twenty years but that their lawyer was incompetent and they were innocent anyway. Penitentiaries should not be to "re-educate" but to give occasion for penance. (Coincidentally, I wouldn't be caught dead living in the place where I worked. They did not, suffice it to say, have cable TV, air conditioning, or conjugal visits. And work they did.)

Random rant concluded. Back to work.

Ryan Haber , January 18, 2011 | [url](#)



Michele....

and if a lifer joins a gang for self protection in prison and is ordered to do stabbings in prison....or commits solitary lust sins for decades? In short conversion may happen or deeper sin may happen. That area then is two sided in the possibilities. The good thief actually converted perfectly under a death penalty. If any of us knew the exact hour of our death, boy would we be motivated for the confession of our lives.

bill bannon , January 18, 2011 | [url](#)



What the Church has to say

"If we want to discover that the Church has to say, we should apply to the Magisterium and its teaching instrument, the Catechism."

Which catechism? The 1997 version does not agree with the catechisms of Baltimore, Pius X, Trent, or St. Thomas, nor does it agree with what was said by all the popes (who spoke on this issue) prior to at least John XXXIII. It is not supported by anything the Doctors or Fathers of the Church have written, and as I pointed out before, it doesn't even agree with itself. How does it make more sense to accept 2267 and ignore everything else than to accept everything else and to understand 2267 as a prudential recommendation rather than as the repudiation of a 2000 year tradition?

Ender , January 18, 2011



Ender.....from 1992 til 1997, the catechism only said this....

The 1992 catechism said, "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."

Then a five year "development" abrupted and the catechism was changed for multiple reasons.....or a regression in this one area more likely.....which regressions happened even according to Newman in the 4th century.

bill bannon , January 18, 2011 | [url](#)



Bill ...

You're right; I should have added the 1992 version to the list of catechisms that weren't in agreement with the current position. It is pertinent to point out that not only did the 1992 version acknowledge the right and duty of States to inflict punishment "not excluding" the death penalty, but that such a right was "well-founded."

Just so. That's the point I've been making: the traditional teaching of the Church recognized the validity of such punishment - and its validity was not based on protection.

Ender , January 18, 2011



Echoing Ryan Haber...

Like Ryan, I also don't see how abolition of the dp is either practical or prudent. I liken it to a golfer saying "throw away my wedge, I never hit into the sandtraps."

Justin , January 18, 2011



Newman on development....

Section 1. First Note of a Genuine Development—Preservation of Type

This is readily suggested by the analogy of physical growth, which is such that the parts and proportions of the developed form, however altered, correspond to those which belong to its rudiments. The adult animal has the {172} same make, as it had on its birth; young birds do not grow into fishes, nor does the child degenerate into the brute, wild or domestic, of which he is by inheritance lord. Vincentius of Lerins adopts this illustration in distinct reference to Christian doctrine. "Let the soul's religion," he says, "imitate the law of the body, which, as years go on, developes indeed and opens out its due proportions, and yet remains identically what it was. Small are a baby's limbs, a youth's are larger, yet they are the same." [Note 1]

For two Popes to call the death penalty "cruel" of course does not qualify as a development under that standard since it is a refutation and complete change of something that is affirmed in early Genesis as the nations were being created....which something, the death penalty as a good, cannot change into into its opposite....."cruel".

bill bannon , January 18, 2011 | [url](#)



Hi Andy

"Since you didn't fail logic, surely you know that this is a red herring fallacy -- throwing out an irrelevant point in the hope that the argument will steer there instead of the actual subject." - Andy

Andy, I was responding to a comment made earlier in this thread (and anticipating those that inevitably pop up during this discussion) but I did not mention the person by name, just as you did not mention me by name. Sorry if that was confusing, but not a red herring.

Just curious, do you agree with me that seeing fewer than 1/2 of 1% of murderers being executed rises to the definition of "minimalist" and those who continue to obsess on the issue are merely using it as a political football?

I would also like to point out that when we throw a human being in a cage like an animal until his heart stops beating, we are in fact "taking" a life -- we just aren't ending it. Sometimes the self-righteous stylings of those who rail against the death penalty seem to lose sight of this and the fact that prison itself is a form of torture. The essence of being human is to possess and exercise our free will which is a gift from God. To forcibly remove a man's free will is to injure his dignity.

Mark , January 18, 2011



How did I . . .

How did I get lumped in with the pro-death guys?

And while we are at it, for all of those who argue so vociferously in favor of the death "penalty," and capital "punishment," do not confuse the criminal's wrongful conduct as somehow giving us license. The morality of the matter is not a one-way street -- one must consider both sides of the death transaction.

Even if, as some would say, a murderer has forfeited his right to life, that does not necessarily give us a right to kill. Even if justice requires that a murderer die, that does not mean that it is just for us to make him die.

Bender , January 18, 2011



How about a 'death penalty more-often-than-not'-ist?

Here I confess to being a protestant. So, I guess I'm outside windows to begin with, which, due to accidents of birth and difficulties with obedience, makes me less than the target audience here.

However, if I may; I believe that mercy only stands out against a background of justice. Further, I believe the scriptures, when they say that this and that person 'take their [own] blood' - that is, they have not only forfeited their lives by acts of murder, rape, adultery, etc, but they have taken their own lives. The state is merely empowered to incarnate the death that is the wages of sin. The Jewish state was under special instructions in this regard, later states have been granted a degree of discretion for various reasons.

Mercy is definitely part of this picture. In some cases, mercy, unearned, unjustified, can be poured out - but with the acknowledgement that someone is taking the pain and suffering for this. Even God couldn't just 'waive' the punishment. When crimes go unpunished - or insufficiently punished - the ground, the land, itself cries out for justice, for blood (so it says in the prophets, over and over).

There are consequences for the community. Justice demands payment. Mercy has a price. To force it on innocents is fundamentally unjust; for people to take it on themselves can be loving.

I appreciate the Roman Church's attempts to encourage caring and love through its teachings about justice and mercy; I also wish that capital punishment were rare. And that imprisonment, also horrible, were rare. And that fines were rare. And war. And every crime and sin and violent act and disgusting act that leads properly to war, fines, imprisonment and capital punishment.

But this will only occur when lions and lambs lie down together. I am not a 'maximalist.' I mourn for what needs to be done, and am dismayed that it fails to be done.

BenK , January 18, 2011



correct as usual, however....

"Jesus Himself, presented with an open-and-shut case of capital guilt under the law of Moses -- a woman taken in the very act of adultery -- did not inflict the death penalty when, according to legal rigorism, He should have."

swing and a miss. Jesus, being the only brother of ours to ever keep the law perfectly, would indeed have blessed her being stoned to death, had her situation actually met the criteria in the torah. ie; two accusers, present to testify against her. He did not say "hey don't worry about getting caught, I have you covered". He said "where are your accusers?" as in; one cannot under the law be put to death for adultery without two accusers.

luckily, as usual, your article stands firm without this piece and is not affected in the least by the error.

God bless and keep it coming.

tim , January 18, 2011



...

If only torture and capital punishment were the hard issues of both the Catholic and the secular culture at large. In fact, these two issues really for the most part, because they are demagogued, provide cover for the left.

Carl , January 18, 2011



Mark...Gen.9:6 is an order...that's why God gives a reason..

man is made in his image. God gives no nice reason when allowing divorce.

bill bannon , January 18, 2011 | [url](#)



Just wondering...

What about the fact that blacks account for 42% of death row inmates but only 13.5% of the US population? Why is that? What might it mean?

I'm not Obama , January 18, 2011



...

Tim -- do you really believe that fundamental moral precepts hinge on such technicalities?

Everyone else -- do you really believe that the same God who stands ready to say "I forgive you" to a murderer and welcome him into eternal life is saying to the rest of us "kill him!"? Does that not seem rather incongruous?

And if you happen to see some guys from death row walking around in heaven when you get to its gates, will you refuse to go in?

God delights not in death. He desires death for no one. That is what that whole Cross thing was about, in case you missed it. It is only to *save* life, that one might licitly engage in deadly force. That is fundamental Catholic teaching, as confirmed by the authority of the Magisterium. You are, of course, free to reject it.

Bender , January 19, 2011



The right to execute

"Even if, as some would say, a murderer has forfeited his right to life, that does not necessarily give us a right to kill. Even if justice requires that a murderer die, that does not mean that it is just for us to make him die." (Bender)

It is surely not left to the individual to execute anyone but the Church has always taught that the State has been granted this authority. *"It must be remembered that power was granted by God [to the magistrates], and to avenge crime by the sword was permitted. He who carries out this vengeance is God's minister (Rm 13:1-4)."* (Innocent I) The teaching that the State has the authority to administer capital punishment is recognized even today. That much at least has not changed.

Beyond this, the idea that *"if justice requires that a murderer die that does not mean that it is just for us to make him die"* seems a bit odd. One may argue that justice never requires capital punishment, but once it is accepted that justice does in fact demand such a punishment then how could it be anything other than just to carry out a sentence that has been acknowledged as just? In fact, if justice actually required such a sentence then it would be unjust not to employ it.

In any event, this ought to be the focus of the debate: not whether or not executions are required by the need for safety but whether they are needed to satisfy the demands of justice.

Ender , January 19, 2011



...

Who is "the state"?

You agree that it would be morally wrong for an individual to execute someone. Perhaps you would even agree that it would be morally wrong for a group of individuals to execute someone.

But if that same group of individuals takes a vote and takes an organized form, suddenly they are possessed with the power to kill? Suddenly, because they are now "the state," they get to do what they could not do without such electoral formality?

That sounds like the state is merely a lynch mob by another name.

Bender , January 19, 2011



Jesus would have blessed the woman being stoned to death?

Oh dear Tim, I don't think so. Think you might have misread that story.

It is Jesus' mercy and his unveiling of the hypocrisy of her accusers that saves the woman - not the legal niceties of the Torah.

Jesus only asks where her accusers have gone after they have all left. Not when they show up demanding he pronounce judgment. By your interpretation, his actions are not ones of mercy and wisdom, but just some clever way of getting around the rules.

You are indeed right, he didn't say "hey don't worry about getting caught, I have you covered". But I just can't see how you could jump from that to the idea he would have blessed her being stoned.

What he does say is "Neither do I condemn you. Go and sin no more". Jesus doesn't condemn, he shows his boundless mercy. But in that mercy he doesn't approve of her sins, instead he calls the woman to good.

And to link back to the topic at hand - I am very much a death penalty minimalist, partly as I do believe that giving Jesus' mercy the chance to change a hardened heart can literally take a lifetime, perhaps a lifetime spent in prison. And ultimately that is what God wants - to save us, not to condemn us.

Meg , January 19, 2011



What do we do ...

with criminals who continue to murder behind bars?

Execute them. Or make prisons more secure.

Mark Shea , January 19, 2011



@Nomad

The first statement seems to imply that a capital criminal can deserve capital punishment. The second passage quoted, however, says that a person's dignity is not dependent upon what someone does and can never be lost. If dignity cannot be lost because of works done, then how can the works of a capital criminal ever make him deserving of capital punishment? One might respond that the defense of society must be considered. Yet, we do not consider it just to counter aggression with whatever means will end the aggression- that is to say, the mean utilized for defense must be fitting for the resolution of the evil encountered.

I'm afraid I'm not clear what the difficulty is. It seems to me that the Church's development of doctrine here has to do with a deeper appreciation of the dignity of the human person, even when that person has committed an act of grave evil. The impetus of the Church is to push as hard as possible to avoid executing the human person if it can possibly be avoided. The Church recognizes that there can still be situations where protection of other human life may necessitate killing the offender. But the Church appears to regard the retributive aspect of the death penalty as an insufficient reason to kill the offender if other forms of retribution can be found. The idea is to be a merciful as practically possible rather than to say, "We need to sacrifice human life to an abstract ideal of Justice." In short, it appear that the Church regards the law as made for man, not man for the law.

I hope that helps. I'm not quite sure what you are getting at. (And don't worry, I didn't think you were playing Gotcha. Just asking a reasonable (albeit unclear to me) question.

Mark Shea , January 19, 2011



...

Bender asks why the state can execute individuals, but private citizens cannot.

"Outside of civil society, let an inveterate enemy attempt to take my life, or, twenty times repulsed, let him again return to devastate the field my hands have cultivated. Inasmuch as I can only oppose my individual strength to his, I must perish or I must kill him, and the law of natural defence justifies and approves me. But in society, when the strength of all is armed against one single individual, what principle of justice can authorize it to put him to death? What necessity can there be to absolve it? A conqueror who causes the death of his captive enemies is called a barbarian! A man who causes a child that he can disarm and punish, to be strangled, appears to us a monster! A prisoner that society convicts is at the utmost to that society but a vanquished, powerless, and harmless enemy. He is before it weaker than a child before a full-grown man."

From an address tot he Constituant Assembly, during the French Revolution by - Maximillian Robespierre!

Michael PS , January 19, 2011



A few thoughts

In the comments above, and elsewhere in Catholic discussions of the death penalty, some have criticized the passage on the death penalty in the current Catechism as inconsistent with past Church teaching on the underlying rationale for the death penalty. Church tradition, so the critique goes, has justified the death penalty as a form of retributive justice that punishes criminals for their offenses. The current Catechism justifies the death penalty as a means of protecting society from offenders (and therefore argues against using it if less violent alternatives are available). The current Catechism departs from Church tradition in this way, neglecting the central justification for the death penalty, a justification which is presumably not directly affected by the availability of nonviolent alternatives.

I hope I have correctly described the critique of the current Catechism passage (I welcome correction from any advocates of this critique). If so, I must admit I am skeptical of this argument. I think that the division implied--Church tradition justifies the death penalty as retribution; contemporary Catechism justifies it as protection of society--might be more apparent the real. My (perhaps rather scattershot) reasons for thinking this are as follows:

i) Accounts of Church teaching prior to the current Catechism do invoke protection of society as an important justification of the death penalty. The Council of Trent catechism, in its passage on the Fifth Commandment, reads

"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 [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."

This passage from the Trent Catechism (which I got from <http://www.catholicapologetics...rentc.htm>; please let me know if this is not an accurate translation) mentions punishment of the guilty, but it also mentions protection of the innocent in the larger society as a justification of the death penalty. This indicates to me that the justification discussed in the current Catechism is not wholly new and a break with the past.

ii) Divorcing the retributive purpose of the death penalty from the protection of society has confusing implications. As Mark Shea points out in the article above, what are we to make of the fact that the crimes deemed as deserving the punishment of death have varied over time? Capital crimes in Mosaic law were not (I assume, please correct me if I am wrong) identical to those in classical or medieval or early modern Christendom, which are not identical to those in the contemporary United States.

These variations in which crimes deserve death suggest either a) standards of retributive punishment are dependent on particular historical/social circumstances and evolve over time or b) standards of retributive punishment are universal and unchanging but have been misunderstood by significant numbers of people, including Catholics, at various points in history. If b) is the case, then we need to know how the correct standards of retribution are to be discerned. If a) is the case, then (I propose as at least a working hypothesis), "retributive justice" is closely tied to the requirements of protecting society in a given time and place.

For these reasons, I think that the "break" between past Church statements on the death penalty and the current Catechism might be more apparent than real. I hope this makes some sense (and sorry for the extremely long post!).

John , January 19, 2011



Bender

My sincere apologies for confusing you with the pro-death guys. I've been writing on the fly.

Mark Shea , January 19, 2011



It is the right of Nations

Dear Mark,

In the UK I grew up thinking, "how can a judge condemn a man to death? Does he not condemn himself therefore, after all, Thou shall not kill."

But of course no one person hands down death in UK justice, the guilt-as-charged offender brings upon himself capital punishment: "It is not I who condemn you," says the judge, "it is you who has condemned yourself."

As it is states or kingdoms (United or otherwise) that condemn a person to death, such decisions can only ever be on a nation-by-nation basis. What is good for one state cannot be presumed to be good for another.

Now, we are posed a question: can a state legally have capital punishment in God's eyes? Unarguably, the Church condones death under three general circumstances: by a lawful court, in self defence and in war.

So, we are left with: to what degree can a state hand down the death penalty?

Well, justice MUST be served. However, mercy is above justice. But, "an eye for an eye, a tooth for a tooth", does that not apply to mercy too? As in "Blessed are the merciful: for they shall obtain mercy ."

Is it not that the degree to which a nation should be merciful in justice in direct proportion to the prevailing culture of the nation: "And his mercy is from generation unto generations, to them that FEAR him."

Mr. Martin Savage , January 19, 2011



Ding ding ding!

Bender gets it (and once again, expounds on it far more clearly than I ever could).

Thank you. This thread was starting to make me crazy. Maybe fewer internets are necessary for me.

Andy , January 19, 2011



Papal executioner executed c.500 people....

in the first half of the 19th century. Two Popes call the death penalty "cruel" in 1999 and in 2010. That is not development. That is a U turn.

None of you now follow the three early 19th century encyclicals against freedom of conscience....they are over thanks to Vatican II. Mark never reads them either. Let's stop the myth of pan importance of every nook and cranny of encyclicals. The

1992 catechism was normal on the death penalty but was changed in 1997 to include inter alia a data mistake and prudential judgement of one Pope from a faulty part of a good encyclical.

John Paul II wrote EV in 1995 implying that life sentences were brand new and saved men from the death penalty BECAUSE these brand new life sentences were sufficiently protecting society....despite liberal MSNBC showing us weekly that life sentences can be a free pass to shanking others with makeshift knives in prison with the state not being able to do anything about it except expensive solitary....which some prisoners want.

Trouble is...life sentences were not new and existed in Rome (damnata ad metallum) while Romans 13:4 was being written. They existed in the Avignon papacy. They existed wherever governments were affluent. Did anyone correct John Paul II the way Paul corrected Peter in Galatians? Not to our knowledge. Did anyone correct him when he called the death penalty "cruel"? Not to our knowledge? Does that mean the Catholic excessive conformism that kept religious use of torture alive for centuries is still alive and well. You bet your bibby it does.

The data error that life sentences are new and the prudential error that they are sufficiently protecting society was stuffed into a catechism article where prudential and data judgements do not belong.....and you men are describing that process as Church teaching....when in fact it is a data error rolled in a prudential judgement and stuffed in a catechism article where both have no place.

Strangely more than half the Catholic world probably has the 1992 version of the catechism and not this new article at all.

That's another oddity.

Catholic predominant countries without death penalties are nearly half of the top twenty worst murder rate countries in the world according to the list at wiki. Almost thoroughly non Christian Japan with a death penalty is the 4th safest country in the world and is safer than every Catholic country in the world except affluent Lichtenstein. Those facts are not definitive but they should have caused John Paul II to do years of research on criminology prior to writing about criminology in a toe in the water fashion.

bill bannon , January 19, 2011 | [url](#)



Redemption

"And to link back to the topic at hand - I am very much a death penalty minimalist, partly as I do believe that giving Jesus' mercy the chance to change a hardened heart can literally take a lifetime, perhaps a lifetime spent in prison. And ultimately that is what God wants - to save us, not to condemn us."

What about the chance for redemption extinguished by the murderer? Certainly every murder victim is not in a state of grace.

Brian English , January 19, 2011



...

Here is a link found at the end of the comments section in the post at Catholic Champion.

<http://www.thomist.org/jour/1999/994aLong.htm>

Dr. Steven Long is a friend of Kevin O'Brien, who is a friend of Mark Shea.

You'll find that this article is a thorough scholarly critique of those who hold the position Shea espouses. I believe that prior to calling anyone who holds the position Dr. Long (professor of moral theology at Ave Maria Univ.) does a death penalty maximalist, and therefore in dissent of Church teaching, one should interact with the actual arguments first.

Thomist , January 19, 2011



Appearances

"But the Church appears to regard the retributive aspect of the death penalty as an insufficient reason to kill the offender if other forms of retribution can be found."

The "appears to regard" creates the problem here. If the Church intends to discard the retributive aspect of the death penalty, it should state that clearly and explain why it is taking that action.

Our faith is based upon reason, so changes in the faith should be accompanied by a statement of the reasoning behind the change.

Brian English , January 19, 2011



...

A book written by E. Christian Brugger (an adherent of the New Natural Law theory), Capital Punishment and Moral Catholic Tradition argues more along the line of Mark Shea, that there is a development in Church teaching here, but he goes further in this position's logic by stating that the death penalty should eventually be abolished. One sees after reading both Long's work and Brugger's that the novel view Shea is espousing (even Brugger admits that it is novel) can only lead to abolishing the death penalty.

Thomist , January 19, 2011



...

Let me be clear, that means abolishing the death penalty completely as being against the dignity of the human person. The simple point is that by accepting the novel arguments presented by Mark Shea, and accepting the grounds for which this so-called development is being made, it would be illogical to continue to accept the legitimacy even in theory of the death penalty. Pretending to have a balanced view between the two schools of thought is naive at best.

Thomist , January 19, 2011



...

For further reading on how the proper appraisal of moral action in a thoroughly Thomistic sense, please read Dr. Long's short but very insightful book "The Teleological Grammar of the Moral Act."

Thomist , January 19, 2011



The Death Penalty and Merciful Justice

"Is it not that the degree to which a nation should be merciful in justice in direct proportion to the prevailing culture of the nation: "And his mercy is from generation unto generations, to them that FEAR him."

Abolition of the death penalty and the degree of merciful justice found in a nation do not necessarily correlate. The Netherlands abolished the death penalty in 1870 and today will not extradite a murderer to any country where there is even a possibility of the death penalty.

However, this beacon of merciful justice is at the forefront of the euthanasia movement, including involuntary euthanasia.

Brian English , January 19, 2011



...

What crimes should be deemed worthy of death?

"It is not permitted to put to death a Roman citizen"—this was the law that the people had adopted; but Sulla conquered and said: "All those who have borne arms against me deserve death." Octavius, and the companions of his misdeeds, confirmed this law.

Under Tiberius, to have praised Brutus was a crime worthy of death. Caligula sentenced to death those who were sacrilegious enough to undress before the image of the emperor...

What, precisely, is the criterion?

Michael PS , January 19, 2011



bender

when discussing an "open and shut case" under the torah, yes. i didn't write it, He did. mind you that i am merely correcting a small part of mr. shea's argument, while i whole heartedly agree with it.

tim , January 19, 2011



Alessandro Serenelli

I wonder what would have happened to him had no-one shown him Mercy?

St. Maria Goretti pray for us!

tubbins , January 19, 2011



...

From the wikipedia article:

....He remained unrepentant and uncommunicative from the world for three years, until a local bishop, Monsignor Giovanni Blandini visited him in jail.....

This was the key - a Shepard calling home the lost sheep.

After his release, Alessandro Serenelli visited Maria's still-living mother, Assunta, and begged her forgiveness. She forgave him, saying that if Maria had forgiven him on her deathbed then she couldn't do less, and they attended Mass together the next day, receiving Holy Communion side by side. Alessandro reportedly prayed every day to Maria Goretti and referred to her as "my little saint." He attended her canonization in 1950.

How beautiful is the Faith when its actually lived out. Why settle for drab sterile ideologies?

Several points ...

The argument that that the State is too amorphous a term to have meaning, or is just a collection of individuals, and therefore has no right to execute criminals is without merit. The Church has consistently taught from Augustine through JPII that "as regards political power, the Church rightly teaches that it comes from God" (Leo XIII) and does indeed have the moral authority to impose capital punishment. This issue is not open to doubt.

The question was raised about which crimes deserve death, with the implication being that since there is disagreement about this and as it had been improperly applied in the past this somehow invalidates its use now. It may be valid to ask this at some point but it has no bearing on the central question: is it a just punishment for the crime of murder? Just because it has been inappropriately applied in some cases says nothing whatever about whether all of its uses were invalid.

The issue of mercy has been raised with the claim made that "*mercy is above justice*." (Savage) This claim is without foundation: "*Mercy differs from justice, but is not in opposition to it*" (JPII) Nor is it ever appropriate to show mercy at the cost of justice: "*this movement of the mind*" (viz. mercy) "*obeys the reason, when mercy is vouchsafed in such a way that justice is safeguarded*" (Augustine). Inasmuch as 2267 ignores justice altogether it is not surprising that others have begun to dismiss its importance as well, but if any virtue can be called preeminent it would be justice, not mercy: *If we speak of legal justice, it is evident that it stands foremost among all the moral virtues, for as much as the common good transcends the individual good of one person.* (Aquinas)

Ender , January 19, 2011

tubbins....

Unfortunately the other night a TV news magazine show detailed the release of a murderer who served about 23 years and on his release proceeded in the coming months to murder a man who helped him with his car...and he murdered an older woman who lived alone and there was a third but I forget the details. Arrested again, he told of the murders in such a way that each victim in his mind was responsible for what he did.

The lesson for you: anecdotes can go in either direction in this area and for overall safety of all people, whose anecdote is safer to go with as a guide to policy...yours or mine? The papal executioner executed over 500 criminals between 1800 and 1869....now two Popes call that cruel. Isn't the hermeneutic of continuity fun.

bill bannon , January 19, 2011 | [url](#)

?

If the Church intends to discard the retributive aspect of the death penalty

If the Church intended to do that, she would demand the criminal not be imprisoned. "Not imposing the death penalty" != "no retribution".

Mark Shea , January 19, 2011

I'm a bit puzzled...

...about why Maximalists are discussing the idea of abolishing the death penalty as though it were a dirty secret my piece was avoiding discussing when I made clear that "the Church does suggest that if the common good is not threatened by a criminal behind bars, then mercy rather than strict vengeance for the crime is the better course. And in the First World, including here in the United States, that means that the practical result is that Catholics should work for the abolition of the death penalty".

I even provided a link to the numerous and long-standing calls of the American bishops to do just that. Yes, death penalty minimalism, in the First World, is practically expressed by saying, "There's not a really a good reason for this if you have the technology to keep people from harming society." As I say, those with technical expertise in the technology of incarceration may have insights here which the bishops lack and may say, "Not so fast! We can't deal with murders committed behind bars or criminals running crime syndicates from the slammer and ordering the deaths of enemies." That's a real objection that can impinge on the discussion. But if such phenomena are rare enough, there is also a real case to be made that the US would be more sensible joining the rest of the civilized world and abolishing the death penalty rather than stubbornly remaining on the side of Iraq, Iran, Pakistan, Saudi Arabia, North Korea and China in this matter. Personally, I think the guidance of the Magisterium is sounder here than models provided by Islamic despotism and Commies.

Mark Shea , January 19, 2011

Tim

I won't quibble with you about the woman taken in adultery ("in the very act" according to the inspired author). But I will note that your argument basically turns on the fact that Jesus, knowing her guilt, basically gets her off on a technicality, not because she is innocent of the crime. His approach is not "You are innocent as the daylight" but "Neither do I condemn you". The point of the story is that the judges so eager for death are guilty of sins as bad as hers while he who is without sin is not eager to kill her. If we are to apply the argument of the story to the present day, then an obvious question to ask those eager to apply the death penalty for murder to others is, "Have you ever hated or been angry with your brother? Because Jesus says,

"But I say to you that every one who is angry with his brother shall be liable to judgment; whoever insults his brother shall be liable to the council, and whoever says, 'You fool!' shall be liable to the hell of fire." In short, if you have ever hated somebody from the heart, you are already guilty of murder in all but deed. If we say to a modern jury or judge, "Let him who is without sin be the first to execute" then I don't see the verdict being any different than it was with the adulterous woman.

Thanks for your kind words, Tim! Blessings!

Mark Shea , January 19, 2011



as regards political power, the Church rightly teaches that it comes from God

So, what you are saying, Ender, is that Herr Hitler ruled by divine right? Thus, he was acting well within divine sanction when he executed so many "criminals."

You read these sources, but you obviously do not understand. Not one bit.

Political power does indeed come from God. But that power can be, and usually has been throughout human history, usurped and abused.

That political power comes from God does NOT ipso facto mean that every government comes from God or that every government rules with His approval. Rather, what it means is that political power comes from God and is conferred upon . . . wait for it . . . *the individual person*, who then organizes into civil society and, from there, into government. Even a deist like Thomas Jefferson could understand that --

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights,[72] that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

But, these individual men are enjoined, "Thou shall not kill." The purpose of this injunction is to preserve human life, such that deadly force may be resorted to only in order to protect life. That injunction carries forward to the associations that individuals might enter into, such as civil government. So that the political power of the state to execute is licit only when utilized to protect life. As the Catechism of Trent states, THAT is the primary foundation for the death "penalty" -- to preserve life. And that was true for all of the centuries of human history before there were large, secure prisons, and prison guards, to protect society from murderers and other dangerous wrongdoers, as there are today.

Bender , January 19, 2011



The dignity argument

The heart of the argument against the death penalty in 2267 is that other means are *"more in conformity to the dignity of the human person."* (CCC 2267) Obviously, executions are not completely contrary to that dignity or they could never be allowed under any circumstances, but why would we consider that executing someone is an affront to his dignity?

Fining someone is a recognition that money is a good and being forced to forfeit a good is a valid punishment. Imprisoning someone isn't considered an affront to someone's dignity and even less does it diminish the value of freedom. Rather it is by only recognizing the intrinsic value of freedom that its loss makes sense as punishment. Why would the loss of life be considered anything other than the loss of the greatest good? Not only does capital punishment not diminish a person's dignity, it recognizes it - and this is the key point - for if it wasn't intrinsically valuable it would not serve as expiation for the crime of murder.

It is profoundly ironic that the very passage that explains the source of man's dignity is dismissed as not being in conformity with that dignity. It is because man's life is sacred that the person who wantonly takes that life forfeits his own; it is only because the life of the murderer is also sacred that his punishment can expiate his crime.

The Catechism of Trent noted that even animals who killed a human were to be destroyed and it may be in this sense that executing a man could be seen as lowering him to the level of an animal, which is "destroyed" rather than "executed". The loss of the sense of the sacredness of all human life might explain JP II's aversion to the death penalty in modern societies, but, as I have argued, this has to be seen as a prudential nod to existent conditions and not as a change to Church doctrine, which has always recognized the justness of capital punishment.

Ender , January 19, 2011



?

"If the Church intends to discard the retributive aspect of the death penalty

If the Church intended to do that, she would demand the criminal not be imprisoned. "Not imposing the death penalty" =/= "no retribution".

No, we are talking about the retributive aspect of the DEATH PENALTY. If I was claiming the Church was discarding the retributive aspect of IMPRISONMENT, then you would have a valid point.

Finding the Edges First

It seems to me that just as a puzzle is more easily assembled by connecting the edge pieces together first, so too it is easier to make true statements about the death penalty by first finding the limits within which it must fall.

There may be others, but I am aware of at least five items which circumscribe my view on Capital Punishment, forcing my views to fall within the region they demarcate:

1. God Does Not Command Evil
2. An Infallible Teaching May Not Err
3. Government May Only Justly Do That Which Government May Justly Do
4. The Punishment Must Fit The Crime
5. Mercy Must Be Mercy, Not Systemic Indifference To Evil

1. God Does Not Command Evil

No Catholic may hold a position on the death penalty which would logically require the conclusion that God commanded objective evil in the Old Testament;

2. An Infallible Teaching May Not Err

No Catholic may hold a position on the death penalty which would logically require the conclusion that the Church's infallible Magisterium taught error in faith and morals. Related to this, development in doctrine (following John Henry Newman's thoughts on the topic) must be development; it must be a refinement, not a reversal. Bill Bannon's earlier post on this topic must not be ignored, and merits further exploration.

3. Government May Only Justly Do That Which Government May Justly Do

We cannot require government to exercise a power it does not legitimately have. If (as I believe) government derives its just powers from the consent of the governed, and if the governed can only delegate to the government just powers which they already had by virtue of their intrinsic human dignity, then the government may not utilize a given form of punishment unless (a.) individuals are in some (however rare) circumstances justified in utilizing the same punishment, and (b.) "We The People" have delegated the power to do so to the relevant part of government.

Item (b.) is non-controversial, I think; but Item (a.) is something to think about. If individuals are not permitted to torture other individuals for information, why then neither is the government (can I get an amen, Mark Shea?). But if the government is ever (ever!) authorized to use the death penalty, that implies that under some (however rare) circumstances, an individual alone (in, say, a lawless region) has just authority to kill another individual not as an act of self-defense but in order to enact just punishment for an evil deed, even if self-defense is not an issue.

That requires some serious thought. But I bring it up because government must derive its just authority somehow, but the source of its authority ultimately implies limits on that authority (the river cannot rise above its source). Government has certain things it cannot justly do. We must determine whether enacting the death penalty is among these things, or not, and our answer must be consistent with our understanding of how a government obtains authority/legitimacy.

4. The Punishment Must Fit The Crime

Punishment serves various useful functions...

- Protection of society
- Deterrence of the same crime being committed by others
- Prevention of recidivism through deterrence
- Prevention of recidivism through inmate reformation
- Satisfaction of the social need for justice, which satisfaction serves to edify society
- That justice be done (apart from whether society knows about it or not)

...but of these, the most important one, which must not be sacrificed at any cost, is the requirement that justice be done. This logically requires that the punishment be proportionate to the crime.

The need for the punishment to be proportionate to the crime is a two edged sword. On the one hand, it probably represents an absolute moral requirement that the death penalty be imposed in some particularly brutal cases.

...continued...

Cord Hamrick , January 19, 2011

Finding the Edges First, part 2

...continuing...

On the other hand, as C.S.Lewis portrays in *That Hideous Strength*, the need for the punishment to be proportionate to the crime also puts a *limit* on punishment. In *That Hideous Strength* the forces of evil have taken hold of government powers

through selective use of propaganda. Among the powers they exercise is the power to hold a criminal *indefinitely*, no matter what his crime, and subject him to various psychological assaults to "recondition" him through "remedial treatment"; in effect, to "cure" him of being a criminal and remake him into a well-behaved cog in the engine of society. The propagandists call this enlightened approach "the end of the cruel and barbaric notion of retributive punishment."

So the requirement of proportionate retribution is a kind of protection of the free will, and thus the human dignity, of the criminal. He has the *choice* to commit a crime and that choice -- the bundle of things which he is choosing through his wrongful act -- includes not only the act but all just consequences of the act.

By the way, there may be crimes so horrific, so heinous, that the only just punishment for them is simply hell. For such a crime, I suppose the closest a civic authority could get to approximating just punishment would be prolonged torture of some kind. However, this would be an instance where Rule 4, "The Punishment Must Fit The Crime," must be subordinated to Rule 3, "Government May Only Justly Do That Which Government May Justly Do." I hold in an unqualified way that such a punishment is not among the powers delegated to our government; I hold with only slight qualification that such a punishment is not within the just authority of the individuals who did the delegating to begin with.

Thus, in such instances, we cannot perfectly match the punishment to the crime; we must approximate just punishment as closely as the moral law allows us.

5. Mercy Must Be Mercy, Not Systemic Indifference To Evil

I am sensitive to Mark's very well-stated argument for a role for *mercy*, and I *agree* with that need for mercy as a general principle.

This sounds like it contradicts my previous point, where I argued strongly that the punishment must fit the crime.

There is a tension here, but I think we can reconcile it by noting that when reduced sentences become automatic, they are no longer "reduced" sentences; they are simply the new "normal" sentences.

If you execute 99 men for torture-killing children, and grant life in prison to the hundredth, you can plausibly argue that you have shown mercy to the hundredth man. But if you give them all life in prison? If that is, in fact, what the law prescribes for that crime? Then that will be what they expected to get, if caught, from the get-go. That will be what *all* observers expected. Who will perceive any mercy in that?

So I think mercy is never, in that sense, normative: It is not "by the book." It must be extraordinary, or it is not mercy. When we assign lesser penalties for a given crime as a *matter of the statute*, we are not in fact being merciful. We are instead stating an opinion that the crime is not so bad as we had previously thought, and that a lesser punishment is a better fit for the crime.

So I think we are mistaken if we try to write mercy into the statutory punishment. That is the place for proportionate justice.

If mercy is formalized within the criminal justice system, it must be somehow optional, perhaps even rare.

I suspect the proper place for mercy is when, after the sentence has been already determined, the victim of the crime (or his next-of-kin) appeals to the judge for leniency, and the judge amends the sentence in response. This, I think, has the effect of making mercy *mercy*, rather than (as statutory leniency does) merely teaching society the lesson that evil deeds really don't