

Capital Punishment

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The subject of capital punishment is interesting because it is an area of apparent development in Church doctrine during the papacy of Pope John Paul II.

Prior to the *Catechism of the Catholic Church* in 1993 and the papal encyclical *Evangelium Vitae* in 1995, the treatment of punishment in the Catholic tradition had followed the teaching of St Thomas Aquinas who held offenders are punishable because, in choosing to offend, they have excessively indulged their will and thereby gained a kind of advantage over those who have restrained their own wills from such excess. He reasoned that a just relationship between themselves and their fellow citizens can fittingly be restored by proportionately imposing upon such offenders something *contra voluntatem*, contrary to and suppressive of their will¹. Aquinas referred to this as the “medicinal” function of punishment. Capital punishment thus has three “medicinal” purposes:

- To heal the offenders by reforming them and by expiating their offence (rehabilitation);
- To prevent the disease of the offence by deterring others (deterrence); and
- To heal the whole community by rectifying the disorder of injustice created by the offender's self-preferential violation of justice (vindicating the law).

St Thomas expresses it succinctly when he says,

"Every individual person is compared to the whole community, as part to whole. Therefore, if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good"²

Seen in this way, not applying capital punishment for a grave offence such as murder may be considered to fail to take the crime seriously and in that way to leave the society in a disordered state in which it does not value life sufficiently.

Capital punishment appears to have Divine sanction in Scripture. In Genesis 9:5-6, God says to Noah and his family, "And surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; and at the hand of every man's brother will I require the life of man. Who so sheddeth a man's blood, by man shall his blood be shed: for in the image of God made he man."

¹ St Thomas Aquinas *Summa Theologica* I-II q. 46 a. 6 ad 2.

² Ibid. II-II, Q. 64, Art. 2).

The Old Testament lists many offences for which death is the prescribed penalty including:

- Hitting your parents -- Ex. 21:15
- Kidnapping -- Ex 21:16
- Cursing your father or mother -- Ex 21:17
- Killing an unborn infant -- Ex 21:22-25
- Owning an animal that has the habit of injuring others -- Exodus 21:28-29
- Witchcraft -- Ex. 22:18
- Worship of other gods/goddesses -- Ex. 22:20
- Working on the Sabbath -- Ex. 35:2 Adultery -- Lev. 20:10
- Incest -- Lev. 20:11-12 & 14
- Sodomy (homosexuality/lesbianism) -- Lev. 20:13
- Bestiality -- Lev. 20:15-16
- False prophesying -- Deut. 13:1-10
- Rape under some circumstances -- Deut. 22:25

In the New Testament, Jesus was himself a victim of capital punishment and the words of the repentant thief may be seen as condoning capital punishment when he says

"And we indeed [justly]; for we receive the due reward of our deeds: but this man hath done nothing amiss." Luke 23:41

Jesus also appeared to condone capital punishment when he says in response to the mob who have confronted a woman caught in adultery,

"So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her." John 8:7

In his letter to the Romans (13), St Paul writes,

"Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Therefore whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. For rulers are not a cause of fear for good behaviour, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil."

The three purposes, rehabilitation, deterrence and vindication of the law, have stood as the accepted reasons for capital punishment within Christian tradition. The treatment of the issue in the *Catechism of the Catholic Church* therefore came as a surprise.

In clause 2266, punishment must be proportionate to the offence and is justified in order to safeguard the common good and has the primary aim of redressing the disorder introduced by the offence. 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.

In referring to redressing the disorder and expiation, the Catechism is consistent with the tradition, however in addressing capital punishment directly there would seem to have been a shift. The notion of redressing the wrong and expiation would seem to have been omitted.

Clause 2267 limits the use of capital punishment to those circumstances in which it is the only possible way of effectively defending human lives against the unjust aggressor and goes on to say,

“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 are more in conformity to the dignity of the human person.”

The implication is that far from expiating the offender of the offence, capital punishment is undesirable because contrary to human dignity and only permissible as a last resort. The *Catechism* goes on to say that the cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent, because there are many effective possibilities that the state has for preventing crime by rendering one who has committed an offence incapable of doing harm “without definitely taking away from him the possibility of redeeming himself”.

Pope John Paul similarly shifts the emphasis away from expiation and redressing disorder towards viewing capital punishment as an unfortunate last resort when he says in reference to the context of capital punishment,

“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.”³

He refers to a growing tendency, both in the Church and in civil society, to demand that capital punishment be applied in a very limited way or even that it be abolished completely.⁴

In modern society this new approach seems to be a more humane handling of the issue than the earlier approach advocated in the Middle Ages by St Thomas. We have the means to manage serious criminals other than by executing them. We do not feel the need to have their lives taken as a way of making up for the wrong that they have done. However often the families of victims express a different view and nothing short of the death of the perpetrator would satisfy their sense of the injustice to the victim.

³ Pope John Paul II *Evangelium Vitae* 1995, n. 55

⁴ *Ibid.* n. 56

It is interesting to reflect on the fact that our intolerance of capital punishment happens at a time when we are more tolerant of killing with respect to abortion and in the popular advocacy for euthanasia.

The US Supreme Court has expressed some reservations about capital punishment in Justice William Brennan's opinion in the United States Supreme Court decision in *Furman v Georgia*, 1972 in which he said,

“If a punishment is unusually severe, if there is a strong possibility that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively than some lesser punishment, then the continued infliction of that punishment violates the command of the clause [Eighth Amendment] that the State may not inflict inhuman and uncivilised punishments upon those convicted of crimes.”⁵

Many of the arguments against capital punishment are about its consequences. Opponents argue that the evidence suggests that the deterrence effect is no greater than life imprisonment and that capital punishment tends to inflame some minds to greater crime. For those already guilty of a capital offence, capital punishment provides no reason to limit their offending because they “may as well be hung for sheep as for lamb”. There is also evidence of fallibility of prosecution and judgement by the Courts and the effort to prevent mistakes has resulted in the cost of the appeals process often being greater than the cost of life imprisonment. Other concerns are the social impact of violence by State in which it approves and carries out a planned killing. Also, as the *Catechism* has argued, there is no need for capital punishment in order to prevent re-offending. Finally, often the criminal who suffers capital punishment becomes a glorified victim. This can be a response to the cruelty of planned killing in full knowledge and anticipation of the victim. The latter raises questions about the legality of capital punishment in international law because it is arguably a “cruel and unusual punishment” It is worth noting that societies that have prohibited capital punishment do not have a greater rate of serious crime than those who do still employ it.

⁵ U.S. Supreme Court *FURMAN v. GEORGIA*, 408 U.S. 238 (1972)

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