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Christopher Kaczor

Loyola Marymount University, Christopher.Kaczor@lmu.edu

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Capital Punishment and the Catholic Tradition: Contradiction, Circumstantial Application, or Development of Doctrine?

CHRISTOPHER KACZOR
Loyola Marymount University
Los Angeles, CA

IN *VERITATIS SPLENDOR*, John Paul II is usually interpreted as having affirmed tradition; but in *Evangelium Vitae*, he is seen as breaking with it, at least in terms of his discussion of the death penalty. By way of context, I would like first to briefly state the traditional Catholic teaching, followed by current teaching as articulated by Pope John Paul II. Then I will explore various understandings of this teaching. Some see contemporary teaching as a radical rejection of previous tradition. Others highlight tradition, downplaying the significance, importance, and novelty of the contemporary teaching. They argue that nothing has really changed and that the contemporary view of capital punishment is merely a circumstantial application of the traditional teaching. The first tendency emphasizes change to the detriment of continuity; the second emphasizes tradition without sufficiently taking note of what is new. I believe both views are mistaken and that rather a development of doctrine has taken place—a development that does not contradict what was taught in the past but also a development that significantly moves beyond what was taught in the past. The final section of the essay will explore the ramifications of this view of capital punishment for building a culture of life.

I. Justification for the Death Penalty in the Catholic Tradition

Drawing on Thomistic resources, Thomas Higgins defines punishment as the act of a legitimate authority depriving an offender of a good of which

the offender is no longer worthy.¹ The Catholic tradition has accepted the use of the death penalty as fulfilling the four purposes of punishment: retribution, defense of society, deterrence, and rehabilitation of the criminal. Although there is some debate among scripture scholars about the interpretation of these texts, numerous scriptural passages have been cited to justify the death penalty as fulfilling one or more of these purposes of punishment. “Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image” (Gen 9:6). God is sometimes portrayed as putting evildoers to death (Num 16). Perhaps the most common passage used to justify capital punishment as retribution is: “He who kills a man shall be put to death. . . . as he has done it shall be done to him, fracture for fracture, eye for eye, tooth for tooth” (Lev 24:17). In the Old Testament, murder, adultery, idolatry, incest, rape, kidnapping, pederasty, witchcraft, blasphemy, bestiality, and other forms of wrongdoing were punishable by death.

In the New Testament as well, there are passages that seem to affirm the right of the state to administer the death penalty. Governmental authority “does not bear the sword in vain; for he is the servant of God to execute his wrath on the wrongdoer” (Rom 13:4). As Cardinal Avery Dulles notes: “Jesus commends the good thief on the cross next to him, who has admitted that he and his fellow thief are receiving the due reward for their deeds”² (cf. Lk 23:41). Again, according to Cardinal Dulles, “In the New Testament the right of the State to put criminals to death seems taken for granted.”³

This view is certainly taken for granted in the patristic tradition and later in the work of medieval theologians. Although a sermon by St. John Chrysostom on the wheat and the weeds argues against the death penalty,⁴ the patristic tradition is fairly united in support of it. Offering what would become the standard understanding in the West, St. Augustine argued that the fifth commandment does not forbid the taking of any human life, but only the taking of innocent human life. By understanding the commandment in this way, Augustine made room for both a theory of just war as well as legitimate use of capital punishment.

¹ Thomas J. Higgins, SJ, *Man as Man, The Science and Art of Ethics* (Rockford, IL: Tan Books and Publishers, 1992).

² Avery Cardinal Dulles, SJ, “Catholicism and Capital Punishment,” *First Things* 112 (April 2001): 30–35, at 30.

³ Ibid.

⁴ John Chrysostom, Homily 46 on Matthew 13:24–30, in *Nicene and Post-Nicene Fathers of the Christian Church*, ed. Philip Schaff (Grand Rapids, MI: Eerdmans, 1975 [reprint]), vol. 10: 288f. Throughout the historical section of this work, I am particularly indebted to James J. Megivern’s massive work *The Death Penalty: An Historical and Theological Survey* (Mahwah, NJ: Paulist Press, 1997).

St. Thomas Aquinas followed Augustine on this matter and argued that the death penalty can satisfy the four purposes of punishment. Finally, he understood the retributive aspect of punishment as demanding that only the unjust, and never the innocent, may be executed.⁵ Thomas compared state execution to individual self-defense arguing that the body politic, like an individual, has the right to protect itself against criminals.⁶ He also compared capital punishment to amputation of a diseased limb in that someone protects the common good of the body by removing the private good of the limb.⁷ Thomas argued that capital punishment deters others from sinning by making them fear doing evil.⁸ The death penalty even serves the purpose of rehabilitation by ensuring that the sinner cannot commit further sins and by confronting the wrongdoer with immanent death, which can efficaciously stir a person to repent.⁹ As Samuel Johnson noted (in a letter asking for clemency for someone on death row), “When a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.”¹⁰

Approved manuals of moral theology, the consensus of theologians, and the writings of pontiffs well into the twentieth century do not differ substantially from the position articulated by Thomas. Among the most germane of papal teaching on this matter comes from Pope Innocent III, who in 1210 demanded that the Waldensians (a splinter group who had rejected capital punishment) affirm the following proposition in order to be restored to communion with the Church: “the secular power can, without mortal sin, exercise judgment of blood, provided that it punishes with justice, not out of hatred, with prudence, not precipitation” (Denz 257).¹¹

II. Contemporary Teachings on the Death Penalty

The most significant papal statement on the death penalty in recent times comes from John Paul II’s encyclical *Evangelium Vitae*. It apparently marks

⁵ *Summa contra Gentiles* III, 146.

⁶ Ibid.

⁷ Ibid.

⁸ SCG III, 144.

⁹ SCG III, 146.

¹⁰ James Boswell, *Life of Samuel Johnson* (1791), entry of 19 September 1777.

¹¹ Germain Grisez argues that Innocent III’s required profession of faith is not addressing the objective morality of the act of execution, but the question of culpability. E. Christian Brugger, *Capital Punishment and the Roman Catholic Tradition* (Notre Dame, IN: University of Notre Dame Press, 2003) offers a fascinating treatment of the death penalty in the Catholic tradition, and in chapter seven, agrees with Grisez that at no time did the Magisterium ever propose that the death penalty was morally permissible.

a change in the traditional teaching: “It is clear that, for these purposes [retribution, defense against the criminal, deterrence, rehabilitation] to be achieved, *the nature and extent of the punishment* must be carefully evaluated and decided upon, and [the state] ought not 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” (*Evangelium Vitae* 56, emphasis in the original). This doctrine is echoed also in the revised edition of the *Catechism of the Catholic Church* (CCC). Many questions have arisen about the relationship between these statements and the statements cited earlier from tradition. Do we have in *Evangelium Vitae* a rejection of previous teaching? Are the remarks in *Evangelium Vitae* merely a prudential application of traditional teachings in new circumstances?

1. A Contradiction within Church Teaching?

Needless to say, scholars have debated a great deal about the above quoted passage taken from *Evangelium Vitae*, as well as other statements drawn from official sources that echo the teaching. In this reflection, some have claimed that this teaching represents a radical departure, reversal, and rejection of previous teaching. Justice Antonin Scalia sees a tension between retribution and *Evangelium Vitae*’s insistence that the use of the death penalty is rarely if ever appropriate in contemporary society. “If just retribution is a legitimate purpose (indeed, the principal legitimate purpose) of capital punishment, can one possibly say with a straight face that nowadays death would ‘rarely if ever’ be appropriate? So I take the encyclical and the latest, hot-off-the-presses version of the catechism (a supposed encapsulation of the ‘deposit’ of faith and the Church’s teaching regarding a moral order that does not change) to mean that retribution is not a valid purpose of capital punishment.”¹² On this view, the teaching of *Evangelium Vitae* represents a radical departure from previous teaching because it replaces retribution with defense of society as the valid purpose of capital punishment.

Scalia presupposes a disjunctive understanding of the purposes of punishment: It must be *either* for retribution *or* to protect society. Although the standard interpretation of the phrase “when it would not be possible otherwise to defend society” emphasizes a movement away from the death penalty, it is seldom noticed that the statement also implies that the death

¹² Antonin Scalia, “God’s Justice and Ours,” *First Things* 123 (May 2002): 17–21.

penalty *is* justified when needed to defend society. But surely defending society *alone* does not justify judicial execution. Imagine a pathologically insane person who continually escapes mental hospital confinement and harms others. His mental pathology renders him innocent and guiltless despite the harmful effects he causes. Since such a person is innocent, it would always be wrong to intentionally kill him according to Catholic teaching (CCC 2268, *Evangelium Vitae* 57), although it would be permissible to stop him with lethal force when he is in the process of attack (CCC 2263, *Evangelium Vitae* 55). Since the death penalty intentionally kills an incapacitated person, capital punishment for the insane, but innocent, is impermissible. However, imagine a different person, not insane but just very wicked, who continually escapes confinement and harms others. It would not be contrary to the teaching of *Evangelium Vitae* to execute such a person since capital punishment would be needed in such a situation to defend society and the person executed would be guilty and, therefore, a fit object for retribution. These “exceptions” may be in fact fairly numerous if one takes into account those who escape from prison and kill, those who order “hits” or coordinate terrorist activities from within the prison walls, as well as those who kill other inmates or guards without escaping. However, these examples considered together indicate that “defense of society” *has not* supplanted “retribution” (since defense of society *alone* does not justify the death penalty). Therefore, these purposes of punishment should not be read disjunctively (capital punishment is *either* for defense *or* for retribution) but rather conjunctively (capital punishment is both for retribution and for the defense of society).

In *Evangelium Vitae*, John Paul II is suggesting an answer to a question never before formally dealt with by the Magisterium: What is the relationship of the various purposes of punishment in the case of the death penalty? or What are the necessary or sufficient conditions for exercising capital punishment? The answer seems to be that *both* defense of society and retribution are necessary for the legitimate exercise of capital punishment, and neither alone suffices. Arguably, this is a development of doctrine. The teaching of *Evangelium Vitae* on the death penalty does not reject or reverse any previous Church teaching, since no previous Church teaching had addressed the question of the relationship among the various purposes of punishment in the case of the death penalty.

Indeed, applying Scalia’s own theory of judicial interpretation to this controversy would suggest that reading a contradiction between prior and current teaching on the death penalty is unwarranted. In his book *A Matter of Interpretation*, Justice Scalia proposes the following hermeneutic

in interpreting ambiguous legal texts: “Another accepted rule of construction is that ambiguities in a newly enacted statute are to be resolved in such a fashion as to make the statute, not only internally consistent but also compatible with previously enacted laws.”¹³ If we apply this rule of construction to the current ambiguity about how to understand *Evangelium Vitae*’s teaching on the death penalty, then we should favor readings that make *Evangelium Vitae* internally consistent and consistent with previous magisterial teachings. On Scalia’s interpretation, *Evangelium Vitae* would be rendered *internally inconsistent* for it would be explicitly asserting that the primary purpose of punishment is retribution and then within the very same paragraph also implicitly rejecting the notion that the primary purpose of punishment is retribution. *Evangelium Vitae* would also be incompatible with previously enacted Church teaching, as Scalia notes. So the very hermeneutic suggested by Scalia in interpreting ambiguous texts leads one to believe that Scalia’s understanding of *Evangelium Vitae* that should not be accepted.

Indeed, John Paul II puts his own consideration of the death penalty squarely within the context of the traditionally recognized purposes of punishment. Admitting that punishment is for retribution, defense of society, rehabilitation of the criminal, and deterrence, he nevertheless concludes that there is no necessity in imposing the death penalty. To properly understand the teaching on capital punishment one must again consider these purposes.

Of the four purposes of punishment mentioned, the most commonly misunderstood is retribution, which is too often characterized as simple vengeance. Vengeance arises from feelings of anger or hatred and typically punishes until that emotion is satisfied. On the other hand, retributive justice has to do with the expiation of guilt and the recognition of a moral order that may or may not be tied to any emotional state. In fact, the Church teaches that retributive justice is punishment’s primary purpose. As the *Catechism of the Catholic Church* says: “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” (CCC 2266).

What is meant by “primary aim”? As Aristotle noted in the *Categories* (12), one thing can be primary to another in time, in existence, in some particular order or in importance. What is meant by primary in this context is probably not a primacy of importance as the most important purpose of punishment, in John Paul II’s thought at least, is arguably the

¹³ Antonin Scalia, *A Matter of Interpretation* (Princeton, NJ: Princeton University Press, 1998), 16.

defense of society. Securing the common good is the most important function of the state, and discharging punishment, like any other activity of the state, is only legitimately done in light of promoting the common good. Indeed, it would be contrary to the duties undertaken by legitimate authority to punish someone if to do so would destroy the common good—say putting to death a brilliant scientist who was desperately needed to develop a cure for a disease ravaging society. So, of the various aims of punishment, retribution is not the most important, at least in the sense of being the overriding consideration.¹⁴ Primary might also mean first in the order of time, since before deterrence or defense of society from the criminal can take place, retribution is inflicted on the guilty party.

However, it is probably best to understand the notion that the “primary aim” of punishment is retribution to mean that retribution is a necessary condition for the existence of any just punishment. In other words, what is going on is not really just *punishment* unless there is a *guilty party* whose good is deprived by legitimate authority on account of his or her wrongdoing. The state can justly punish only those who are guilty of a crime. Were such a restriction not in place, the state could imprison innocent people if such an act would serve the goals of deterring crime (such as punishing an innocent person who the public at large believed to be guilty), or detaining people for what they are likely to do in the future but which they have not in fact done (defense against likely criminals). Punishment of any kind may be justly administered only upon the guilty and never upon the innocent.

Critics of capital punishment sometimes believe retributive justice dehumanizes the criminal even if the criminal’s guilt is established. Thurgood Marshall argued that capital punishment “has as its very basis the total denial of the wrongdoer’s dignity and worth.”¹⁵ Put another way, a person might oppose capital punishment primarily because they hold retribution in itself to be inhumane or contrary to human dignity. Or if they see a value in retribution, they might oppose capital punishment as a denial of the dignity or goodness of the life of the criminal, though they might see other punishments as not opposed to that dignity. In the words of Rudolf Gerber:

Politicians regularly defend the death penalty on the ground that human life is so sacred that to snuff it out demands the highest penalty possible. Only by using the highest penalty, they argue, can we deter the

¹⁴ *Summa theologiae* II–II, q. 43, a. 7, ad 1.

¹⁵ Thurgood Marshall, “The Death Penalty is a Denial of Human Dignity,” in *Life and Death: A Reader in Moral Problems*, ed. Louis P. Pojman (Belmont: Wadsworth Publishing, 2000), 373.

taking of life and spread the message that life, above all other values, is never to be taken. The death penalty directly contradicts this message. If human life is so sacred that it is never to be taken, the argument also applies by the same logic to governmental killing of a criminal. The death penalty exemplifies that killing is permissible, even desirable, by a powerful entity responding to provocation.¹⁶

On this view, there would be a contradiction in Church teaching between upholding the value of every human life and admitting that capital punishment may be used.¹⁷

Some see this contradiction within the teaching of John Paul II himself. For Christian Brugger, there is an important natural law argument against any use of the death penalty, which arises from the goodness of life. In his book *Capital Punishment and the Roman Catholic Tradition*, Brugger argues that John Paul II's teaching in *Veritatis Splendor* provides all the premises needed for an absolute prohibition of capital punishment. Natural law, on this view, excludes the death penalty in an exceptionless way, just as it excludes abortion or "direct" euthanasia. Brugger writes:

In summary, the logic of *Veritatis Splendor's* account of the foundations of morality is as follows: "human dignity," appealed to as a moral principle, is shorthand for the intrinsic goodness proper to human persons as such; human persons are a unified body-soul reality; human bodily life, because inseparably and irreducibly part of the body-soul reality which is the human person, is invested with the full value (goodness) of human personhood; and deliberate acts that do not have "absolute respect" for human life are wrong, that is, human life is to be absolutely respected. The encyclical's formulation of the relevant exceptionless norm is traditional: "it is always morally illicit to kill an innocent human being." It says nowhere that killing the guilty is morally licit, nor, in light of its own moral logic, does it account for why the norm is formulated as it is.¹⁸

Indeed, for Brugger, the logic of *Veritatis Splendor* leads one to the conclusion that all intentional taking of human life, guilty or innocent, is morally wrong.

¹⁶ Rudolph J. Gerber, "Death Is Not Worth It," *Litigation* 24 (1998): 351–52

¹⁷ Bernard Nathanson, *Aborting America* (Fort Collins, CO: Life Cycle Books, 1979), 241; David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003), 55.

¹⁸ E. Christian Brugger, *Capital Punishment and the Roman Catholic Tradition* (Notre Dame: University of Notre Dame Press, 2003), 30.

In fact, application of retributive justice actually recognizes and reaffirms the humanity of the one being punished; it does not involve a denial of the goodness of human life. Although the ancients put inanimate objects on trial and punished them, we do not. We only try and punish human beings because only human beings enjoy freedom in such a way that they may be held responsible for their actions. The dignity of the person gives rise to freedom, and freedom gives rise to responsibility. If we were to let criminals like elderly mafia dons or Nazi concentration camp officers “off the hook” with no punishment whatsoever since they no longer posed a threat to society, we would be acting on the same principle that they did: Some human beings should be treated as less than human. We would be failing to take their human responsibility seriously, and we in fact would be responding to them as we might respond to a tree or a fire that had caused human misery.

In reply to the second concern—that capital punishment, uniquely among punishments, denies the dignity and goodness of the criminal’s life—it may be helpful to return to the previously mentioned definition: Punishment deprives an offender of a good of which the offender is no longer worthy. If wealth were not a good, then a fine would not be a punishment. If liberty were not a good, then imprisonment would not be a punishment. If the criminal’s life were not a good, then the death penalty would not be a punishment. Rather than denying the goodness of the life of the one put to death, capital punishment presupposes that goodness, as a fine presupposes the goodness of wealth or imprisonment presupposes the goodness of liberty. Since judicially imposed fines or imprisonment do not “send a message” that private theft or kidnapping is permissible, capital punishment need not be understood as a tacit approval of taking innocent human life.

The thought of John Paul II supports the idea that capital punishment does not of itself violate the natural law in part because freedom, like bodily life, is an intrinsically good aspect of a human being. In this passage from *Veritatis Splendor*, the Pope criticizes views of freedom that pit freedom against the biological nature of humankind. According to John Paul II, these theories hold that:

human nature and the body appear as “presuppositions or preambles,” materially “necessary” for freedom to make its choice, yet extrinsic to the person, the subject and the human act. Their functions would not be able to constitute reference points for moral decisions, because the finalities of these inclinations would be merely “physical” goods, called by some “pre-moral.” To refer to them, in order to find in them rational indications with regard to the order of morality, would be to expose

oneself to the accusation of physicalism or biologism. In this way of thinking, the tension between freedom and a nature conceived of in a reductive way is resolved by a division within man himself.

This moral theory does not correspond to the truth about man and his freedom. It contradicts the “Church’s teachings on the unity of the human person,” whose rational soul is “*per se et essentialiter*” the form of his body. The spiritual and immortal soul is the principle of unity of the human being, whereby it exists as a whole—“*corpore et anima unus*”—as a person. These definitions not only point out that the body, which has been promised the resurrection, will also share in glory. They also remind us that reason and free will are linked with all the bodily and sense faculties. (*Veritatis Splendor* 48).

In other words, freedom, linked to our bodily capacities, is an intrinsic aspect of the human person properly understood, just as is the good of life. Elsewhere, private property is also spoken of as a proper good of the person (*Veritatis Splendor* 13). But given that both freedom and private property are proper goods of persons, it does not follow that fines or imprisonment imposed by legitimate authorities in punishment for crime contradicts the just relationship between states and individuals. Thus, Brugger’s argument from John Paul II proves too much because for the Pope not only is life a proper good of the person, so is freedom and property. Obviously, freedom and property can be curtailed through the just punishment of wrongdoers. So too, the good of life can be justly taken away without denying that life is a good or denying that life is an intrinsic aspect of the person.

Retribution is also sometimes misunderstood by advocates of capital punishment. Retribution demands that there must be a proportion between crime and punishment. Everyone agrees that one may not legitimately exceed proportionality in retribution. Thus, it is unjust to sentence a man who stole a loaf of bread to life in imprisonment, even if this will greatly deter others from stealing bread. However, from these considerations it would seem to follow that the *worst crime*, such as first degree murder, deserves the *worst punishment*, the death penalty. So a failure to execute a murderer is a failure to do what justice requires.

Although justice does demand a proportionality between crime and punishment, there is no duty to impose capital punishment because retribution is not a matter of geometrical precision. Although crime and punishment must be proportionate, they can *never* be perfectly proportionate, save perhaps in financial matters. Obviously, we could not put Timothy McVeigh to death 168 times. We cannot sexually abuse the adult child molester in his youth. Even death for death for someone who

has taken a single human life is not *exactly* proportionate, since all the details of the original killing could never be perfectly reproduced. The truth of the biblical adage, “An eye for an eye, a tooth for a tooth,” rests in its affirmation of the need for retributive justice, but not for a justice understood as a geometrical correspondence. Indeed, an “eye for an eye” is best understood as a principle *limiting* violence and, therefore, as an alternative to the more severe punishment prompted by vengeance.

Nor should the more exact retribution of capital punishment in the case of murder be understood as a necessary divine imperative.¹⁹ As St. Ambrose noted about Cain’s fratricide of Abel: “God who preferred the correction rather than the death of the sinner, did not desire that a homicide be punished by the exaction of another act of homicide.”²⁰ Unlike Kant, the Catholic tradition never maintained that a state *must impose* the death penalty, rather it allowed that in some cases the state may impose it. The state has a right to execute, but it does not follow that from a right to execute the state must execute or should execute. The natural law tradition recognizes the right of the state to execute, but it never claimed that capital punishment *must be* discharged.

Indeed, understanding retribution as implying that the *worst crime* (first degree murder) *deserves* the *worst punishment* (the death penalty)²¹ is difficult to reconcile with the biblical and Christian tradition. Scripture approves of punishing lesser crimes, such as adultery, with the death penalty (Lev 20:10), and in Christian societies many lesser crimes were punished by capital punishment, including theft. It is clear then that the tradition does not understand retributive justice in terms of an obligation to inflict the worst punishment for the worst crime, since it was accepted that death may be inflicted for lesser crimes. Retributive justice punishes serious crime with a serious punishment, but it does not require and, indeed in most cases, cannot respond with a mathematically understood retribution. For Thomas, the natural law requires that wrongdoers be punished, but exactly how they should be punished is a determination of the natural law, which human beings often must determine by means of prudential consideration of concrete circumstances (*ST* II–II, q. 85, a. 1, ad 1).

There is, therefore, no need to administer capital punishment in the name of retributive justice. Lifelong imprisonment is an extremely serious punishment that is proportionate to an extremely serious crime.

¹⁹ J. Budziszewski, “Categorical Pardon: On the Argument for Abolishing Capital Punishment,” *Notre Dame Journal of Law, Ethics, and Public Policy* 16 (2002): 43–56.

²⁰ *De Cain et Abel*, II, 10, 38: CSEL 32, 408.

²¹ David S. Oderberg, *Applied Ethics: A Non-Consequentialist Approach* (Oxford: Blackwell, 2000), 159.

Consider the punishment of the “Unabomber” Ted Kaczynski in a new “super-maximum” security prison:

Those in the special segregated population will be confined individually 23 hours a day in a 7-by-12 foot cell. The narrow slat for a window will have smoked glass so the prisoner cannot see outside the cell. The prisoner will have an exercise period of one hour a day, pacing by himself in a narrow concrete yard surrounded by a 12-foot high concrete wall and topped by barbed wire. These segregated prisoners will have no group activities and no educational or vocational programs. The worst criminals will have no reading materials. When visitors are admitted, no physical contact will be allowed.²²

Some consider this punishment worse than death, even cruel and unusual. Undoubtedly, such punishment is extremely severe, fitting extremely serious crimes, and it is due to this fittingness that it fulfills the purpose of punishment as retribution.

Let us move now to the second purpose of punishment: defense of society. Although the death penalty absolutely excludes the chance of the criminal harming society again, imprisonment in contemporary Western society can usually serve to defend others against the aggression of the criminal. In Aquinas’s justification of self-defense (*ST* II–II, q. 64, a. 7), the violence of the means used in defense cannot exceed that which is necessary to save innocent life. So too in St. Thomas’s justification of amputation—amputation would not be justified if a less radical remedy can accomplish the same goal of protecting the rest of the body. In his treatment of the death penalty, Thomas compares the death penalty to private self-defense and amputation.

Now every part is directed to the whole, as imperfect to perfect, wherefore every part is naturally for the sake of the whole. For this reason we observe that if the health of the whole body demands the excision of a member, through its being decayed or infectious to the other members, it will be both praiseworthy and advantageous to have it cut away. Now 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, since “a little leaven corrupteth the whole lump” (1 Cor. 5:6) (*ST* II–II, 64, 2).

If the punishment of criminals is understood as analogous to amputation or individual self-defense, then capital punishment is only permissible if

²² William Saunders, “Capital Punishment and Church Teaching (Part Two)” *Catholic Herald*, 5/31/01. (www.catholicherald.com/saunders/01ws/ws010531.htm)

it is the only means available for the defense of the physical well-being of society.

Christian Brugger argues that the focus on the importance of the defense of the society indicates a rather radical shift in the Church's understanding. On this view, the death penalty is now under the "model" of private self-defense.²³ He points out that the word "aggressor" rather than "criminal" is used in formulations treating the death penalty (CCC 2267). He notes further regarding the language used in the *Catechism*: "'Rendering aggressors incapable of doing further harm' is classical terminology used to refer to the lawful killing of aggressors by private citizens in self-defense."²⁴

However, this approach is not without its difficulties. Cardinal Dulles points out that double-effect reasoning, which justifies violent self-defense, excludes intending the evil effect of death, but in capital punishment the death of the criminal is intended.²⁵ In addition, the treatment of the death penalty is itself within *Evangelium Vitae* and the *Catechism* explicitly put in the context of *punishment*, not within the treatment of killing in self-defense. Furthermore, in private self-defense, one may not kill an attacker who has been, at least for the moment, incapacitated. If someone attacks me and I knock him out and then tie him up, I would not be justified in going a step further and killing him. But virtually all forms of capital punishment (hanging, electric chair, guillotine, lethal injection) presuppose that the "aggressor" is not, at least for the time being, an aggressor. Thus, if capital punishment were simply a form of community self-defense governed by the same norms as private defense, then justified capital punishment should not be described in *Evangelium Vitae* as "rare, if not practically non-existent" but rather as *entirely non-existent*.²⁶ Lethal private self-defense is not justified in cases where the aggressor is incapable of inflicting harm, but that is precisely the circumstance in which capital punishment is exercised.

The shifts noted by Brugger are significant in that they highlight the development of communal defense as a necessary condition for justly

²³ Christian Brugger, "Avery Cardinal Dulles and His Critics: An Exchange on Capital Punishment," *First Things* 115 (August/September 2001): 7–8.

²⁴ *Ibid.*, 8.

²⁵ Avery Cardinal Dulles, SJ, "Avery Cardinal Dulles and His Critics: An Exchange on Capital Punishment," *First Things* 115 (August/September 2001), 14.

²⁶ This was pointed out also by Steven Long, "For if we interpret *Evangelium Vitae* as assimilating the *ratio* of public justice to the *ratio* of wholly private self-defense, then *Evangelium Vitae* will appear to miscontextualize the teaching of Thomas while suggesting grave difficulties for the Catholic tradition's distinction between private and public authority." Steven Long, "*Evangelium Vitae*, St. Thomas Aquinas, and the Death Penalty," *The Thomist* 63 (1999): 511–52, at 516.

administering capital punishment. The shifts do not, however, indicate a rejection of the traditional fourfold purpose of punishment, the context within which John Paul II treats the death penalty, nor do they indicate the assimilation of capital punishment to the norms governing private self-defense.

It would also be mistaken to hold that the defense of society includes retribution. As Scalia writes: “The text [of *Evangelium Vitae*] limits the permissibility of the sanction to one situation: ‘when it would not be possible otherwise to *defend society*.’ No reasonable speaker, much less careful draftsman of an encyclical, would use that language to describe or include the goal of *retribution*.”²⁷ It is quite easy to see how the *physical defense* of society is facilitated by contemporary prisons, the “steady improvements in the organization of the penal system,” that lessen the likelihood of escape. It is hard to see how such penal improvements would make any difference whatsoever in manifesting the transcendent order of justice.²⁸

The third purpose of punishment, deterrence, is also subject to discussion. In itself, the practical abolition of capital punishment does not impede the traditional purpose of punishment as a deterrent. Study of the issue has not determined, to the best of my knowledge, a definitive answer to the question of whether capital punishment is a better deterrent than other forms of punishment. Some suggest capital punishment does deter, if well publicized nationally.²⁹ Others argue strongly that no

²⁷ Antonin Scalia, “Antonin Scalia and His Critics: The Church, the Courts, and the Death Penalty,” *First Things* 126 (October 2002): 8–18, emphasis in the original.

²⁸ Long rightly points out this misreading, “The primary purpose of punishment is stated as being ‘to redress the disorder caused by the offence,’ yet the reductionist reading has interpreted the ‘rehabilitative’ goal highlighted in the following sentence as the complete and sufficient meaning of ‘redressing the disorder.’” Long, “*Evangelium Vitae*, St. Thomas Aquinas, and the Death Penalty” 516. However, Long, I believe, overemphasizes that the defense of the physical order of society did not play a role in Catholic considerations of the death penalty prior to *Evangelium Vitae*. In the first edition of the *Catechism of the Catholic Church* (that is, pre-*Evangelium Vitae*), it reads: “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” (no. 2267, emphasis added). A proper interpretation of *Evangelium Vitae* must take into account that for John Paul II, the physical protection and the criminal not only guilty but an “aggressor” does play a role in the interpretation and development of the tradition in the encyclical.

²⁹ Steven Stack, “Publicized Executions and Homicide,” *American Sociological Review* 52 (1987): 532–39.

discernable deterrent is provided by capital punishment.³⁰ Still others hold that homicide increases immediately before and after the use of the death penalty!³¹ At best the jury is out, and in cases of doubt, one should err on the side of not taking human life.

Although Aquinas is correct that the death penalty keeps the sinner from committing more sins, and although imminent death may prompt conversion (it seems better to foresee and prepare for death than to be surprised and unable to prepare as happened with Jeffrey Dahmer), capital punishment completely excludes rehabilitation in any ordinary sense. Even if there is an end of life conversion, the death penalty does not allow conversion to bear fruit. Many grave sinners, even murderers, have later led exemplary lives and done great good. In the Old Testament, Moses killed a man but then gave the Ten Commandments to the people of Israel. David committed adultery and ordered the death of the innocent husband, but in the Psalms later composed some of the most beautiful and influential of all passages in Scripture. In the New Testament, St. Paul persecuted and colluded in the death of Christians but later went on mission to the Gentiles and offered his own life rather than hurt that Body of Christ he once persecuted. In our own time, Dr. Bernard Nathanson performed or oversaw some 75,000 abortions, including killing his own child. He co-founded the National Abortion Rights Action League (NARAL). However, he experienced a profound conversion, as detailed in his book *The Hand of God*, and has spent more than twenty years in exemplary service to human beings in the womb through lectures, books, and movies such as *The Silent Scream* and *Eclipse of Reason*. Admittedly, not all killers experience this metanoia, but our world is a better one because some have. In sum, the contemporary teaching is in continuity with received doctrine regarding the purposes of punishment and is not in contradiction with other teachings of the Church past or present.

2. Change in Circumstances or Development of Doctrine?

Some scholars, however, have viewed contemporary teaching on the death penalty as only a restatement of past teaching applied in a new situation. In other words, they see John Paul II's statements about the death penalty as refinement of Catholic teaching in the sense of an application of the traditional doctrine to new circumstances. New circumstances can certainly render a new application of a traditional teaching. Just as shifts

³⁰ Gerber, "Death Is Not Worth It."

³¹ William J. Bowers et al., *Legal Homicide: Death as Punishment in America, 1864–1982* (Boston, MA: Northeastern University Press, 1984).

in economic models brought a change in the understanding of usury, so too perhaps shifting contemporary circumstances have made a difference in the application of the death penalty.

Since capital punishment is compared by Aquinas and others in the tradition to communal self-defense (though as noted it is not *simply* a form of self-defense), and since it is generally agreed that the use of protective force in self-defense must never exceed that which is necessary for defense (it would be wrong to kill, if injuring provides defense; wrong to injure, if one can simply detain the attacker), it follows that if bloodless means can secure communal defense, such means should be used. Perhaps our contemporary circumstances of the modern penal system have brought a change in the application of teaching.

A difficulty can be raised with this argument in that the physical protection of society from criminals could be secured long before the twentieth century. Ancient Greek and Romans could enslave entire peoples for life. In the middle ages, the *oubliette* left prisoners to languish until the end of their lives. The Tower of London likewise contained many prisoners without parole. So, the ability of society to imprison for life does not seem to be a radical new development.

Secondly, even with contemporary technology, it is not clear that capital punishment would only rarely contribute to the defense of society. The Department of Justice recorded 83 murders in prison during 1993 alone, and untold numbers of convicted murderers have escaped and killed again or have killed guards or fellow inmates within the prison walls. Unfortunately, the modern criminal justice system has many times failed to render the incarcerated harmless. Even when not killing personally, mafia bosses in jail have ordered hits executed by subordinates on the outside. The circumstances are, therefore, not really new, for societies have for centuries had the technological capacity to imprison criminals for life, and even with contemporary technology, many such prisoners have continued to harm society. Thus, the notion that there is simply an application of a traditional teaching in contemporary circumstances is unfounded.

Perhaps contemporary society may itself be viewed as a change in circumstance with respect to the application of the death penalty. Experience of the horrid abuse of human life at the hands of the state in the twentieth century has led to an increasing awareness that justice is sometimes not well-served by the “justice” system, and that perhaps the state should not have jurisdiction over life and death. Not only are the innocent sometimes put to death, but sadly sometimes the holiest of saints. Robert Royal’s *Catholic Martyrs of the 20th Century* details the way state

power exercising capital punishment has been particularly abusive to religious believers in various totalitarian regimes.³² The Thomistic understanding of the parable of the wheat and the weeds (Matt 13.24–30) allowed that if the good cannot be distinguished from the bad, then it is better to spare both than to lose both. To the extent that the criminal justice system does a poor job in the discernment of innocent from guilty, then to that extent the death penalty ought not be administered.

Although the abuse of capital punishment has been regular during the twentieth century, it is not clear that this abuse is a *new* circumstance unique to contemporary experience. From the very beginning, innocent people have been unjustly killed or imprisoned. The death penalty took the lives of Socrates, St. Peter, St. Paul, Boethius—and of course Jesus—to cite just a handful of examples. What may be new is an increasing unwillingness to risk harming innocents. That innocents have been harmed by capital punishment has clearly been a consideration from the earliest stages of the discussion and applies also to lesser punishments such as imprisonment or exile.

A third circumstance that would seem to differentiate current administration of the death penalty from its theoretical justification in the past is the contemporary understanding of the state. In medieval times, theologians justified capital punishment by saying that the state does not act on its own authority but on God's. But as Cardinal Dulles notes:

Retribution by the State can only be a symbolic anticipation of God's perfect justice. For the symbolism to be authentic, the society must believe in the existence of a transcendental order of justice, which the State has an obligation to protect. This has been true in the past, but in our day the State is generally viewed as simply an instrument of the will of the governed. In this modern perspective, the death penalty expresses not the divine judgment on objective evil but rather the collective anger of the group.³³

The traditional justification of the death penalty rested on the idea of a natural law or transcendental moral order reflected by laws of state that the state has an obligation to protect. This transcendental moral order presupposed by traditional defense is completely absent in the administration of justice in the United States, based as it is on an explicit rejection (in most legal quarters) of a transcendent moral order and an explicit acceptance of a positivistic understanding of law.

³² Robert Royal, *Catholic Martyrs of the 20th Century* (New York: Crossroad, 2000).

³³ Avery Cardinal Dulles, SJ, "Catholicism and Capital Punishment," *First Things* 112 (April 2001): 30–35, at 33.

One way of construing this argument is that the corruption of modern states renders them unjustified in the administration of the death penalty. Contemporary states have so abused their authority that even though, in principle, a state might have the right to administer the death penalty, contemporary states may no longer exercise this right, just as parents who abuse their children have their parental rights terminated. As Ralph McInerny notes: "The traditional justification for the death penalty sees the state as the instrument of the common good. But modern states, most notably in the matter of abortion, have farmed out to some members of society the right to take innocent life. Is the Holy Father suggesting that such states no longer meet the conditions of the traditional justification for the death penalty?"³⁴ In the words of Cardinal Dulles: "The classical vision of the state has fallen on hard times, perhaps because of the outrageous abuses of governmental power by the Nazis, Stalinists, and Maoists of the past century. For better or for worse, the state in our secular democratic societies is seen as a creature and instrument of the people, bound to carry out the will of the majority. In a society so governed, it becomes difficult to see the death sentence as representing the divine order of justice. Rather, it is seen as implementing the sovereign will of the people, whose appetite for vengeance grows with what it feeds on."³⁵

However, this way of construing the argument fails to establish a true change in circumstance, for the argument could equally well apply to many states throughout history that were arguably even more corrupt than contemporary governments. Yet these prior states administered capital punishment without ecclesiastical condemnation. Many ancient states not only condoned abortion, but also infanticide, murder of foreigners, slavery, and blood sports. They had not merely a malignant indifference to religion but actively imposed, at least in Christian judgment, idolatrous practices on citizens. It is certainly true that states are viewed differently by contemporary society than they were viewed during the height of Christendom, but again this does not seem entirely new. As Mary Kochan observes: "There is no reason to think that, at the time that St. Paul wrote the Romans, belief in a 'transcendent order of justice' generally informed the civil authority. This authority, which permitted infanticide, slavery, and blood sports, was according to the Apostle, 'the servant of God to execute his wrath,' not because of what society believed but

³⁴ Ralph McInerny, "Avery Cardinal Dulles and His Critics: An Exchange on Capital Punishment," *First Things* 115 (August/September 2001): 10.

³⁵ Avery Cardinal Dulles, SJ, "Avery Cardinal Dulles and His Critics: An Exchange on Capital Punishment," *First Things* 115 (August/September 2001): 15.

because God had instituted this authority.”³⁶ Contemporary Catholic teaching as expressed in the *Catechism of the Catholic Church* echoes the idea that the contemporary state, whether consciously or not, whether acknowledged by society at large or not, still shares in the administration of God’s authority (CCC 2238). Corrupt states, like corrupt religious superiors, may still exercise authority (though obviously within limits) over their subjects.

Nor is the emergence of democracy a circumstance that necessarily gives rise to a change in Church teaching on the death penalty. U.S. Supreme Court Justice Antonin Scalia, for example, sees in the teaching of *Evangelium Vitae* an excessive deference to democracy:

The death penalty is undoubtedly wrong unless one accords to the state a scope of moral action that goes beyond what is permitted to the individual. In my view, the major impetus behind modern aversion to the death penalty is the equation of private morality with governmental morality. This is a predictable (though I believe erroneous and regrettable) reaction to modern, democratic self-government. . . . These passages from Romans [affirming the morality of the death penalty] represent the consensus of Western thought until very recent times. Not just of Christian or religious thought, but of secular thought regarding the powers of the state. That consensus has been upset, I think, by the emergence of democracy. It is easy to see the hand of the Almighty behind rulers whose forebears, in the dim mists of history, were supposedly anointed by God, or who at least obtained their thrones in awful and unpredictable battles whose outcome was determined by the Lord of Hosts, that is, the Lord of Armies. It is much more difficult to see the hand of God—or any higher moral authority—behind the fools and rogues (as the losers would have it) whom we ourselves elect to do our own will. How can their power to avenge—to vindicate the “public order”—be any greater than our own?³⁷

Clearly, it is more difficult to envision a higher moral authority operating in the rough and tumble world of celebrity politicians and hanging chads than it was in a society that believed in the divine right of kings. However, even in democracies, a distinction between individual rights and state rights, between private morality and governmental morality, is clearly rational and overwhelming recognized. If one follows Kant in arguing that rights arise from responsibilities, and then notice further that governments in democratic societies have many responsibilities that individuals qua

³⁶ Mary Kochan, “Avery Cardinal Dulles and His Critics: An Exchange on Capital Punishment,” *First Things* 15 (August/September 2001): 10–11.

³⁷ Antonin Scalia, “God’s Justice and Ours,” *First Things* 123 (May 2002): 17–21.

individuals do not have (such as securing public order and building public works), then it would follow that there are many rights enjoyed by the state but not by private citizens, *even if* the powers of the state come directly or indirectly from these private citizens. This truth is widely recognized. After all the government as government, and no private individual as private individual, may tax, throw criminals in prison, and fine wrongdoers. None of these prerogatives are licitly discharged by a private individual who cannot tax but only steal, cannot imprison but only kidnap, and cannot fine but only rob. So there is no problem in itself with a state discharging the death penalty in a democratic society based on the presumption that the state enjoys no more power than the individual since everyone recognizes, in a number of other cases, that the state does enjoy greater rights than private individuals. Democracies both modern (U.S.) and ancient (Athenian) used the death penalty without such problems arising, and there is no theoretical contradiction in so doing. In sum, the allegedly "new" circumstances are not really new and so it does not seem plausible to say, therefore, that contemporary Catholic teaching on the death penalty is merely an application of traditional doctrine to new circumstances.

If the allegedly new circumstances are not actually new, then it would appear that a development of doctrine has taken place rather than just an application of the traditional teaching in new circumstances. What then has been developed? I believe there has been development in two ways, the first of which has been addressed at some length already, namely the newly considered relationship among the purposes of punishment, and the second of which relates to a major theme in *Evangelium Vitae*—the culture of life.

In contemporary teaching on the death penalty, there is a new emphasis on the primacy—in the sense of importance—of defending the community. Although the four purposes of punishment are retained, there is for the first time an ordering among them, at least in the case of capital punishment. The Pope does not say explicitly that he is establishing a hierarchy among the various purposes of punishment (*Evangelium Vitae* takes up the question only briefly), but his emphasis on the defense of the common good seems to highlight this goal of punishment as the most significant, indeed, along with retribution, a necessary condition for its justified use. If bloodless means secure the protection of society, capital punishment should not be used even if the death penalty would secure other goals of punishment. Although retribution remains a necessary condition of any just punishment (and so remains in this sense "the primary purpose of punishment"), the pope seems to be clarifying that the most important aim of punishment is to protect public order and the safety of persons. It is not that contemporary circumstances are so remarkably different from the past

that has elicited the change, but rather that there is a greater refinement in our understanding of the purposes of punishment.

III. Development of Doctrine

Since the teaching of *Evangelium Vitae* cannot be explained as simply the application of the traditional understanding in new circumstances, and since the teaching of *Evangelium Vitae* also does not contradict previous teaching, it seems most reasonable to understand the teaching as a development of doctrine. As a study of the history of theology makes clear, the understanding of revealed truth deepens in the course of time. This is true of all areas of theology. Scripture speaks of the Father, Son, and Holy Spirit, but a more precise understanding of God as a Trinity of three Divine Persons sharing one divine nature arose in the post-apostolic Church. Likewise, an understanding of Jesus Christ as fully God and fully human, with two complete natures, one human and another divine, arises from the New Testament but is not explicitly contained therein. The Catholic understanding and appreciation of the role of Mary, her Immaculate Conception, and her Assumption body and soul into heaven likewise took time to develop. Nor is development restricted to matters of dogma alone, for developments may also be seen in the Church's moral teaching, for example, in the issues of slavery and religious liberty. Why is there development of doctrine? What distinguishes true developments from corruptions? Great minds, including John Paul II and most especially John Henry Cardinal Newman, have wrestled with these questions.

For Aquinas, the first principles of theology are the articles of the creed and the creed in turn summarizes what is found in Scripture. Like other medieval theologians, the Angelic doctor recognized many senses of scripture. Aquinas rooted his account of theology in the literal sense of Scripture, and what the author intends to communicate constitutes the literal sense.³⁸ Since God is the author of Scripture, Aquinas, following Augustine, holds that there may be multiplicity of true meanings intended by God in the literal sense of Scripture.³⁹ Divine authorship of Scripture leads the text to have a profound depth of meaning unlike any other.

When combined with other Thomistic theses, namely God's perfect simplicity and the inability of any human being to comprehend God's essence, it follows that a complete understanding of the many true meanings of the literal sense is and will always remain elusive. God's incomprehensible essence is one with God's understanding, will, and intention. As

³⁸ *ST I*, q. 1, a. 10; *De potentia*, q. 4, a. 1.

³⁹ *ST I*, q. 1, a. 10.

God is beyond comprehension, so the Word of God is beyond comprehension. Scripture therefore must always remain mysterious in a way no other text is. Thus, even brief phrases of Scripture are filled with deep meaning. For example, in commenting on the passage *factus ex mulier* in his commentary on Galatians (c.4, lesson 2), Thomas unpacks deep Christological meaning out of this one phrase arguing that it excludes both Nestorianism and Valentinianism as well as showing that Mary is the Mother of God.⁴⁰ Examples could be multiplied indicating Thomas's confidence in the pregnant meaning of the literal sense. In the words of Aquinas: "[S]ince the prophet's mind is a defective instrument, as stated above, even true prophets know not all that the Holy Ghost means by the things they see, or speak, or even do."⁴¹ Aquinas's high account of Scripture's authorship ensures that we could never have a definitive understanding of the text, for a human being could never fully comprehend the divine intention, which is nothing else than the divine essence.

In addition, there is always need for an explanation of Scripture. "The purpose of Scripture," writes Aquinas, "is the instruction of people; however, this instruction of the people by the Scriptures cannot take place save through the exposition of the saints."⁴² There is no new public revelation, but there will always be a need for an explanation of revelation situated in a given time and place and tailored for a given audience. This needed explanation (*interpretatio sermonum*) by the saints is a gift of the Holy Spirit.⁴³ Aquinas notes elsewhere in terms of understanding this revelation, "the faith is able to be better explained in this respect each day and was made more explicit through the study of the saints."⁴⁴ Given the ever changing audience, the *telos* of Scripture cannot be reached without an ever adapting interpretation or development. Therefore, it is not just that the nature and the purpose of Scripture for Aquinas allow for doctrinal developments, but that the nature and purpose of Scripture invite such development.⁴⁵ We should not be at all surprised therefore that there is doctrinal development in matters of both faith and morals.

⁴⁰ Throughout this section I am much indebted to the work of Leo Elders and his article, "St. Thomas Aquinas and Holy Scripture" forthcoming in a volume about Aquinas and his sources edited by Timothy Smith.

⁴¹ *ST* II-II, q. 173, a. 4, English Dominican Province translation.

⁴² Quodlibet XII, q. 16, a. unicus [27].

⁴³ Quodlibet XII, q. 16, a. unicus [27]; *SCG*, III, 154; *In 1 Cor.* 12, lect. 2.

⁴⁴ *In Sent.* III, d. 25, 2, 2, 1, ad 5.

⁴⁵ See Christopher Kaczor, "Thomas Aquinas on the Development of Doctrine," *Theological Studies* 62 (2001): 283–302, and E. Christian Brugger, *Capital Punishment and the Roman Catholic Tradition* (Notre Dame, IN: University of Notre Dame Press, 2003), chapter seven.

However, to consider the question of development at length in relation to capital punishment falls outside the scope of the present discussion.⁴⁶ However, suffice it to say that from what has been said earlier in this essay (section 3), this development should not be characterized as simply a filtering of the true propositions from a previous mixture of true and false propositions taught by the Magisterium. Nothing formally taught previously by the Magisterium is formally “revoked” by *Evangelium Vitae*. Neither should this development be characterized as development of specification whereby imprecise language becomes more precise. Rather, the development should be considered as an answer to a question never formally proposed before: What is the relationship among the purposes of punishment in the case of the death penalty?

IV. Capital Punishment and a Culture of Life

Contemporary moral theology has developed a deeper understanding of the dignity of all persons, an intrinsic dignity that cannot be lost. For some in the tradition, such as Aquinas, it seems that the criminal loses human worth: “[A]lthough it be evil in itself to kill a man so long as he preserve his dignity, yet it may be good to kill a man who has sinned, even as it is to kill a beast. For a bad man is worse than a beast, and is more harmful, as the Philosopher states (*Polit.* i, 1 and *Ethic.* vii, 6)” (*ST* II–II, q. 64, a. 2, ad 3). Rejecting this element of the tradition, John Paul II, on the other hand, repeatedly affirms, “Not even a murderer loses his personal dignity, and God himself pledges to guarantee this” and that “great care must be taken to respect every life, even that of criminals and unjust aggressors” (*EV* 9, 57). In this he may not be entirely rejecting Aquinas after all, for Thomas states that even those in hell do not completely lose the goodness of their nature (*ST* I–II, q. 85, a. 2, ad 3). Every human person is made in God’s image, even if each individual does not always live up to that dignity.

This development in moral teaching is sometimes called the “consistent life ethic,” which holds that all human beings have intrinsic dignity and value regardless of condition, size, health, beliefs, past, present, or future—period. One might speak of a growing understanding of a “bias” or “preferential option” for life—the dignity of the person must always be respected, and respecting this dignity involves the respecting of the goods of the person, fundamental among them is the good of life, the foundation of all other goods. In the face of an increasingly lethal culture of

⁴⁶ For a discussion of the question of capital punishment and development of doctrine, see E. Christian Brugger, *Capital Punishment and the Roman Catholic Moral Tradition* (Notre Dame, IN: University of Notre Dame Press, 2003), chapter seven.

death, the Church's consciousness of the value of each human life and its unwillingness to allow for the taking of life, except perhaps to save the life of another, leads naturally to a careful reconsideration of the death penalty.

Two objections might be raised at this point. First, is not contemporary culture after all just another "circumstance" marking not so much a change in teaching but a change in application? Furthermore, didn't ancient cultures clearly disrespect human life, perhaps even more than contemporary culture? Yes, but theoretically the response to these abuses did not lead to the theorizing about what all the abuses had in common, namely a disrespect for the human person. Hence, even were all contemporary abuses of human life to end, the "consistent life ethic" would still theoretically make sense in those new circumstances.

Secondly, it is not clear that those working for a culture of life should also oppose the use of the death penalty because in failing to punish those who take innocent human life as severely as we could, in fact punishing cold-blooded murder with the same punishment in some cases as repeated robbery or drug dealing, the law indicates a societal disrespect for life. In response, it might be said that whatever is received is received in the manner of the receiver. Although theoretically punishing murderers more severely might underscore a lesson about the value of human life, contemporary society does not as a whole seem to understand that as the lesson. The law certainly teaches, but Cardinal Dulles's argument in part seems to be that the lesson society takes is not the correct one. Rather, there is a moral danger that the use of capital punishment in fact reinforces the belief of many people in contemporary society that some human beings are expendable and may be killed for the good of others.

Some have argued that the consistent life ethic neglects important distinctions between the aggressors and the innocent, and in its most popularized form this is true. However, even among prominent advocates of the consistent life ethic, not all "life" issues are held to be of the same importance. The person who first brought the "consistent life ethic" or "seamless garment of life" to prominence, Joseph Cardinal Bernadin, said:

I made it very clear that by the consistent life ethic I was articulating I was not saying that all the problems or issues were the same. . . .but that they were all related in some way. Some of the people who didn't like the consistent ethic accused me of down-playing abortion, just making it one issue among many, but . . . they [the life issues] are not all the same or equally important, but they are all important and all related, and to be truly "pro-life," you have to take all of those issues into account.⁴⁷

⁴⁷ James J. Megivern, *The Death Penalty: An Historical and Theological Survey*, 378.

Underscoring this idea and formulating more completely the relationship among life issues, the National Conference of Catholic Bishops wrote:

Adopting a consistent ethic of life, the Catholic Church promotes a broad spectrum of issues seeking to protect human life and promote human dignity from the inception of life to its final moment. Opposition to abortion and euthanasia does not excuse indifference to those who suffer from poverty, violence and injustice. Any politics of human life must work to resist the violence of war and the scandal of capital punishment. Any politics of human dignity must seriously address issues of racism, poverty, hunger, employment, education, housing, and health care. Therefore, Catholics should eagerly involve themselves as advocates for the weak and marginalized in all these areas. Catholic public officials are obliged to address each of these issues as they seek to build consistent policies which promote respect for the human person at all stages of life. *But being “right” in such matters can never excuse a wrong choice regarding direct attacks on innocent human life.* Indeed, the failure to protect and defend life in its most vulnerable stages renders suspect any claims to the “rightness” of positions in other matters affecting the poorest and least powerful of the human community. If we understand the human person as the “temple of the Holy Spirit”—the living house of God—then these latter issues [such as racism, poverty, hunger, employment, education, housing, and health care] fall logically into place as the cross-beams and walls of that house. *All direct attacks on innocent human life, such as abortion and euthanasia, strike at the house’s foundation.* These directly and immediately violate the human person’s most fundamental right—the right to life. Neglect of these issues is the equivalent of building our house on sand.⁴⁸

For the National Conference of Catholic Bishops, the preeminent human dignity issues are abortion and euthanasia. Abortion and euthanasia undermine the very foundation of the house, the temple of the human person in whom dwells the Spirit. Concerns about education, poverty, hunger, and unemployment are moot for the dead. Furthermore, although the state retains the right, in principle, to administer capital punishment even though in practice it may not legitimately do so, according to Catholic teaching, no state or person ever has the right to take innocent life. The very magnitude of the killing involved (some 1.25 to 1.5 million deaths each year from abortion versus around 100 a year from capital punishment) suggests urgency to the abortion issue vis-a-vis other life issues. Therefore, the U.S. bishops have written: “Because victims of abortion are the most vulnerable and defenseless members of the human family, it is imperative

⁴⁸ NCCB, *Living the Gospel of Life*, no. 23, emphasis in the original.

that we, as Christians called to serve the least among us, give urgent attention and priority to this issue of justice. . . . This focus and the Church's firm commitment to a consistent ethic of life complement each other. A consistent life ethic, far from diminishing concern for abortion or equating all life issues touching on the dignity of human life, recognizes the distinctive character of each issue while giving each its proper role within a coherent moral vision."⁴⁹ Without ever acting as if all life issues were of equal importance, those committed to reducing the number of abortions should also be committed to a critical examination of the death penalty as used in the United States. Commitment to the value of all human life makes witness to the value of innocent life even more powerful.

Returning to John Paul II, it is interesting to note that although he is a philosopher, *Evangelium Vitae's* treatment of capital punishment, indeed all life issues, emphasizes salvation history rather than philosophy. Christ was only once directly asked about capital punishment. A woman was caught in adultery and was about to be stoned by an angry mob. "The law of Moses says she has merited death. What do you say?" "Let him without sin cast the first stone." For John Paul II, the Gospel of Jesus is the Gospel of Life. And so the people of this Gospel message stand on the side of life, even when it is unpopular, difficult, and trying. Debbi Morris, who was raped by Robert Willie, the subject of *Dead Man Walking*, once noted: "We don't sing 'Amazing Justice'. We sing 'Amazing Grace.' " We give witness to life and grace even, no especially, in the face of death and sin. For John Paul II this means opposition to the death penalty, even for the most horrid criminals, save in those cases where execution is needed to save innocent lives.

⁴⁹ U.S. Bishops, *Pastoral Plan for Pro-life Activities: A Reaffirmation*, 1985, 3–4.