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CAPITAL PUNISHMENT: IS THE CATHOLIC CHURCH ABOLITIONIST?

PETER J. RIGA*

INTRODUCTION

Two documents at the highest level of the Catholic Church, *Catechism of the Catholic Church*¹ 1997 (revised edition) and *Evangelium Vitae*² 1995, have brought Catholic thinking on capital punishment into more precise focus. This article examines and compares these two documents, and ultimately contends that capital punishment, while remaining a theoretical possibility, is in fact practically and morally abolished. Analysis of this teaching requires some reflection.

Many national Catholic hierarchies have taken a stand against capital punishment, as have recent popes.³ In 1970, Pope Paul VI personally intervened to save the lives of six Basque separatists in Burgos.⁴ In September, 1975 he pleaded with the

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¹ CATECHISM OF THE CATHOLIC CHURCH, (2d ed., 1997) [hereinafter CATECHISM].

² JOHN PAUL II, ENCYCLICAL LETTER *EVANGELIUM VITAE* (MARCH 25, 1995) [hereinafter *EVANGELIUM VITAE*].

³ See Robert F. Drinan, *Death Penalty Target of Catholic Leaders*, NAT'L CATH. REP., May 16, 1997, at 15 (noting the "vigor of the opposition to the death penalty from the Holy See down to diocesan officials"); *Telling Catholics What They Believe*, WK. SOC'Y, Nov. 30, 1992, at 22 (stating that "the hierarchies of France, Canada and the U.S." oppose the death penalty).

⁴ See *Papal Plea Disclosed*, N.Y. TIMES, Dec. 31, 1970 at A3 ("Pope Paul VI had made a personal appeal to General Franco urging that the lives of the six condemned Basques be spared."); See also Richard Eder, *Spain Sentences 6 Basques To Die, 9 To Long Terms*, N.Y. TIMES, Dec. 29, 1970 at A1 (reporting that a spokesman for the Vatican stated "the sentences had been received in the Holy See with 'profound emotion.' The Vatican, he said, would continue its efforts to obtain commutation of the death sentences.").

Spanish government to pardon several other terrorists.⁵ His pleas went unheeded, and relations between the Vatican and the Spanish government were strained.⁶ In 1983, John Paul II asked for clemency for those condemned to death, particularly when the punishment was imposed for political reasons.⁷

San Francisco's Archbishop John Quinn, declared in 1990 that the execution of Robert Alton Harris would not stop "the cycle of violence and death"⁸ Three weeks later an editorial in the *Osservatore Romano*, entitled "The Death Penalty: A Terrible Instrument of Hopelessness" (*La Pena Di Morte: Uno Strumento Terribilmente Disperato*),⁹ condemned in harsh terms the execution by lethal injection of Billy White in the U.S.: "It seems that a primitive instrument of violence appears in wealthy civilized societies to emphasize their contradictions and . . . despair of human living. These societies have lost their sense of communion, of the sacredness of life. They have despaired of the future."¹⁰ Hundreds of similarly situated prisoners have been executed by lethal injection, and the state of Texas has been particularly aggressive with the imposition of the death penalty.¹¹ In the U.S. many local bishops as well as the National Conference of Catholic Bishops have taken positions against capital punishment.¹²

⁵ See Henry Giniger, *5 Are Executed in Spain Despite Pleas in Europe*, N.Y. TIMES, Sept. 28, 1975, at A1 (Before the individuals were executed, Pope Paul VI had appealed for clemency).

⁶ See *Denunciations Intensify*, N.Y. TIMES, Sept. 29, 1975, at A7 (stating that "Pope Paul VI had repeatedly criticized the decision to execute the terrorists.").

⁷ See *John Paul Speaks Out Against Death Penalty*, N.Y. TIMES, Jan. 16, 1983, at A5.

⁸ Rita Ciolli, *High Court Blocks Execution in California*, NEWSDAY, Apr. 3, 1990, at 4.

⁹ *La Pena di Morte: Uno Strumento Terribilmente Disperato*, OSSERVATORE ROMANO, Apr. 26, 1992, at 1.

¹⁰ *Id.*

¹¹ See *Executions Fall 22 Percent in 2001, BJS Report Says*, CORRECTIONS PROF., Jan. 11, 2002 (reporting that "Texas remains the nation's leader in capital punishment"); William J. Wiseman Jr., *Inventing Lethal Injection*, CHRISTIAN CENTURY, June 20, 2001, at 6.

¹² See *National Tally: 1,927 Groups Join the Call for a Moratorium on Executions*, http://www.quixote.org/ej/ej_tally_of_moratorium_signers_by_st.html (updated Dec. 2001) [hereinafter *National Tally*]; see also Bill Reel, *Bishops See Even McVeigh's as a Human Life*, NEWSDAY, June 27, 1997, at A46 ("On issues of life and death the Catholic bishops have been cogent, consistent, correct—and pretty much alone.").

International bodies have also taken positions against the death penalty.¹³ Article 3 of the *Universal Declaration of the Rights of Man*, adopted by the U.N. in 1948, gives this directive: "Everyone has the right to life, liberty and security of his person."¹⁴ Article 5 says: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁵ In 1957, the *European Convention on Extradition* recognized the right of a country that does not impose the death penalty for certain crimes not to extradite a person to a country which does.¹⁶ Article 4 of the *American Convention of the Rights of Man* strictly limits the application of such a punishment:

In no case shall capital punishment be inflicted for political offenses or related common crimes . . . Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.¹⁷

Article 6 of the *International Covenant on Civil and Political Rights* promulgated by the U.N. in 1966, contains similar provisions concerning the right to life.¹⁸

The European Parliament, on April 22, 1980, passed a resolution encouraging its member states that had not yet abolished capital punishment to do so.¹⁹ In 1950 Protocol No. 6 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* went into effect: "The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."²⁰

In 1989, the U.N. adopted Protocol No. 2 to the *International*

¹³ See *National Tally*, *supra* note 12.

¹⁴ G.A. Res. 217 A (III), U.N. GAOR, art. 3 (1948).

¹⁵ *Id* at art. 5.

¹⁶ See *European Convention on Extradition*, Dec. 13, 1957, <http://www.magnet.mt/gazette/publications/euconex.htm>.

¹⁷ See *American Convention On Human Rights*, July 18, 1978, 1144 U.N.T.S. 123, art. 4, <http://www.umn.edu/humanrts/oasinstr/zoas3con.htm>.

¹⁸ See G.A. Res. 2200 A (XXI), U.N. GAOR, art. 6 (1966) *available at* <http://www.hrcr.law.columbia.edu/docs/Civil&Political/intlcivpol5.html>.

¹⁹ See *A Case Against the Gallows*, FIN. TIMES (LONDON), May 10, 1982, at 10.

²⁰ Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, Apr. 28, 1983, art. 1, <http://conventions.coe.int/treaty/en/Treaties/Html/114.htm> [hereinafter Council of Europe Protocol No. 6].

Pact Relative to Civil and Political Rights, which declared that no one should be executed in the signatory states and that “[e]ach State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”²¹ On March 12, 1998, the European Parliament passed a resolution that again invited “those European states that retain the death penalty, without having recourse to it, to abolish it definitively for all crime as rapidly as possible.”²²

II.

The Catholic Church seems to adopt this abolitionist view, with an exception for self-defense. The two texts of the official Magisterium of the Catholic Church should be compared side by side. They are cited at length so they may be compared.

The following is the text of *Catechism of the Catholic Church*, paragraphs 2265 through 2267:

§ 2265

Legitimate defense can be not only a right but a grave duty for one who is responsible for the lives of others. The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. For this reason, those who legitimately hold authority also have the right to use arms to repel aggressors against the civil community entrusted to their responsibility.²³

§ 2266

The efforts of the state to curb the spread of behavior harmful to the people’s rights and to the basic rules of civil society correspond to the requirement of safeguarding the common good. Legitimate public authority has the right and the duty to inflict

²¹ See *Elaboration of a Second Optional Protocol to the International Civil and Political Rights*, U.N. Doc. A/RES/44/128 (1989), <http://www.un.org/documents/ga/res/44/a44r128.htm>, [hereinafter U.N. Protocol No. 2].

²² *Universal Abolition of the Death Penalty*, EUR. PARL. DOC (a)B4-0468, 0487, 0497, 0513, 0542/97 (June 12, 1997), <http://www.hartford-hwp.com/archives/27/014.html>.

²³ CATECHISM, *supra* note 1, at ¶ 2265.

punishment proportionate to the gravity of the offense. Punishment has the primary aim of redressing the disorder introduced by the offense. When it is willingly accepted by the guilty party, it assumes the value of expiation. Punishment then, in addition to defending public order and protecting people's safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.²⁴

§ 2267

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

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

²⁵

In 1997, the text was revised in light of Pope John Paul II's encyclical *Evangelium Vitae*, which follows:

Evangelium Vitae

55. This should not cause surprise: to kill a human being, in whom the image of God is present, is a particularly serious sin. *Only God is the master of life!* Yet from the beginning, faced with the many and often

²⁴ *Id.* at ¶ 2266.

²⁵ *Id.* at ¶ 2267.

tragic cases which occur in the life of individuals and society, Christian reflection has sought a fuller and deeper understanding of what God's commandment prohibits and prescribes. There are in fact situations in which values proposed by God's Law seem to involve a genuine paradox. This happens for example in the case of *legitimate defence*, in which the right to protect one's own life and the duty not to harm someone else's life are difficult to reconcile in practice. Certainly, the intrinsic value of life and the duty to love oneself no less than others are the basis of a *true right to self-defence*. The demanding commandment of love of neighbour, set forth in the Old Testament and confirmed by Jesus, itself presupposes love of oneself as the basis of comparison: "You shall love your neighbour as *yourself*" (*Mk* 12:31). Consequently, no one can renounce the right to self-defence out of lack of love for life or for self. This can only be done in virtue of a heroic love which deepens and transfigures the love of self into a radical self-offering, according to the spirit of the Gospel Beatitudes (*cf. Mt* 5:38-40). The sublime example of this self-offering is the Lord Jesus himself.

Moreover, "legitimate defence can be not only a right but a grave duty for someone responsible for another's life, the common good of the family or of the State." Unfortunately it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life. In this case, the fatal outcome is attributable to the aggressor whose action brought it about, even though he may not be morally responsible because of a lack of the use of reason.

56. This is the context in which to place the problem of the *death penalty*. On this matter there is a growing tendency, both in the Church and in civil society, to demand that it be applied in a very limited way or even that it be abolished completely. The problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God's plan for man and society. The primary purpose of the punishment which society inflicts is "to redress the disorder caused by the offence." Public authority must redress the violation of personal and social rights by imposing on the offender an adequate

punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfills the purpose of defending public order and ensuring people's safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated.

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

In any event, the principle set forth in the new *Catechism of the Catholic Church* remains valid: "If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person."²⁶

III. SELF DEFENSE

Is the person condemned to death any longer an aggressor? If he is present before us without defense, have we no other alternative than his death? Clearly, the answer is no.

When the only concern is individual defense, the answer is clear; the one who we condemn and judge is no longer an aggressor. If we remain strictly on that plane, to execute him would be legal murder.

The *Catechism of the Catholic Church*, however, also speaks of a social and collective level of self-defense as well. Legitimate self-defense can take place on a social level. Citizens are responsible not only for themselves, but for others: "Legitimate defense can be not only a right but a grave duty for one who is

²⁶ *EVANGELIUM VITAE*, *supra* note 2, at ¶¶ 55–56 (emphasis in original) (footnotes omitted).

responsible for the lives of others.”²⁷ The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. This language appears verbatim in both texts. The common element between individual and collective self-defense is the impossibility of defending oneself from a mortal danger in any other way. *A direct intention to administer death must always be absent, in the sense that, if we could do otherwise, we would.*²⁸ Therefore, motives of hate, vengeance, and disproportionate means are radically excluded. These exclusions severely restrict capital punishment. The only direct intention must be to protect oneself or others against a mortal danger; otherwise tribunals will be guilty of willful murder. Capital punishment, as it exists today in the U.S., is immoral and unethical and cannot be morally justified. When a prisoner is incarcerated, he is no longer a danger to others and the intent to kill him, say, by lethal injection, becomes immoral and unjustified. The danger to the public safety no longer exists.

The principle of legitimate defense permits us to defend ourselves against an aggressor, even by mortal means.²⁹ The maxim can be reformulated as follows: *You shall never act with the intention of killing but you can take all measures to defend yourself or defend those over whom you have responsibility and use all means necessary to do so even if you must use deadly means.*³⁰ Death is not directly intended—only the protection of the innocent. Death, however, may follow from employment of lethal means as a last resort.

Cases where a modern society can defend itself only by a death penalty are difficult to imagine. The *Catechism* offers no example, but repeats the text from *Evangelium Vitae*. *Evangelium Vitae* is explicit: “Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.”³¹ Yet,

²⁷ CATECHISM, *supra* note 1, at ¶ 2265; see also *EVANGELIUM VITAE*, *supra* note 2 at ¶ 55.

²⁸ CATECHISM, *supra* note 1, at ¶ 2267 (“[T]he 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.*”) (emphasis added).

²⁹ See *id.* (stating that the death penalty can be used if there is no other way to protect society).

³⁰ See *id.*

³¹ *EVANGELIUM VITAE*, *supra* note 2, at ¶ 56.

the United States continues to use capital punishment against prisoners who no longer pose an imminent societal threat. Other, non-fatal, means must be pursued when the prisoner has been rendered harmless. Both *Evangelium Vitae* and the *Catechism* purport this view.³²

Punishment

Classical treatises on morality speak of the death penalty as a punishment, which has three functions or objectives: (1) vindication, to restore a disturbed order; (2) deterrence, to dissuade others from doing the crime; and (3) medicinal, to restore and help the individual rehabilitate himself.³³ Many authors, however, believe that the death penalty serves none of these functions.³⁴

The death penalty is not medicinal because it does not allow the criminal to rehabilitate himself.³⁵ Also, there is little, if any proof that it serves as a deterrent.³⁶ In fact, most studies show that it is not a deterrent.³⁷ There is no difference, for example, in the murder rate in those areas where the death penalty is

³² See *supra* text accompanying notes 30–35.

³³ See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW, 13–19 (3d. ed. 2001) (outlining the traditional theories of punishment as moral reasoning, utilitarianism, retributivism, and denunciation); see also Michele Cotton, *Back With a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1315–17 (2000) (stating the usually articulated purposes of punishment as retribution, deterrence, incapacitation, and rehabilitation).

³⁴ See Andrea E. Girolamo, Note, *Punishment or Politics? New York State's Death Penalty*, 7 B.U. PUB. INT. L. J. 117, 131–33 (1998) (stating that the small number of executions cannot realistically deter any criminal and that rehabilitation provides no justification for capital punishment); see also James J. Megivern, THE DEATH PENALTY: AN HISTORICAL AND THEOLOGICAL SURVEY 329 (1997) (stating that capital punishment “is basically an act of vengeance. It neither corrects the criminal nor helps the dead victim.”)(quoting B. Msgr. Salvatore J. Adamo).

³⁵ See Megivern, *supra* note 34, at 367 (discussing one of the difficulties with the current practice of capital punishment as extinguishing “possibilities of reform and rehabilitation for the person executed as well as the opportunity for the criminal to make some creative compensation for the evil he or she has done”).

³⁶ See *id.* at 227 (discussing an abolitionist view of the retributivist theory on capital punishment, and describing the death penalty as an “inherent violation of human dignity, treating a person as a means instead of an end”).

³⁷ See Rudolph J. Gerber, *Death Is Not Worth It*, 28 ARIZ. ST. L. J. 335 (1996) (stating that despite popular belief that the death penalty can alter behavior, the belief is misplaced).

practiced from places where it is not.³⁸ Finally, though it may be retributive, capital punishment is contrary to the whole Catholic tradition that each person should receive humane treatment.³⁹

In fact, the vindictive function of punishment is very close to vengeance, such as when relatives want to witness the death of the murderer. This is a moral abomination. Vindictiveness tends to mean a restoration of a disturbed order by punishing the criminal, thus restoring a rough equivalence between the evil committed and the evil received.⁴⁰ The two magisterial documents cited above also speak of the medicinal function, contributing to the rehabilitation of the guilty party.⁴¹ Therefore, both functions, vindictive and medicinal, should be present at the same time. If the punishment is solely vindictive, it would evidence a pessimistic belief that human nature is incapable of redressing itself.⁴²

But can the death penalty have a medicinal effect? It clearly cannot. By suppressing the individual, one eliminates all possibility of his re-introduction into the community.⁴³ By

³⁸ See *id.* at 342–51 (noting that of the eight discussed strategies used to assess the deterrent effect of capital punishment on future crime, only one suggested such an effect).

³⁹ See DONALD D. HOOK & LOTHAR KAHN, *DEATH IN THE BALANCE: THE DEBATE OVER CAPITAL PUNISHMENT* 44–45 (1989) (describing a study on deterrence by Thorstein Sellin, which concluded that the presence of the death penalty had no effect on the murder rates among states with similar ethnic, religious and economic factors that employed a death penalty versus those that did not).

⁴⁰ CATECHISM, *supra* note 1, at ¶ 2266 (“Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense. Punishment has the primary aim of redressing the disorder introduced by the offense.”).

⁴¹ See *id.* (“Punishment then, in addition to defending public order and protecting people’s safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.”); see also *EVANGELIUM VITAE*, *supra* note 2, at ¶56 (“In this way authority also fulfills the purpose of defending public order and ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behaviour and be rehabilitated.”).

⁴² See Girolamo, *supra* note 34, at 132 (“By establishing a death penalty, we implicitly state that either that the death penalty properly punishes a murderer and we do not care about his rehabilitation, or we have made normative judgment that we cannot rehabilitate some people.”).

⁴³ See *CAPITAL PUNISHMENT: A READER* 126 (Glen H. Stassen ed., 1998) (describing the death penalty as the only penalty that does not allow reinstatement after it is carried out); see also Megivern, *supra* note 34, at 334 (noting the tension between rehabilitation and retribution as purposes of

condemning someone to death, civil authorities inflict a punishment that has no curative value, and in this sense is not a true punishment but pure vindictiveness.⁴⁴ It serves no other purpose than vengeance.⁴⁵

The criminal does constitute a danger for society, and society cannot determine, with certainty, that he will eventually be rehabilitated. Society, therefore, must deprive him of his freedom and cannot leave his rehabilitation up to himself.⁴⁶ The only solution is to inflict a punishment of prison time corresponding to his crime. The old logic of equilibrium (vindication) has a value. If I have suffered in proportion to that suffering which I have caused, I am free because I have paid my debt to society.⁴⁷ *Evangelium Vitae* evinces wisdom when it states “the nature and extent of the punishment must be carefully evaluated and decided upon.”⁴⁸

But if the death penalty is considered to be unjust, what can be a just compensation for a homicide? We have seen that a punishment proportional to the crime is very much in order. Therefore, the natural response is life in prison without the possibility of parole.

But we should reflect on this for a moment. Does life imprisonment really respect the human dignity of the criminal-murderer? Does it correspond to the medicinal function, which is to reinsert the rehabilitated criminal back into society after punishment? Life imprisonment without any possibility of parole deprives a prisoner of all hope of eventually returning one day to a normal life. We condemn him to perpetual punishment without a reason to live. In reality, we are condemning him to death after a longer agony. There must be another solution. Can there be rehabilitation or parole after a certain number of years, after the

punishment, and that the death penalty serves “only the latter while making nonsense of the former”).

⁴⁴ See Megivern, *supra* note 34, at 463–64 (describing capital punishment as “simply and obviously an act of vengeance and ought to be acknowledged as such”).

⁴⁵ See *id.* at 426 (“[C]apital punishment, in my view, has never achieved anything except revenge....”) (quoting Albert Pierrepoint, Britain’s chief executioner from 1946–56).

⁴⁶ See CATECHISM, *supra* note 1, at ¶ 2266 (noting that the state, and not the criminal him/herself, bears the responsibility of implementing punishment).

⁴⁷ See DRESSLER, *supra* note 33, at 18 (describing retributivist punishment as permitting an offender to pay his debt to society).

⁴⁸ *EVANGELIUM VITAE*, *supra* note 2, at ¶ 56 (emphasis in original).

prisoner has shown himself to be rehabilitated? This is fiercely debated in our society. This should be decided on a case-by-case basis to see if, after 20-25 years, the murderer is truly capable of again functioning in society.

Both documents repeat the following:

“If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.”⁴⁹ This may necessitate life in prison because he may be judged too great a risk for others. Society must be protected. But the public authority should remain open to the possibility that this is not always the case.

Moreover, since man’s nature never changes, he is never radically corrupt. Intrinsically, he is always dignified because the image and likeness of God in him⁵⁰ can never be effaced or destroyed.⁵¹ Natural law is *the foundation of rights*.⁵² What harms society is not the person of the criminal, but his activity.⁵³ We must therefore forbid and restrain his activity, not destroy his person.⁵⁴

The right to life, the first right of every human person, must be firmly recognized without exception.⁵⁵ We must return more

⁴⁹ *Id.*; see also CATECHISM, *supra* note 1, at ¶ 2267.

⁵⁰ See Genesis 1:27 (New American) (“God created man in his image; in the divine image he created him; male and female he created them.”).

⁵¹ See CATECHISM, *supra* note 1, at ¶ 1956 (“[T]he natural law . . . expresses the dignity of the person . . . [and] cannot be destroyed or removed from the heart of man.”).

⁵² *Id.* (“The natural law, present in the heart of each man and established by reason, is universal in its precepts and its authority extends to all men. It expresses the dignity of the person and determines the basis for his fundamental rights and duties.”).

⁵³ *Id.* at ¶ 1849 (“Sin is an offense against reason, truth, and right conscience; it is a failure in genuine love for God and neighbor caused by a perverse attachment to certain goods. It wounds the nature of man and injures human solidarity.”).

⁵⁴ *Id.* at ¶ 2267 (asserting that execution of a criminal offender, which takes away his possibility of redeeming himself, is rarely necessary in the face of various alternatives for preventing crime).

⁵⁵ *Id.* at ¶ 2258 (“*Human Life* is sacred because from the beginning it involves the creative action of God and it remains forever in a special relationship with the Creator. God alone is the Lord of life from its beginning until its end; no one can under any circumstances claim for himself the right directly to destroy an innocent human being.”).

and more to our Christian roots which forbade the profession of soldier or gladiator as well as that of judge, so as not to spill blood. The approval of the death penalty by Christians after Constantine comes from pagan societies, not from our Christian roots.⁵⁶

Evangelium Vitae says that “[t]he problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God’s plan for man and society.”⁵⁷ This plan of God is a plan for life, which always hopes for the conversion of the sinner.⁵⁸ If the state derives its authority from God, from whom all authority comes, then it is God alone who gave life, and only he has the power to take it away.⁵⁹ To appeal to God for capital punishment is clearly erroneous.

CONCLUSION

The power of the state to kill is in direct contrast to the spirit of the Gospel and is in opposition, for example, to the Sermon on the Mount.⁶⁰ The ideal that Jesus taught is one of absolute non-violence.⁶¹ And it is certain that towards this ideal all Christians

⁵⁶ Megivern, *supra* note 34, at 20–21 (noting that a comment by the earliest Christian philosopher, Athenagoras of Athens reflects the “sensitivity of a second-century member of a Christian community that would have nothing to do with human bloodshed . . . killing is killing, and Christians are well known to be opposed to it in all its forms”).

⁵⁷ *EVANGELIUM VITAE*, *supra* note 2, at ¶ 56.

⁵⁸ See *Ezekiel* 18:23 (New American); *Genesis* 4:18 (New American); *Ezekiel* 19:21 (New American) (“But if the wicked man turns away from all the sins he committed, if he keeps all my statutes and does what is right and just, he shall surely live, he shall not die. None of the crimes he committed shall be remembered against him; he shall live because of the virtue he has practiced”); see also *CATECHISM*, *supra* note 1, at ¶ 1846 (“The Gospel is the revelation in Jesus Christ of God’s mercy to sinners. The angel announced to Joseph: ‘You shall call his name Jesus, for he will save his people from their sins.’”).

⁵⁹ See *CATECHISM*, *supra* note 1, at ¶ 2258 (“God alone is the Lord of life from its beginning until its end: no one can under any circumstances claim for himself the right directly to destroy an innocent human being.”).

⁶⁰ See *Matthew* 5:38–39 (New American); see also *CATECHISM*, *supra* note 1, at ¶ 2261 (“In the Sermon on the Mount, the Lord recalls the commandment, ‘You shall not kill,’ and adds to it the proscription of anger, hatred and vengeance. Going further, Christ asks his disciples to turn the other cheek, to love their enemies.”).

⁶¹ See *Luke* 6:29 (New American) (“To the person who strikes you on one cheek, offer the other one as well . . .”).

must tend, under pain of no longer being Christians. But tradition has never considered these injunctions from the Sermon to be formal orders or mandatory obligations that under all circumstances must be followed, particularly in defense of innocent human life.

The circumstances of our day, however, have made progress in the discovery of human dignity and have permitted the *Catechism* and *Evangelium Vitae* to go further than the Magisterium has ever gone before in limiting the moral right of the state to that of legitimate defense.⁶² Such defense is extremely limited if it is permissible at all, given the possibilities of incarceration today.

The Catholic Church is not completely abolitionist on capital punishment since it upholds the right of self-defense, both individually and collectively in cases of *imminent* danger of death.⁶³ Yet capital punishment, as exercised today, no longer serves the purpose of self defense. What goes on today in prisons across America is nothing more than legal murder.

The Catholic Church's view of capital punishment imitates God, who is God of the living and not of the dead. In the words of John Paul II, "The only path to peace is forgiveness. Forgiveness given and received enables a new kind of relationship between people, breaking the spiral of hatred and revenge and shattering the chains of evil which bond the hearts of those in conflict with one another."⁶⁴ Capital punishment stifles all of this.

⁶² See CATECHISM, *supra* note 1, at ¶¶ 2263–65 (discussing the legitimate defense of persons and societies); *EVANGELIUM VITAE*, *supra* note 2, at ¶¶ 55–56. (stating that punishment of an offender "must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity" and noting that such cases "very rarely arise").

⁶³ CATECHISM, *supra* note 1, at ¶¶ 2263–65 ("[S]omeone who defends his own life is not guilty of murder and legitimate defense can be . . . a grave duty for one who is responsible for the lives of others.").

⁶⁴ JOHN PAUL II, *MESSAGE OF THE HOLY FATHER FOR LENT 4* (2001) available at http://www.vatican.va/holy_father/john_paul_ii/messages/len/documents/hf-jp-ii_mes_20010206_lent_2000_en.html.