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THE ROLE OF MERCY IN A CULTURE OF LIFE: JOHN PAUL II ON CAPITAL PUNISHMENT

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IN HIS 30 MARCH 1995 press conference releasing Pope John Paul II's Encyclical Letter *Evangelium Vitae* ("The Gospel of Life"),¹ Joseph Cardinal Ratzinger commented that the encyclical's teaching that capital punishment ought not generally be used represents a "development" in the Church's teaching on the subject; he added that the development would be incorporated into the *Catechism of the Catholic Church*.² The pope's teaching and Ratzinger's remarks did not go unnoticed; the news media generally highlighted them in their coverage of the encyclical's release. Upon reflection, several reasons why this is unsurprising suggest themselves. First, capital punishment is an important political issue, and especially so in the United States among Western democracies since federal and many state laws provide for its use.³ Moreover, the pope's teaching on this issue seems to correspond with the position of the media elite (in contrast to the case of abortion). Second, the pope seemed to be embracing something like the "consistent ethic of life"⁴ promoted by many, including famously the late Joseph Cardinal Bernardin,⁵ and sometimes used by people not necessarily themselves opposed to abortion but opposed to capital punishment to claim common ground with the pro-life position.⁶ Thus the teaching concerning capital punishment seemed to implicate the abortion controversy as well. Third, less substantively, anything that can be described as a "development" in Catholic teaching will fascinate some.⁷

Specifically, *Evangelium Vitae*'s norm⁸ concerning the use of capital punishment (#56) is that it ought to be used only "in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society." The pope adds: "Today...such cases are very rare, if not practically non-existent." In fact, as an indication of how narrowly the pope intends to circumscribe the use of capital punishment, earlier in the encyclical he mentions "*growing public opposition to the death penalty*, even when such a penalty is seen as a kind of 'legitimate defense' on the part of society" as being "[a]mong

the signs of hope” pointing to Christ’s victory over death even in the midst of a “culture of death” (#25-27). Evidently the pope envisages abolition of the death penalty as a goal consistent with his teaching.

This can be further clarified by considering what he might mean by “to defend society.” This phrase could refer only to rendering a particular aggressor unable to inflict further harm, or it could also encompass deterrence of crimes by others contemplating them. In the context of *Evangelium Vitae*, though, it includes only the former. The pope explains his approval of abolitionism by saying: “Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform” (#27). This is, of course, a prudential judgment (although, I think, an unexceptionable one), but even someone who doubts that it is true must recognize that it indicates how narrow a scope the pope intends to allow for prudential judgments concerning this issue—the only prudential question that right principle leaves for policy-makers to answer concerns whether it is true that means other than capital punishment will render criminals harmless; the use of capital punishment only because it would deter crime is, in principle, an illegitimate way “to defend society.”⁹ It should also be noted that the same conclusion is implicit in what the pope says in more formally presenting the new norm. He explains that the reason that cases of “absolute necessity” for capital punishment “to defend society” are “very rare, if not practically non-existent” is “as a result of steady improvements in the organization of the penal system” (#56). It is doubtful that improvements in the penal system could contribute significantly to the deterrent value of the threat of prison time. The defense of society made possible by such improvements is almost exclusively defense against further crimes by a convict. It is only such defense that the pope has in mind.¹⁰

Thus the norm laid down by *Evangelium Vitae* is that capital punishment ought not be used except when it would be the only way to prevent further crimes by a convict. But this norm requires a principled explanation and defense. A right understanding of it is important to clarify the right response to the important moral issue of capital punishment; to show what implications, if any, what society decides concerning capital punishment will in fact have for how it is likely to address other life issues like abortion; and to indicate what kind of development the pope’s teaching represents. Also, as will become clear, the pope’s approach implicates theoretical questions

about the meaning of justice, the meaning of love or mercy, the relationship between justice on the one hand and love or mercy on the other, and what this has to do with the purpose of political society no less than that of our lives as individuals. Understanding of the pope's answers to these questions is necessary for understanding of his teaching concerning capital punishment. But these theoretical questions are also important in themselves.

A full explanation and defense of the norm would include consideration of two questions: (1) Why ought capital punishment not generally be used? (2) In view of the answer to (1), why, then, may it be used in the limited (perhaps hypothetical) case of necessity? I shall, in this essay, focus on the first of these two questions. It is clearly the question of greater practical importance. Furthermore, answering it suffices to illumine the relationship between capital punishment and other life issues (which I shall summarize explicitly), and the nature of the teaching in *Evangelium Vitae* and of the development it represents (which will become clear in the course of my explanation of the substance of the teaching).

As I shall show, *Evangelium Vitae* provides the principles explaining and showing the truth of the norm and in particular the reasons why capital punishment ought generally not be used, especially when it is read in the layers of context provided by such previous encyclicals as *Dives in Misericordia* ("Rich in Mercy")¹¹ and *Redemptor Hominis* ("The Redeemer of Man"),¹² by the Second Vatican Council's Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*,¹³ and by the foundational retrieval of Christian anthropology accomplished in this century by Henri de Lubac, S.J. In brief, *Evangelium Vitae*'s reservations concerning capital punishment stem from the importance of mercy. Examination of the theological meaning of mercy reveals that mercy promotes rehabilitation. Indeed, without mercy, no real rehabilitation is possible. Furthermore, the use of mercy need not conflict with the defense of society; this is accomplished better by mercy than by deterrence. Ultimately these conclusions stem from the relationship between justice and mercy, which in turn reflects the relationship between nature and grace. Because the integrity of nature is realized only in its direction by grace to its supernatural end, justice is realized only when it is subordinated to mercy. Mercy is intrinsic to the realization of justice. Strictly just but unmerciful punishment will

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therefore be less successful in promoting justice both in the heart of the criminal (rehabilitation) and in society at large.

CAPITAL PUNISHMENT AND JUSTICE

We may begin our explanation of the norm by noting that the pope does not teach that capital punishment is unjust. In fact, the pope implies that capital punishment is not unjust by means of the differences between what he says about the killing of the innocent and what he says about capital punishment.¹⁴ He makes very clear the nature of the evil of the killing of the innocent in general and abortion in particular. Immediately following his statement of the norm concerning capital punishment, he continues (#57):

If such great care must be taken to respect every life, even that of criminals and unjust aggressors, the commandment “You shall not kill” has absolute value when it refers to the *innocent person.... I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral....* The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end.... [I]t contradicts the fundamental virtues of justice and charity.

In short, the prohibition against killing the innocent is grounded in the judgment that such killing is always unjust, and is consequently absolute. Abortion, as an instance of such killing, is “opposed to the virtue of justice” (#13); and the pope “*declare[s] that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder*” (#62).

We may contrast what the pope says about capital punishment. If capital punishment were, like murder in general and abortion in particular, always unjust, then it would never be permissible. This would be inconsistent with the pope’s indication that it would be permissible in some (perhaps hypothetical) circumstances.¹⁵ And if its justice or injustice depended solely upon circumstances like society’s ability otherwise to restrain a criminal, then the pope would be propounding a utilitarian conception of justice.¹⁶ This would be inconsistent with his treatment of the killing of the innocent.¹⁷ If circumstances alone could make the otherwise-unjust killing of the guilty just and therefore licit, then there would be no reason to think that, in theory, circumstances alone could not make the otherwise-unjust killing of the innocent just and therefore licit.

In addition to implying that capital punishment can be just, the pope indicates how punishment can be shown to be just, not merely useful, and therefore how capital punishment in particular can be shown to be just and thus distinguished from unjust killing of the innocent. John Paul writes: “The primary purpose of the punishment which society inflicts is [quoting the *Catechism of the Catholic Church* #2266] ‘to redress the disorder caused by the offense.’ Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime” (#56). In these words, the pope is invoking the classical understanding that it is just to treat a guilty person in ways that it would be unjust to treat an innocent person, in order to exact payment of a debt resulting from guilt. This is the foundation in justice for punishment in general and capital punishment in particular. It limits the punishment that may be inflicted for a given crime, useful though a more severe one might seem. And it allows capital punishment for grave offenses.¹⁸

We may see the roots of this understanding of punishment in Aristotle’s analysis of justice. Aristotle distinguishes between justice in distribution of a community’s assets, and justice correcting private transactions. He says that both voluntary and involuntary transactions are subject to corrective justice, and names as examples of involuntary transactions a series of crimes: theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness, assault, imprisonment, murder, robbery, maiming, defamation, and abusive treatment.¹⁹ Thus, just punishment of criminals is analogous to just payment in such voluntary transactions as sales. Aristotle explains that although in the case of some crimes such as assault, the criminal does not, strictly speaking, “gain” from his offense, nor does his victim “lose,” punishment is nonetheless a matter of restoring equality by penalizing the criminal, just as one who receives a product must pay for it to restore equality.²⁰

Thomas Aquinas agrees explicitly with Aristotle’s division of justice into justice of distribution and justice of transactions, and with the inclusion of just responses to involuntary transactions—that is, punishments for crimes (he includes a list of crimes nearly identical to Aristotle’s)—in the species of justice of transactions (“commutative justice”). He argues: “In all these actions, whether voluntary or involuntary, the mean [between gain and loss to be observed by justice] is taken in the same way according to the equality of repayment.”²¹

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But just punishment allows one to exact more than would constitute just payment in a voluntary transaction. For example, one who steals may justly be required to do more than pay the cost of the item stolen (or return it), or repair the material damage one has done. Furthermore one may be punished even if one did not succeed in inflicting such a loss. Indeed punishment properly so-called is distinct from restitution. This understanding of just punishment follows from the distinction between good and evil, between guilt and innocence. Evil itself grounds an inequality between those guilty of it and the innocent, and requires redress.²² This understanding is manifest in Aquinas's treatment:

When a man takes another's things unjustly, two things must be considered. One is the inequality on the part of the thing.... The other is the sin of injustice, which is consistent with equality on the part of the thing, as when a man intends to use violence but fails.

As regards the first, the remedy is applied by making restitution, since thereby equality is re-established; and for this it is enough that a man restore just so much as he has belonging to another. But as regards the sin, the remedy is applied by punishment.²³

MERCY AND LIMITS ON CAPITAL PUNISHMENT

Despite teaching that "[t]he primary purpose of punishment" in general is just redress for a crime and implying (consistent with previous Church teachings)²⁴ that capital punishment can serve this purpose, the pope, as we have seen, says that it ought not be used "except...when it would not be possible otherwise to defend society." It would seem then that punishment, or at least capital punishment in particular, must be more than simply just.²⁵ I contend that the pope generally rejects capital punishment because it is less merciful than alternatives, and full respect for human dignity requires mercy, for the sake of both the one to whom mercy is shown and the society that shows it.

That the requirements of human dignity are at issue is indicated by the pope in several places in *Evangelium Vitae*. The first comes as he considers the story of Cain and Abel, early in the encyclical (#7-9). Concerning the mark God put on Cain as a sign that no one should kill him, the pope comments: "*Not even a murderer loses his personal dignity*, and God himself pledges to guarantee this" (#9). The second is found in the pope's discussion of the biblical demand for "*reverence and love for every human life*" (#39-41). There he

says: “Of course we must recognize that in the Old Testament this sense of the *value of life*, though already quite marked, does not yet reach the refinement found in the Sermon on the Mount. This is apparent in some aspects of the current penal legislation, which provided for...the death penalty” (#40; emphasis added). Finally, introducing his norm concerning capital punishment, he says: “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” (#56; emphasis added).

To understand the norm, it is therefore necessary to look closely at the pope’s understanding of the dignity or value of the human person and human life, and its requirements. *Evangelium Vitae* explains this in theological terms.²⁶ Most generally, the pope says: “The dignity of this life is linked not only to its beginning, to the fact that it comes from God, but also to its final end, to its destiny of fellowship with God in knowledge and love of him.” More specifically, the pope makes reference to “the wonderful truth recalled by the Second Vatican Council: ‘By his incarnation the Son of God has united himself in some fashion with every human being.’ This saving event reveals to humanity not only the boundless love of God...but also the *incomparable value of every human person*” (#2). Now the love of God revealed by Christ is something to be received by humanity by being lived out. Through the prophets, God promised to give men a “new heart” which, the pope comments, “will make it possible to appreciate and achieve the deepest and most authentic meaning of life: namely, that of being *a gift which is fully realized in the giving of self*.... It is in the coming of Jesus of Nazareth that...a new heart is given through his Spirit.... This is the *New Law*... and its fundamental expression, following the example of the Lord who gave his life for his friends (see *John 15:13*), is *the gift of self in love for one’s brothers and sisters*” (#49; cf. #25). In short, human dignity is founded in our capacity to receive from Christ a participation in God’s self-giving love.

Respect for human dignity—by which respect alone we live out our own dignity—entails respect for this capacity and the will to promote it, including help for the sinner to return to communion with God. Accordingly, St. Ambrose says in his commentary on God’s treatment of Cain, quoted by the pope (#9), that “God...preferred the correction rather than the death of a sinner.” This same concern is seen in the pope’s presentation of his norm concerning capital punishment. It is

immediately after his call for “a system of penal justice ever more in line with human dignity” that the pope speaks of the purposes of punishment. As has been explained, the first of these is “redress” or justice by means of “an adequate punishment...as a condition for the offender to regain the exercise of his or her freedom.” But the pope adds: “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 then that he goes on to propound the norm: “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 go to the extreme of executing the offender except in cases of absolute necessity” (#56). Evidently, human dignity requires that society do what it can to achieve the secondary purposes of punishment as well as its primary purpose of justice, and in particular that it attempt to bring about rehabilitation. Presumably the pope judges that other forms of punishment than capital punishment are more conducive to rehabilitation.

It may, however, be asked why one would need to “prefer” either “correction” or “death” (in Ambrose’s words), why non-capital punishment is more conducive to rehabilitation. One consideration might be that those given more time to reform are more likely to do so. Even if imminent death can be an incentive to reform, so it might be argued, all will die at some point—even those who die of old age or illness or some other cause—and most such people are likely to be aware of the imminence of death for at least some time. Thus, the person who is not executed will still be likely to have imminent death as an incentive to reform eventually if this would be helpful—as well as more time during which to have other experiences that might be incentives. All of this is suggested by the pope’s reference, in his commendation of opposition to the death penalty, to sentences other than death as “means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform” (#27).

I contend, however, that there is more to the matter than this. It should be noted that the pope says in his discussion of the norm concerning capital punishment that in punishing, authority “offer[s] the offender an *incentive and help* to change his or her behavior and be rehabilitated” (#56; emphasis added). It seems that the pope thinks that punishment does not simply leave open opportunities for reform,

opportunities extrinsic to the act of punishment itself. Punishment itself positively promotes rehabilitation. In this case, withholding capital punishment better achieves rehabilitation not simply by leaving open (more) opportunities for reform, but also and perhaps more importantly by better promoting it.

To begin to see this more clearly, one can consider the language the pope uses in reference to God's protection of Cain. He says that "God, who is always *merciful* [emphasis added] even when he punishes, 'put a mark on Cain, lest anyone who came upon him should kill him' (*Gen 4:15*)"; he adds that in this, God's guarantee of Cain's personal dignity, "the *paradoxical mystery of the merciful justice of God* is shown forth"; and he quotes Ambrose as calling God's treatment of Cain an example of "the divine law of God's *mercy* [emphasis added]" (#9). Withholding just capital punishment is, this suggests, an act of mercy. But far from simply allowing reform, mercy, as the pope understands it, promotes reform.

To see how the pope understands mercy to promote reform, one can consult his encyclical *Dives in Misericordia*. There he examines the scriptural revelation of God's mercy. "In the preaching of the prophets," he says, "*mercy signifies a special power of love, which prevails over the sin and infidelity of the chosen people*" (#4). Note the expression "*prevails over*": mercy does more than endure sin; it actively conquers it. Similarly, in the New Testament it is revealed that mercy is "an especially creative proof of the love which does not allow itself to be 'conquered by evil,' but overcomes 'evil with good'" (#6). "[T]he Son of God...reveals himself as the inexhaustible source of mercy...that, in a subsequent perspective of the history of salvation in the Church, is to be everlastingly confirmed as *more powerful than sin*" (#8).

How, precisely, does mercy overcome evil? This is explained by the content of mercy. Already in the Old Testament, mercy "does not pertain only to the notion of God but is something that characterizes the life of the whole people of Israel and each of its sons and daughters: *mercy is the content of intimacy with their Lord*" (#4). Especially important in indicating how Christ's teaching develops our understanding of mercy is the parable of the prodigal son, of which the pope says: "Although the word 'mercy' does not appear, it nevertheless expresses the essence of the divine mercy in a particularly clear way." It does so by means of the "analogy" by which the parable concerns especially "man's interior": "The

inheritance that the son had received from his father was a quantity of material goods, but more important than these goods was *his dignity as a son in his father's house*," dignity lost by his choice (#5). In the face of this situation, the father (who, in the analogy, "reveals to us God as Father") "*is faithful to his fatherhood*." But this is something that pertains by definition to the son as well. Indeed, "[t]he father's fidelity to himself is totally concentrated upon the humanity of the lost son, upon his dignity.... Going on, one can therefore say that the love for the son, the love that springs from the very essence of fatherhood, in a way obliges the father to be concerned about his son's dignity." And even more specifically, the love of a father does not simply respect but constitutes his son's dignity. In the face of sin, the father's love restores his son's dignity. By virtue of the father's love, the son's humanity "*has been, in a way, found again*." In general "the person who is the object of mercy" is "found again and 'restored to value.'" A "good...has been achieved thanks to a mysterious radiation of truth and love" (#6).

Now insofar as the "good" at issue is sonship, a "participation in the very life of God," it "includes *the call* to man to share in the divine life by giving himself" (#7). This is why "Christ, in revealing the love-mercy of God, at the same time *demanding from people* that they should also be guided in their lives by love and mercy" (#3). Thus, the participation in love by which, as we have seen, *Evangelium Vitae* teaches that we live out our human dignity is, more specifically, a participation in God's restorative mercy.²⁷ If the decision by human authorities to withhold capital punishment is an act of mercy, then it is conducive to rehabilitation because those who make it are really allowing themselves to participate in, to be transparent to, "a mysterious radiation" of God's fatherly love. Their respect for the good of the offender's life, even when this might justly be taken to make redress, communicates God's own restoration of that life to the dignity that comes from sharing in God's love.²⁸

THE IMPORTANCE OF MERCY FOR JUSTICE

A possible objection remains to be considered. Why must respect for an offender's dignity go so far as to extend mercy in this way? It would seem that justice does not fail to respect human dignity. It would seem, further, that punishing as severely as justice allows would not be without rehabilitative value. Indeed, a murderer does not simply fail to observe the requirements of charity or mercy that go

beyond justice; he fails even to be just. Why should a lesson in justice not be all that society needs to offer him? A just punishment would call to his attention the dignity of the human person insofar as this dignity is manifested in the responsibility he has for his criminal actions, the responsibility that makes punishment meaningful. It would therefore confront him with a basis, beyond fear, for re-evaluating his criminal dispositions. The objection takes on additional force when it is considered that the end or purpose of political society is generally understood to be justice. On what grounds can it be concluded that political society must be an instrument of the fullness of God's love or mercy? This might even seem to be a version of an integralism that confuses the respective roles or purposes of Church and state.²⁹ Also, subordinating justice to mercy would seem to ignore the deterrent value of punishing crimes to the full extent allowed by justice.³⁰

In fact, the affirmations that the purpose of politics *qua* politics is justice and that political society must act with mercy are compatible, for the reason that mercy is an intrinsic requirement for the realization of justice. To respond to the objection it is necessary to show this; therefore the response requires explicit treatment of the relationship between justice and mercy, and this in turn must be considered a dimension of the relationship between the natural and supernatural orders. Thus we must devote some attention to theological anthropology. We may begin by noting the state into which Roman Catholic theological anthropology was put by the work of Cajetan (1468–1534), and in which it persisted until this century. Because of the influence of Cajetan's commentary on the writings of Aquinas, it was generally assumed during these four centuries that it is meaningful to speak in anthropology of 'pure nature' with its own end.³¹ This was not to deny the necessity of grace for the realization of that end, but it was to deny that grace enables the realization of nature's ends by subordinating them to man's supernatural end of participation in God's life of love. That is, the prevailing view was that human nature includes the principles of its own integrity. In this century, a major challenge to this view was mounted by Henri de Lubac.³² De Lubac argued that this view was consistent neither with the position of Aquinas rightly interpreted, nor with the teaching of the Church Fathers.³³ He denied that a hypothesis of 'pure nature' helps to safeguard the gratuity of the supernatural order,³⁴ in view of the reality that man as he exists has been given a supernatural end.³⁵

Before undertaking his extensive, systematic reflections on this question, de Lubac wrote *Catholicism: Christ and the Common Destiny of Man*, a volume clarifying at length how the Christian concern about man's relationship with Christ does not leave unimportant such concerns of this world as human society. In this context de Lubac makes the following statement: "By revealing the Father and by being revealed by him, Christ completes the revelation of man to himself."³⁶ He goes on to explain that since this is true for each person, "[i]t is our very unity in God."³⁷ Now, if de Lubac takes our common affinity with Christ—that about ourselves which Christ reveals to us—to ground the relevance of human society as such for Christianity, then it would seem that this affinity must encompass our nature, not be extrinsic to it; otherwise Christianity would remain superfluous to human society and would have no basis for concern with it. So de Lubac's statement must adumbrate the anthropology he later developed more fully, even though the statement is made apropos of what is overtly a different (though closely related) problematic.³⁸

In any case, it can be shown that the pope not only accepts his statement but sees it as entailing the rejection of the notion of "pure nature." De Lubac and John Paul—then Karol Wojtyła—met at the Second Vatican Council; de Lubac served there as a *peritus* or theological expert, and Wojtyła participated as a bishop. The two worked together especially on the document that became the Council's Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*,³⁹ in which one can see the theological fruit of the encounter.⁴⁰ The Pastoral Constitution begins with a foundational chapter on "The Dignity of the Human Person." This chapter concludes with an indication of how Christianity and the Church can contribute to an understanding of human dignity. In this context, the Constitution states: "Christ, the final Adam, by the revelation of the mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear" (#22). This is close to a verbatim repetition of de Lubac's statement in *Catholicism*.⁴¹ And not only can the reader of the Constitution see the importance of the statement for the document as a whole.⁴² Wojtyła, seven years later, said of it: "We seem here to have reached a key point in the Council's thought."⁴³

The pope took up the statement in his first encyclical, *Redemptor Hominis*, and clarified his understanding of it: "Man cannot live

without love. He remains a being that is incomprehensible to himself, his life is senseless, if love is not revealed to him, if he does not encounter love, if he does not experience it and make it his own, if he does not participate intimately in it. This...is why Christ the Redeemer ‘fully reveals man to himself’” (#10). If, apart from God’s love in Christ, man is not merely less comprehensible but incomprehensible, there can be no question of a dualistic anthropology envisaging a “pure nature” to which man’s supernatural end is extrinsic. Such a nature would by definition include a principle of comprehensibility.

This understanding of the relationship between nature and grace is at work in the pope’s treatment of mercy in *Dives in Misericordia*. One begins to realize this upon encountering the references at the very beginning of this encyclical to the text from *Gaudium et Spes* I have discussed and to *Redemptor Hominis* as the starting points for *Dives in Misericordia*. The pope goes on to make explicit the relationship between justice and love or mercy that follows. In the Old Testament, “mercy...in many cases is shown to be not only more powerful than justice but also more profound.... [L]ove is ‘greater’ than justice: greater in the sense that it is primary and fundamental. Love, so to speak, conditions justice and, in the final analysis, justice serves love” (#4). “In the parable of the prodigal son...*the relationship between justice and love, that is manifested as mercy, is inscribed with great exactness.... It becomes more evident that love is transformed into mercy when it is necessary to go beyond the precise norm of justice—precise and often too narrow*” (#5). What is saved by the father’s mercy, and only by this mercy, is the son’s very “humanity” (#6).

The pope heads a chapter (#11) of *Dives in Misericordia* with the question, “Is Justice Enough?” To answer, he continues to draw consequences for human society of the relationship between nature and grace, between justice and love or mercy. He notes that

it would be difficult not to notice that very often *programs which start from the idea of justice* and which ought to assist its fulfillment among individuals, groups, and human societies, *in practice suffer from distortions*. Although they continue to appeal to the idea of justice, nevertheless, experience shows that other negative forces have gained the upper hand over justice, such as spite, hatred, and even cruelty.... This kind of abuse of the idea of justice shows how far human action can *deviate from justice itself*, even when it is undertaken in the name of justice.... The experience of the past and of our own time demonstrates that justice alone is not enough, that it can even lead to the negation and destruction of itself, if *that deeper power, which is love, is not allowed to shape human life in its various*

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dimensions.... This...indicates...the need to draw from the powers of the spirit which condition the very order of justice, powers which are still more profound.

The references in *Evangelium Vitae* to human dignity and to mercy need to be interpreted in light of these considerations.⁴⁴ It then becomes clear that society should use mercy in punishing because, if it does not do so, it will not ultimately succeed even in being just. This has consequences for both those being punished and society as a whole. First, punishment that considers only what justice allows does not correspond fully to the dignity of the person who is its object. Insofar as it is just, it is of course not wholly inconsistent with human dignity. But insofar as it results from a positive rejection of mercy, it becomes inconsistent with human dignity. It is not enough to hold someone responsible for his actions by exacting payment when they are evil; it is necessary to do this in a manner that positively serves the restoration of the communion with God that is lived out by good actions, by participating in God's faithfulness to his own fatherhood in continually extending the offer of this communion. Apart from this, the nature of the good to which the offender ought to turn will be "incomprehensible" (cf. *Redemptor Hominis* #10) and so also, therefore, the nature of the evil he has done.

Second, mercy is necessary for the integrity of the society that practices it. A society that does not practice mercy rejects it by failing to live out the share in God's love and mercy that the society's own practice of mercy constitutes. Such a society will in the end fail to be merely just. Perhaps most immediately, it will fail to be just—at least in intention—to those deserving of punishment. It is probably the case that in the U.S. murderers do not often receive sentences of death that are unwarranted by justice (cases in which innocent people have been convicted and then sentenced aside), nor longer prison terms than are so warranted. But it is worth noting that support for capital punishment frequently manifests a spirit more of raw vengeance than of justice,⁴⁵ as witness, for example, what one sees outside prisons during some executions.⁴⁶ This is bad in itself; it is worth considering seriously also what consequences it could portend for the future.

But the problem is more extensive than this. A society that rejects mercy, the principle of its own integrity, and which therefore ceases to be just will also fail to respect the requirements of justice toward the innocent. This will in general result in more murders.⁴⁷ Indeed, one can infer that it is for this reason that the pope does not consider

the possible deterrent value of capital punishment as a legitimate consideration when one is determining whether capital punishment is necessary. This does not reflect a judgment about whether capital punishment does or does not in fact have deterrent value.⁴⁸ It reflects instead a theological judgment that no amount of deterrence is the best long-term way to a healthy society. Deterrence presupposes, after all, people who are disposed to evil but held back only by fear. If capital punishment is, for ultimately theological reasons, at odds with the practices necessary to promote dispositions not to evil but to good, then its deterrent value becomes irrelevant.

These considerations about society illumine the relationship between capital punishment and such other life issues as abortion. Abortion, unlike capital punishment, is unjust. Hence it is not precisely the case that consistency requires opponents of abortion to oppose capital punishment. Indeed, to the extent that the pope emphasizes a link, it is in the other direction, as was discussed above (see EV #57). He argues that capital punishment is objectionable in itself, not simply in its consequences for other life issues. Still, one can affirm on the basis of the logic of the pope's opposition to capital punishment as I have presented it that such opposition is necessary for the building of a culture in which abortion is rejected. Since justice will break down where mercy is not practiced, such injustices as abortion will be more likely to be accepted. And again, this is true for theological reasons.⁴⁹ This link occasions the pope's inclusion of a discussion of capital punishment in *Evangelium Vitae*, even though it does not drive his argument against capital punishment.

CONCLUSIONS

Evangelium Vitae is concerned primarily with attacks "affecting life in its earliest and final stages" (#11): abortion and euthanasia. However, it situates its explanation of the evil of these acts and its condemnation of them within a call for a "culture of life" (#6, 78-101) marked by reverential solidarity with other human persons (#83) rather than excessive concern with efficiency (#12). It does so both because such a culture is desirable in itself—it is right that culture as a whole should be formed by the principle of the value of human life—and because apart from such a culture, "structures of sin" will make the practices of abortion and euthanasia more likely. To build a culture of life requires more than condemnations of selected sins (*cf.* #48-49). Indeed the pope finds it necessary to address issues other

than those involving killing, for example, contraception (#13, 97).⁵⁰ And respect for life must inform the structures of society as such, including politics, as well as the actions of individuals.⁵¹ These concerns intersect in *Evangelium Vitae*'s reservations concerning capital punishment with yet another concern: that respect for life must be grounded in participation in the fullness of God's love or mercy. The integrity of our nature, and so with it such dispositions proportionate to our nature as justice, are realized only in such participation. Neither in our lives as individuals nor in our common political life is justice alone sufficient. This is not to say that political authorities should compel individual acts of love beyond justice; it is to say that political society should as such act with love. An instance of this requirement, and perhaps the key one, is found in the reservation of capital punishment to cases of necessity.

Given that this requirement and its link with other life issues are theologically grounded, it might be asked how, in practice, the pope's concerns are relevant for the life of a secular society. In answer, I note *Evangelium Vitae*'s call for evangelization (#78-79, 95). Only by proclaiming Jesus (#29, 80) can one proclaim the "Gospel of Life." Yet one can also, I think, regard the existence of such movements as those against abortion and capital punishment as constituting an opportune moment for the necessary evangelization. Insofar as the goals of these movements correspond with the requirements of the Gospel, one can point to them as calling for deeper reflection on the foundation of human dignity.⁵² One can proclaim to societies as well as to individuals that Jesus "marvelously fulfills all the heart's expectations while infinitely surpassing them" (EV #2). One will then be in a position to show forth respect for life, even when such respect entails suffering, "compassion," even when it entails compassionate solidarity with sinners, as that for which the human heart was made.

NOTES

¹John Paul II, Encyclical Letter *Evangelium Vitae*, Vatican translation (Boston: Pauline, 1995). Hereafter, EV.

²Ratzinger spoke of the teaching as “a real development” and “important doctrinal progress”; see “On File” in *Origins* 24 (1995) 690. For the modifications, cf. #2266–67 of the 1992 *Catechism* (English trans. 1994) with their counterparts in “Vatican List of Catechism Changes,” *Origins* 27 (1997) 261.

³ For details concerning frequency and geography of executions, federal and state legislative activity concerning capital punishment, and public opinion, see, e.g., Hugo Adam Bedau, ed., *The Death Penalty in America: Current Controversies* (New York: Oxford Univ. Press, 1997) 3–126; Keith Harries and Derral Cheatwood, *The Geography of Execution: The Capital Punishment Quagmire in America* (Lanham: Rowman & Littlefield, 1997) 1–40.

⁴“Among those welcoming the encyclical as ‘one of the most important’ statements of John Paul II’s papacy was Joseph Cardinal Bernardin of Chicago, who 11 years ago developed the theme of the ‘consistent ethic of life’--linking abortion with other issues like...the death penalty.... Many Catholic officials and theologians said yesterday that this approach was embodied in the encyclical, although some regretted that the phrase itself was not used” (“U.S. Responds on Established Lines,” *New York Times*, March 31, 1995, A13).

⁵According to James J. Megivern (*The Death Penalty: An Historical and Theological Survey* [New York: Paulist Press, 1997] 354), this expression may perhaps be traced to a passage in a document prepared at the request of the U.S. bishops by the Pontifical Commission for Justice and Peace: “The U.S. bishops have spoken out and acted firmly in defense of life against abortion and euthanasia. There is then an inner logic that would call Catholics, with their sense of the sacredness of life, to be consistent in this defense and extend it to the practice of capital punishment” (“The Church and the Death Penalty,” *Origins* 6 [1976] 391). Whatever the source of the expression, one can see its influence in, e.g., the most recent of the United States Catholic Conference Administrative Board’s quadrennial statements on political responsibility (*Political Responsibility: Proclaiming the Gospel of Life, Protecting the Least Among Us, and Pursuing the Common Good* [Washington: USCC, 1995]): “A key criterion is consistency; we are called to stand up for human life whenever it is threatened” (6); “We are convinced that a consistent ethic of life should be the moral framework from which we address all issues in the political arena. In this consistent ethic, we address a spectrum of issues” (12).

⁶For example: “‘There’s no question that there are differences between Catholic and Jewish positions on an issue like abortion,’ said Rabbi Jack Bemborad.... But noting the nation’s growing resort to the death penalty...he endorsed one of the Pope’s key images: ‘I must tell you I think we do have a

“culture of death,” and in that situation you need someone to get up and say, human life is sacred” (“U.S. Responds,” A13). However, a comment made by Bernardin should be noted: “I made it very clear that by the consistent-ethic...I was not saying that all the problems or all the issues were the same.... I made it very, very clear that they are not all the same or equally important” (Megivern, *The Death Penalty*, 378).

⁷For example, the *New York Times* spoke of “a shift from previous church doctrine” and “[t]he only notable shift in Catholic doctrine” in the encyclical (“Pope Offers ‘Gospel of Life’ vs. ‘Culture of Death,’” March 31, 1995, A1, A13). Presumably the interest in development is sometimes due to a questionable understanding of the Catholic concept of development of doctrine. See, e.g., Richard A. McCormick, “The Gospel of Life,” *America* 172/15 (1995) 12: “The Pope’s move goes beyond the presentation in the *Catechism of the Catholic Church*. Cardinal Ratzinger admits that the catechism will have to be modified as a result. This clearly implies that not everything in the catechism is carved in granite, a point that should be underlined for certain Catholic *immobilisti*. Other points in the catechism may need improvement.” McCormick seems to gloss over the distinction between additions to previous teachings (additions that may well lead to new practical norms when the teachings at issue are moral ones, without in any way implying that the previous teachings do not remain “carved in granite”), and the revocation of previous teachings.

⁸That this is a norm seems to be missed by Raphael T. Waters (“Capital Punishment: An Evil Act or an Act of Justice?” in *Social Justice Review* 87 [1996] 6), who says only that the pope “suggests that capital punishment is rarely needed, since the occasions requiring it are rare.” The pope also teaches that its permissibility (not merely its desirability) depends upon its necessity.

⁹The same exegetical argument is made by Gerard V. Bradley, “No Intentional Killing Whatsoever: The Case of Capital Punishment” in *Natural Law and Moral Inquiry: Ethics, Metaphysics, and Politics in the Work of Germain Grisez*, ed. Robert P. George (Washington: Georgetown Univ. Press, 1998) 162–63.

¹⁰Cf. also John P. Langan, “Situating the Teaching of John Paul II on Capital Punishment: Reflections on *Evangelium Vitae* 56,” in *Choosing Life: A Dialogue on Evangelium Vitae*, ed. Kevin Wm. Wildes and Alan C. Mitchell (Washington: Georgetown Univ. Press, 1997) 220–21. Waters (“Capital Punishment” 6) says that “[a]ny practical judgment still depends on a knowledge of the facts concerning crime, its severity, and frequency.” The pope’s teaching narrows the bounds within which capital punishment is permissible to a far greater extent than Waters suggests. Applying the

teaching does entail making a practical judgment concerning what will suffice to restrain a particular criminal, but no more.

¹¹John Paul II, Encyclical Letter *Dives in Misericordia*, Vatican translation (Boston: Daughters of St. Paul, 1980).

¹²John Paul II, Encyclical Letter *Redemptor Hominis*, Vatican translation (Boston: Daughters of St. Paul, 1979).

¹³Second Vatican Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* (Washington: USCC, 1965). Hereafter, GS.

¹⁴These treatments seem sometimes to be conflated; *e.g.*, the subhead to the *New York Times* article “Pope Offers ‘Gospel of Life’” was: “In Strongest Terms, He Assails Abortion and Capital Punishment.” The *Times*’s reproduction of *Evangelium Vitae*’s cover was captioned, “The Pope’s strongest condemnation yet of abortion, euthanasia, and capital punishment” (March 31, 1995, A12).

¹⁵A failure to notice this distinction constitutes a flaw in Megivern’s criticisms of Michael Pakaluk’s contention that the pope’s occasional statements opposing specific executions are proposals of “mercy, which is possible only if the fittingness of punishment is first acknowledged” (“Till Death Do Us Part: Does the Death Penalty Satisfy Christian Standards of Justice and Compassion?” *Crisis* 7/8 [1989] 56). Megivern responds (*The Death Penalty* 413): “What is most ironic about this formulation is its basic misunderstanding of what the pope, the bishops, and other abolitionists of our day have been insisting on. They are not ‘refraining’ out of mercy from using the right to kill (while holding it ominously in reserve). They are rather recognizing the priority of the *right to life*, which is sacred and not to be intentionally destroyed. It is not a question of whether to be nice; it is a question of whether to be moral. The statements in *Evangelium Vitae* further clarify this for anyone who somehow missed it.”

It seems conventional to say that one has a “right” to that of which one may not *justly* be deprived or that which one may *justly* do. For example, the pope speaks of “the inviolable right to life of every innocent human being” (EV #71). Now he does not teach that criminals may not justly be executed. Therefore one should not conclude that “the *right to life*” is at issue. Furthermore, his willingness to allow some executions indicates that a “right to kill” is in a real sense being held “in reserve.” This is not to deny that morality is at issue; as we shall see, the distinction between justice (or rights) and mercy does not imply a disjunction between morality and mercy.

¹⁶This is, in fact, the reading of the teaching proposed by Langan (“Situating the Teaching” 222) and McCormick (“The Gospel of Life” 16–17).

¹⁷It would also be inconsistent with the pope's explicit critique of such conceptions; see esp. his Encyclical Letter *Veritatis Splendor* ("The Splendor of Truth"; Vatican translation [Boston: Pauline, 1993]; hereafter, VS) #71–83. It should be noted that, in the traditional terminology used therein, capital punishment would be described as a different moral object—a different kind of chosen action—than murder. See for more the literature cited in Kevin E. Miller, "The Incompatibility of Contraception with Respect for Life," *Life and Learning VII*, ed. Joseph W. Koterski (Washington: University Faculty for Life, 1998) 112 n.19.

¹⁸ It is for this reason that capital punishment could not be ruled out in principle as proposed by Germain Grisez (*Living a Christian Life*, vol. 2 of *The Way of the Lord Jesus* [Quincy: Franciscan Herald Press, 1993] 892–94). Grisez appeals to "Christian conceptions of human dignity and the sanctity of every human life" (893). Though full argument of the point is beyond the scope of this essay, I contend that Grisez would be mistaken to think that distinctively Christian principles (beyond justice) could suffice to rule out capital punishment in principle; see Aquinas's arguments concerning the morality of preferring charity for society to charity for a criminal in the texts cited in n.29, *infra*. But one suspects that more than this underlies Grisez's position. Grisez prefaces his discussion of the capital punishment with some general remarks about punishment (most of which are consistent with my argument). In the course of his discussion, he says that "Christians...should oppose punishments which...intentionally attack the basic human goods instantiated in" criminals (891). This seems a clear allusion to the natural law theory he has developed with its reliance on self-evidently inviolable basic goods (including life). It is difficult if not impossible to see how capital punishment could be justified under this theory.

Bradley ("No Intentional Killing") tries to read the pope's position as consistent with Grisez's theory. His argument is problematic. First, Bradley notes that the pope's treatment of capital punishment is preceded by a discussion of non-intentional killing in self-defense (EV #55) and that the pope then continues by saying, "This is the context in which to place the problem of the *death penalty*" (#56). Bradley concludes: "EV...seem[s] to assimilate capital punishment to ordinary self-defense, a matter of causing death while intending strictly just to halt aggression" (156; *cf.* 161, 165). But the text does not support the conclusion that the pope means to make self-defense the moral specification of capital punishment. Bradley claims that it "do[es] not explicitly say" whether "capital punishment may be specified morally by the intention to restore the order of justice disturbed by the criminal's bad act (157), so that "the textual evidence does not permit much more than speculation" (165). In view of the pope's discussion of the purposes of punishment, one can go much further than this and affirm that the pope certainly considers retributive justice to specify capital punishment

morally, even though, as we shall see, he teaches that punishment must be more than simply just, and would agree with Aquinas that to be in accord with charity it would be necessary that capital punishment be necessary for defense of society (as Bradley notes in correctly reading the norm; see n.9, *infra*), so as to make it necessary to choose charity for society or charity for the criminal (hence the “context” for EV #56). But even in this case it would not be necessary for capital punishment to involve unintentional killing, not even for reasons of charity, given Aquinas’s argument that it is licit to prefer charity for society to charity for the criminal.

Second, Bradley argues that even if capital punishment is morally specified by retributive justice, it would have to be the only effective means of executing such justice to be morally licit, and furthermore that the conditions under which this would be the case are the same conditions as those under which it would be necessary for defense of society (165–69). But the former conclusion presupposes Grisez’s interpretation of natural law with its prohibition against intentional killing, which not only is philosophically flawed but also has nothing to do with the pope’s position since his approach is clearly not Grisez’s. In his systematic treatment in *Veritatis Splendor* the pope writes that “the *primordial* moral requirement of loving and respecting the person...also *implies*...respect for certain fundamental goods” (#48; emphasis added). “To give an example,” he adds, “the origin and foundation of the duty of absolute respect for human life are to be found in the dignity proper to the person.... Human life, even though it is a fundamental good of man, thus acquires a moral significance in reference to the good of the person, who must always be affirmed for his own sake.... [N]atural inclinations take on moral relevance only insofar as they refer to the human person and his authentic fulfillment” (#50). *Contra* Grisez, the good of life is not irreducible; this is the foundation for the conclusion that it can be moral to take a life in just retribution. This is not to deny the existence of absolute moral norms such as that concerning innocent life. It is, however, to clarify the *nature* of these absolutes. Thus, a guilty person deserves treatment different from that deserved by an innocent person and so may be made to suffer deprivations that could not be justly inflicted on an innocent person, including deprivation of life. (For more on the problems with Grisez’s theory and the differences between it and the pope’s, see Miller, “The Incompatibility of Contraception with Respect for Life,” esp. 82–83 and nn.) Now, since natural law gives rise to no norm against all intentional killing, Bradley’s citations (157 and 170 n.1) of VS #96 and EV #57, on the relevance for society (not merely private individuals) of exceptionless moral norms, are irrelevant.

Bradley also adduces two other considerations from *Evangelium Vitae*. The first is the teaching (quoting EV #9), “*Not even a murderer loses his personal dignity*” (158). As I shall discuss at length below, this is an objection to capital punishment founded upon charity, not upon justice. Retributive justice *per se* in no way presupposes a loss of dignity. The

second (summarizing EV #47, 53) is “God’s mastery over life,” which Bradley says “evidences...God’s will that no human person whomsoever shall have a homicidal will” (159). But Bradley goes on to admit that it is “unclear” whether his interpretation is well-founded in light of the pope’s frequent references to an absolute norm against the taking of “innocent” life (see also VS #50). As I have argued, this term reflects a crucial distinction.

Furthermore, Bradley’s reason for the claim that, assuming Grisez’s theory, capital punishment would have to be uniquely just to be licit, is that only then could it be unintentional killing—only then, that is, could it be said to be chosen as the only way to execute justice, not for its own sake as one of several just alternatives (168). But Bradley is wrong that capital punishment would then be unintentional; death would still be chosen, even though as the (only) means to the end of justice, not merely tolerated as a side-effect of another action (as in the licit defensive use of lethal force).

Bradley’s conclusion that capital punishment could be uniquely just only under the same conditions as those under which it would be necessary for the defense of society presupposes that all forms of punishment are commensurable, so that a particular form (*e.g.*, death) could be “uniquely suited” only in the absence of any other practical way (secure imprisonment) to achieve an “imposition” against the criminal (169). It is, of course, necessary to consider carefully what punishment(s) would be appropriate for a given crime; Bradley’s remarks on this subject (166–67) are very helpful. But in the absence of a prohibition against any “intentional killing whatsoever,” Bradley’s argument about the incommensurability of forms of punishment would seem to “bite back” with regard to the acceptability of capital punishment. That is, justice not only allows capital punishment to be chosen as retribution, but it allows it to be so chosen even as only one of a number of possibly suitable forms of retribution.

¹⁹Aristotle, *Nicomachean Ethics* 1130b30–31a9.

²⁰Aristotle, *Nicomachean Ethics* 1132a6–19, b11–20.

²¹St. Thomas Aquinas, *Summa Theologiae*, trans. Fathers of the English Dominican Province (New York: Benziger, 1947) II-II, q. 61, a. 3.

²²*Cf.* St. Anselm of Canterbury, *Cur Deus Homo*, book 1, ch. 12.

²³Aquinas, *Summa Theologiae* II-II, q. 62, a. 3.

²⁴

Catholic teaching concerning capital punishment was actually very minimal prior to *Evangelium Vitae*. A group of Waldensians returning to the Church in 1210 were required to make a profession of faith including the affirmation that “the secular power can, without mortal sin, exercise judgment of blood” (DS 425; for some background, see Megivern, *The Death Penalty* 99–102). In 1976, the Pontifical Commission for Justice and Peace wrote the U.S.

bishops: “The Church has never directly addressed the question of the State’s right to exercise the death penalty”; but added, referring to the 1210 profession: “The Church has condemned the denial of that right” (Megivern, “The Church and the Death Penalty” 391). It is arguable that what such a profession affirms does not carry doctrinal weight (requiring someone to profess something is not necessarily equivalent to teaching it), and the fact of its imposition seems disciplinary in nature. Germain Grisez adds that the profession on its face “concerns only the subjective morality of the act of capital punishment” (*Living a Christian Life* 893). One should however perhaps look also at the *Roman Catechism* (*Catechism of the Council of Trent*), which teaches: “Another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of power, far from involving the crime of murder, is an act of paramount obedience to [the Fifth] Commandment which prohibits murder” (*The Catechism of the Council of Trent for Parish Priests*, trans. John A. McHugh and Charles J. Callan [Rockford: TAN, 1982] 421). Inasmuch as the *Catechism* is “sanctioned by the authority of the Council” (4), what it teaches would seem to carry the weight of an act of the ordinary Magisterium (cf. Robert I. Bradley, *The Roman Catechism in the Catechetical Tradition of the Church: The Structure of the Roman Catechism as Illustrative of the “Classic Catechesis”* [Lanham: Univ. Press of America, 1990] 196–97), requiring of Catholics an assent “which, though distinct from the assent of faith, is nonetheless an extension of it” (*Catechism of the Catholic Church* #892). Such an assent entails regarding the teaching as true (as opposed to merely living as though it were true, and not disputing it publicly). Nonetheless, the teaching would not be definitive. (See for more on the history of the issue Megivern, *The Death Penalty*, passim; and M. B. Crowe, “Theology and Capital Punishment,” *Irish Theological Quarterly* 31 [1964] 24–61, 99–131.) In any case, *Evangelium Vitae* does not dispute the justice of capital punishment, and it was not taught prior to *Evangelium Vitae* that the use of capital punishment is required whenever it would be just.

²⁵The original *Catechism* already taught that justice is not sufficient: “If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority should 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” (#2267). In fact, the pope quotes this at the end of EV #56 and says that it “remains valid.” It is not clear that Cardinal Ratzinger’s statement and the changes in the *Catechism* imply that the pope has introduced a development beyond this; he may have only echoed a development in the *Catechism* beyond previous teachings. Ratzinger himself later said (see Richard John Neuhaus, “A Clarification on Capital

Punishment,” *First Things* 56 [1995] 83–84): “Clearly, the Holy Father has not altered the doctrinal principles which pertain to [capital punishment] as they are presented in the Catechism, but has simply deepened the application of such principles in the context of present-day historical circumstances. Thus, where other means for the self-defense of society are possible and adequate, the death penalty may be permitted to disappear. Such a development...is something good and ought to be hoped for.... It is in this sense that the Catechism may be rewritten, naturally without any modification of the relevant doctrinal principles.... [M]any opinions have been expressed in favor of the *aggiornamento* of the [Catechism’s] text in light of the papal teaching in *Evangelium Vitae*. Such suggestions appear to be well-founded, consonant as they are with the substance of the text as it presently stands in the Catechism.”

If this is true, however, the pope’s teaching remains important not only for its application but also for its indication of the principles underlying the norm. Furthermore, the pope does at least add significant clarification concerning the content of the norm in indicating how narrow is the type of defense (against further crimes by a particular convict only) for which capital punishment must be necessary in order to be licit. I would argue that this clarification actually indicates something that the original *Catechism* does not indicate even with careful reading, and so is a doctrinal development beyond the original *Catechism*.

²⁶It is worth noting that the U.S. bishops also ground their opposition to capital punishment in specifically theological considerations, calling for “methods...that are more consistent with the gospel visions [*sic*] of respect for life and Christ’s message of healing love” (*Political Responsibility* 16).

²⁷In this light, it would seem that awareness that a deserved punishment is being withheld is not central to the exercise of mercy (even though it is desirable that people understand the truth about justice). What is central is that the exercise of mercy—concretely, the withholding of capital punishment—be recognized as a good. Pakaluk is therefore mistaken when he says that given the failure of most in “our society” to appreciate the justice of the death penalty, “the abolition of the death penalty would be regress, not progress” (“Till Death Do Us Part” 56). (This is not, however, to deny that it is important that the nature of the good be appreciated; for more, see n.52, *infra*).

²⁸

Fully to accomplish this, it is not sufficient to withhold capital punishment. It is also necessary rightly to administer prisons. This is, emphatically, not to say that prisons should not seem like places of punishment. They should not be brutal; they should probably be very austere (in the U.S. today, the paths to these goals might well converge—eliminating brutality might require primarily that authorities exercise more control over inmates precisely by

permitting them less time and fewer activities outside of cells; see, e.g., Walter Berns, *For Capital Punishment: Crime and the Morality of the Death Penalty* [Lanham: Univ. Press of America, 1991] 62–64). Prisons need not be transformed into quasi-therapeutic institutions, but opportunities for religious instruction and practice should be available (I have not made a careful study, but there seems to be anecdotal evidence of intolerance of religious practice in particular in at least some U.S. prisons). One might consider the example of the pope’s responses to his attempted assassin, Mehmet Ali Agca. The pope has visited him in prison (see “Pope Meets in Jail with His Attacker,” *New York Times*, Dec. 28, 1983, A1, A4) but has not, so far as I know, adjudged the term or conditions of his imprisonment to be too severe.

²⁹ On the reading which I shall present of the basis for John Paul’s teaching on capital punishment, this teaching is a practical manifestation of the general understanding of the Church-world relationship that David L. Schindler has found to characterize the pope’s thought. Since I see no alternative reading that renders the teaching on capital punishment fully intelligible, my reading seems to represent a confirmation (and application) of Schindler’s conclusions. And Schindler’s criticisms, on the basis of the pope’s approach, of the thought of John Courtney Murray on religious liberty have been criticized as, in effect, integralist. See Schindler, “Religious Freedom, Truth, and American Liberalism: Another Look at John Courtney Murray,” *Communio: International Catholic Review* 21 (1994) 696–741; idem, *Heart of the World, Center of the Church: Communio Ecclesiology, Liberalism, and Liberation* (Grand Rapids: Eerdmans; Edinburgh: T&T Clark, 1996), ch. 1, with the further clarifications provided by the “Introduction.” For criticisms of Schindler’s arguments, see Thomas Hughson, “John Courtney Murray and Postconciliar Faith,” *Theological Studies* 58 (1997) 480–508; and Richard John Neuhaus, “The Liberalism of Pope John Paul II,” *First Things* 73 (1997) 16–21. For a reply, see Schindler, “Reorienting the Church on the Eve of the Millennium: John Paul II’s ‘New Evangelization,’” *Communio: International Catholic Review* 24 (1997), esp. 749–50 n.30, 769 n.64 with reference specifically to Hughson.

Schindler explains (*Heart of the World* 84–85) that the pope’s position is not integralist because it presupposes that the Church is primarily not a juridical reality, but rather a participation in the Trinitarian communion. Therefore, the call to the world, including the political sphere, to be formed by God’s love need not (and cannot) entail a juridical Church-state union. My depiction of the implications of this call for the issue of capital punishment will clarify this, as I show that these implications entail not that the state should enforce charity but rather that in enforcing justice it should order its life *qua* state in accord with charity (toward God—as Schindler has contended in his critique of Murray, though without elaboration concerning the situations in which this will be manifest—and then toward man—as in

making decisions about punishment), neutrality toward charity in such matters being impossible (since the very idea of “neutrality” presupposes that charity is extrinsic to justice, which is precisely what is at issue).

It should also be noted that the pope’s specific concerns about capital punishment can be found in Aquinas as well (since the pope’s concerns derive from Henri de Lubac’s account of nature and grace, as I shall show, this might confirm that Aquinas shares de Lubac’s position and recognizes its implications, *contra* those who claim that de Lubac’s theory is an innovation *vis-à-vis* Aquinas; see n.33, *infra*). While Aquinas concentrates on explaining why capital punishment can be, finally, permissible, in doing so he confronts (and does not treat as irrelevant) objections that capital punishment (and just punishment in general) is contrary to charity (*Summa Theologiae* II-II, q.25, a.6; q.64, a.2; q.108, a.1). It is to overcome *this* concern (not a concern about justice) that he appeals to the value of punishment for the defense of society and to the morality of preferring charity for society to charity for the criminal when there is a conflict between these (discussion of his arguments is beyond the scope of this essay). And it would seem that for Aquinas, charity requires not only that capital punishment be useful for this purpose, but that it be the only practical means to the end of public safety (on the basis of the logic of II-II, q.65, a.1 *ad* 3).

³⁰ It might be argued that for society, as for the criminal, this value goes beyond that of the instilling of fear, to that of a lesson in human dignity (*cf.* Berns, *For Capital Punishment*, ch. 4–5; George Weigel, “*Evangelium Vitae* on Capital Punishment: A Response to John Langan,” in *Choosing Life* 229). However, it is unclear why a lesser but still real punishment would not accomplish this purpose. A more severe punishment seems primarily to be more fearful.

³¹ Henri de Lubac, *The Mystery of the Supernatural*, trans. Rosemary Sheed (New York: Herder & Herder, 1967), ch. 1.

³² For helpful overviews see Susan Wood, “The Nature-Grace Problematic within Henri de Lubac’s Christological Paradox,” *Communio: International Catholic Review* 19 (1992) 389–403; Bruno Forte, “Nature and Grace in Henri de Lubac: From *Surnaturel* to *Le Mystère du Surnaturel*,” trans. Adrian Walker, *Communio: International Catholic Review* 23 (1996) 725–37.

De Lubac’s position continues to be criticized as a denial of the reality of nature *vis-à-vis* grace; see, *e.g.*, Steven A. Long, “Nicholas Lobkowitz and the Historicist Inversion of Thomistic Philosophy,” *The Thomist* 62 (1998) 68–72. This criticism is gratuitous. To see that the contrary is true, one can consider the case of Christ’s human nature. As suggested by the Council of Chalcedon and clarified by the Second Council of Constantinople, this human nature exists wholly in and for his divine person; yet it is no less real

and integral for not having of itself the principle of its own integrity (for helpful accounts of Cyril of Alexandria's Christology and theological anthropology as background, and of the relationship between Chalcedon and Constantinople II, see, respectively, John A. McGuckin, *St. Cyril of Alexandria: The Christological Controversy: Its History, Theology, and Texts*, Supplements to Vigiliae Christianae, vol. 23 [Leiden and New York: Brill, 1994]; and Patrick T. R. Gray, *The Defense of Chalcedon in the East (451–553)*, Studies in the History of Christian Thought, vol. 20 [Leiden: Brill, 1979]). The case of our humanity *vis-à-vis* grace is analogous. See Schindler, *Heart of the World* 15–24, esp. 19.

It should be noted that Long's mistake results at least in part from a confusion of de Lubac's anthropology with that of Rahner and his followers; see Long, "Nicholas Lobkowitz" 69–70: "Of course the destruction of nature as a normative concept in theology was a door through which some passed in order to free themselves of a dessicated manualism so as to contemplate scripture and the Church Fathers.... But this should not obscure the historical fact that a whole group—the Concilium group—marched through this same door in the quite different direction of an historicized radical theological pluralism." Rahner emphatically did not "march through the same door" as did de Lubac; this is why it is gratuitous to conclude that de Lubac prepared for Rahner's treatment of nature. Ironically, Rahner himself wished to avoid de Lubac's intrinsicism, and this was the motivation for his recourse to the theory of the "supernatural existential" (see, e.g., Rahner, *Foundations of Christian Faith: An Introduction to the Idea of Christianity*, trans. William V. Dych [New York: Seabury, 1978] 126–33; for sympathetic summaries of Rahner's argument, see Russell R. Reno, *The Ordinary Transformed: Karl Rahner and the Christian Vision of Transcendence* [Grand Rapids: Eerdmans, 1995] 106–19, and Stephen J. Duffy, *The Graced Horizon: Nature and Grace in Modern Catholic Thought*, Theology and Life, vol. 37 [Collegeville, MN: Liturgical Press, 1992], ch. 4). It was as part of his attempt to obtain the advantages of intrinsicism despite this lingering extrinsicism that Rahner reduced nature to a *Restbegriff* ("remainder concept"). De Lubac explicitly rejected Rahner's theory as unsatisfactory (*Mystery of the Supernatural* 132 n.2: "Really, to the extent that this 'existential' is conceived as a kind of 'medium' or 'linking reality,' one may object that...the problem of the relationship between nature and the supernatural is not resolved, but only set aside").

³³De Lubac, *Mystery of the Supernatural*, esp. ch. 2. A specific point of controversy has been de Lubac's reading of Aquinas. Full resolution of this exegetical question is beyond my scope, but one specific objection deserves a brief response. Mark F. Johnson has written that "Henri de Lubac...ha[s] argued strongly that St Thomas most definitely does not express his doctrine of grace and the supernatural in terms of obediencial potency," but that Aquinas in fact does do so in at least one place ("St Thomas, Obediencial

Potency, and the Infused Virtues: *De virtutibus in communi*, a.10 ad 13,” *Thomistica*, ed. E. Manning, *Recherches de Théologie Ancienne et Médiévale Supplementa*, vol. 1 [Leuven: Peeters, 1995] 27–34). However, de Lubac is aware of the very text treated by Johnson (see de Lubac, *Augustinianism and Modern Theology*, trans. Lancelot Sheppard [New York: Herder & Herder, 1965] 226 n.75, 228 n.89 [where the citation is misprinted as “art. 10 ad 3m”]). His argument (*Mystery of the Supernatural* 182–85; see *Augustinianism*, pp. 224–29) is that “the application [Cajetan] makes of [obediential potency] to the problem of the supernatural end is not that made by St Thomas.... It is quite certain that for St Thomas human nature can be said to be *in potentia obedientiae* to receive sanctifying grace, and that one may speak of it as a miracle.... But...he only admits these terms...in a generic sense.... There is in [human nature] not only a ‘potentia obedientiae,’ but a certain ‘ordo naturalis’ to the receiving of that grace, whereas in the case of miracle [sic] such ‘ordo naturalis’ does not exist.... [I]t remains quite clear, from the explanations he has given us, that for St Thomas...the simple idea of *potentia obedientialis* conceived not ‘to express the condition in which God’s gift places us of being able to become children of God,’ but to account for the possibility of a miracle, is not adequate as a definition of the relationship of human nature to the supernatural.... Now for Cajetan the idea of *potentia obedientialis* is adequate.” Hence, de Lubac says: “I have never ‘scorned’ the concept of *potentia oboedientialis* [sic]...except in the very sense in which [Rahner] himself resolutely rejects it” (*Mystery of the Supernatural* 139 n.36).

³⁴De Lubac, *Mystery of the Supernatural*, ch. 4. In brief, such a hypothesis would avail only if it meant that the finality of the concrete, historical person changes from a natural to a supernatural one. But this would destroy the concepts of nature and of finality.

In this light, it is remarkable that Long objects to de Lubac by saying that “once nature itself is identified as already oriented apart from grace directly to beatific finality, ‘the natural’ is no longer definitively distinct from the ‘supernatural.’ This is because substances are defined by powers, powers by acts, acts by objects, and objects by *ends*” (“Nicholas Lobkowicz” 70 n.60; see *idem*, “Obediential Potency, Human Knowledge, and the Natural Desire for God,” *International Philosophical Quarterly* 37 [1997] 53). It follows precisely that if nature is not “already oriented apart from grace directly to beatific finality,” then grace replaces human nature with a new nature. But (created) grace need not be substantially distinct from nature to be “definitively distinct” from it; the distinction in question is that between accident and substance (Aquinas, *Summa Theologiae* I-II, q.110, a.2 *ad* 2).

Stephen J. Duffy tries to defend Rahner’s apparent extrinsicism (see n.32, *infra*) from this problem by referring to the transcendental anthropological context (see n.52, *infra*) for Rahner’s theory of the supernatural existential. Duffy asks, “But is it not also possible to conceive of human nature as such,

a nature with all our essential attributes, without a definitive end, and capable of varying modes of realization?" (*The Graced Horizon* 78–79), since the statement, "To change the finality is to change the *identity*," "is so only if the end to which the being is gratuitously ordered is radically new, wholly other than it would be were the creature not so gratuitously ordered. The human spirit as such is an openness to being, hence a conditioned desire for God. Thus ordination to beatific vision is not an organic, absolute change. It is the perfection and completion of a directedness already present. It actualizes humanity's most radical possibility" (79 n.30). Putting aside questions about the viability of the transcendental method in itself, one can reply that it does not succeed in resolving the extrinsicism resulting from the supernatural existential because however much the respective ends of nature and the supernatural existential may lie in the same direction, the end of the supernatural existential must, by definition, be an infinitely more distant object if this existential alone is to represent the call to a supernatural end, as Rahner intends. Rahner and Rahnerians cannot have it both ways.

³⁵De Lubac, *Mystery of the Supernatural*, ch. 5.

³⁶Henri de Lubac, *Catholicism: Christ and the Common Destiny of Man*, trans. Lancelot C. Sheppard and Elizabeth Englund (San Francisco: Ignatius, 1988) 339.

³⁷De Lubac, *Catholicism* 340.

³⁸Cf. de Lubac, *Mystery of the Supernatural* 283: "By revealing himself to us, Bérulle used to say, God 'has revealed us to ourselves.'" The fuller statement in *Catholicism* seems a clear allusion to this principle, here placed explicitly in the context of the nature-supernatural problematic.

³⁹The importance of de Lubac and Wojty a's meeting and collaboration has been described by both. De Lubac recalls of Wojty a: "He knew my works, and we were soon on good terms" (*At the Service of the Church: Henri de Lubac Reflects on the Circumstances that Occasioned His Writings*, trans. Anne Elizabeth Englund [San Francisco: Ignatius, 1993] 171). The pope writes: "I am particularly indebted...to Father Henri De Lubac. I still remember today the words with which [he] encouraged me to persevere in the line of thought that I had taken up during the discussion" (*Crossing the Threshold of Hope*, ed. Vittorio Messori [New York: Alfred A. Knopf, 1994] 159). David L. Schindler ("Christology and the *Imago Dei*: Interpreting *Gaudium et Spes*," *Communio: International Catholic Review* 23 [1996] 168 n.21) also mentions these texts.

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This is not to say that Wojty a was wholly dependent upon de Lubac for his theological anthropology. The language the pope uses when he says that de Lubac "encouraged [him] to persevere in the line of thought that [he] had

taken up” at the Council implies that he had entered that “line of thought” before meeting de Lubac. For some insights into other sources for Wojtya’s theological anthropology, see the remarks on the pope’s interpretation of the experience of the Polish nation as pointing toward a Christological reading of man and of human history in Rocco Buttiglione, *Karol Wojtya a: The Thought of the Man Who Became Pope John Paul II*, trans. Paolo Guietti and Francesca Murphy (Grand Rapids and Cambridge: Eerdmans, 1997), ch. 1 (and see also 193–216 for further discussion of the importance of Wojtya’s thought for Vatican II).

⁴¹Schindler (“Christology and the *Imago Dei*” 168 n.21) first brought to my attention the use by *Gaudium et Spes* of de Lubac’s statement from *Catholicism*. See this article for a fuller discussion of the Pastoral Constitution, especially from the perspective of its references to the *imago Dei*.

⁴²Important as it clearly is in the context of the Constitution, is this text in that context clearly intended to bear the full weight of de Lubac’s anthropology (as, I have argued, it must in the context of *Catholicism*)? That is, can it be shown that what Christ is there said to reveal is a calling intrinsic to human nature as such or in the order of creation, or would the text also be consistent with the theory that this calling, though now historically real, is ontologically subsequent and therefore extrinsic to creation? Joseph Ratzinger says of the Constitution that “it seemed to many people...that there was not a radical enough rejection of a doctrine of man divided into philosophy and theology. They were convinced that fundamentally the text was still based on a schematic representation of nature and the supernatural viewed far too much as merely juxtaposed” (“The Dignity of the Human Person” in *Pastoral Constitution on the Church in the Modern World*, vol. 5 of *Commentary on the Documents of Vatican II*, ed. Herbert Vorgrimler, trans. W. J. O’Hara [New York: Herder & Herder, 1969] 119). Others have taken up Ratzinger’s concern; see, e.g., Luis Ladaria, “Humanity in the Light of Christ,” trans. Louis Bertrand Raymond, in *Vatican II: Assessment and Perspectives*, ed. René Latourelle, 3 vols. (New York and Mahwah: Paulist, 1989) 2:396; Walter Kasper, “The Theological Anthropology of *Gaudium et Spes*,” trans. Adrian Walker, *Communio: International Catholic Review* 23 (1996) 137–38; David L. Schindler, “Christology and the *Imago Dei*” 157–58. Some further color is added to this concern by the history of the Constitution: “Originally [GS #36] had begun in Text 4 [first considered at Ariccia in early 1965, and debated at the Council in September–October of that year] with the words ‘Pro credente igitur omnia ultimum vim religiosam induunt...’ This introductory sentence was then omitted, however, perhaps because of the sharp criticism to which K. Rahner had subjected it” (Alfons Auer, “Man’s Activity throughout the World” in *Pastoral Constitution* 192).

It could be replied that when the Constitution says that “man was created ‘to the image of God,’ [and] is capable of knowing and loving his Creator” (#12), the reference to “loving” strongly implies that man was created for an activity possible only in the supernatural order, even though neither the precise nature of the love in question, nor, therefore, the role of Christ, is made explicit (for the former, broader concern, see Luigi M. Rulla, Franco Imoda, and Joyce Ridick, “Anthropology of the Christian Vocation: Conciliar and Postconciliar Aspects,” trans. Bartholomew Kelly, in *Vatican II: Assessment and Perspectives* 2:410–11); cf. #19, “The basic source of human dignity lies in man’s call to communion with God. From the very circumstance of his origin man is already invited to converse with God.” Cf. also #11: “For faith... manifests God’s design for man’s total vocation, and thus directs the mind to solutions which are fully human.... Thus the mission of the Church will show its religious, and by that very fact, its supremely human character.” (Anthony O. Erhueh, *Vatican II: Image of God in Man: An Inquiry into the Theological Foundations and Significance of Human Dignity in the Pastoral Constitution on the Church in the Modern World, “Gaudium et Spes”* [Rome: Urbaniana Univ. Press, 1987] 126–30, notes the importance of these texts but does not clearly indicate how what he calls the “secular” significance of man as *imago Dei* is related to the “religious” significance.) More generally, it would seem that the importance of the Christological “scrutinizing” envisaged by the Constitution (see n.52, *infra*) would be difficult to understand in the context of a dualistic anthropology. Finally, one should note that overcoming at least the consequences of such dualism was among Pope John XXIII’s intentions for the Council: “The Constitution *Humanae Salutis* of 25 December 1961, which announced the Council, devoted an important passage to this problem: ‘It is a question in fact of bringing the modern world into contact with the vivifying and perennial energies of the gospel.’ After a short description, John XXIII continues: ‘This supernatural order must also reflect its efficiency in the other order, the temporal one, which on so many occasions is unfortunately ultimately the only one that occupies and worries man’” (Charles Moeller, “History of the Constitution” in *Pastoral Constitution* 7). In any event, John Paul has clearly appropriated the text as an affirmation of de Lubac’s intrinsicism, as will become clear presently.

⁴³ Karol Wojtyła, *Sources of Renewal: The Implementation of the Second Vatican Council*, trans. P. S. Falla (San Francisco: Harper & Row, 1980) 75; this too is mentioned by Schindler (“Christology and the *Imago Dei*” 169). See also Ladaria’s brief discussion of echoes of this teaching in other conciliar documents (“Humanity in the Light of Christ” 397–98).

One should now note the partial quotation/partial paraphrase of *Gaudium et Spes* #22 in the passage from EV #2 cited above, in which the pope refers to “the wonderful truth recalled by the Second Vatican Council: ‘By his

incarnation the Son of God has united himself in some fashion with every human being.' This saving event reveals to humanity not only the boundless love of God...but also the *incomparable value of every human person.*" Cf. David L. Schindler, "Christological aesthetics and *Evangelium Vitae*: Toward a definition of liberalism," *Communio: International Catholic Review* 22 (1995) 193–224; and for more on the pope's use and development of this teaching, Lawrence J. Welch, "*Gaudium et spes*, the Divine Image, and the Synthesis of *Veritatis Splendor*," *Communio: International Catholic Review* 24 (1997) 794–814.

⁴⁵For the distinction between the two, see the *Catechism of the Catholic Church* #2302.

⁴⁶See, e.g., "Florida Executes Killer as Plea Fails," *New York Times* (May 26, 1978) A6, concerning the execution of the first U.S. inmate whose appeal was rejected by the Supreme Court after the 1972 case *Furman v. Georgia* had struck down existing death penalty laws (Gary Gilmore had been executed in 1977 but had refused to appeal); and "Bundy is Electrocuted as Crowd of 500 Cheers," *Los Angeles Times* (Jan. 25, 1989) part 1, p. 12, concerning the execution of a particularly notorious serial killer.

⁴⁷It might be objected that our society does not seem healthier and more peaceful for our very limited use of capital punishment, especially in the 1970's; see Berns, *For Capital Punishment*, pp. 5–6, and ch. 2. But nothing in my argument implies that abolition of capital punishment will be sufficient to bring about a more just society.

⁴⁸Whether and to what extent capital punishment deters crime is difficult to establish; see Berns, *For Capital Punishment*, ch. 3. In any event, one could argue that society should err on the side of the possibility of a deterrent effect. And for a careful argument that capital punishment does act as a deterrent, see John C. McAdams, "Wisconsin Should Adopt the Death Penalty" in *Marquette Law Review* 79 (1996) 708–15. It is only the larger considerations introduced by the pope that overcome these arguments.

⁴⁹Contrast John Haas ("*The Gospel of Life* and the Death Penalty," *Crisis* 13/7 [1995] 23): "The pope's position on capital punishment seems to be a prudential one. There is such a threat to human life today and such misunderstanding about the proper role of the state that it is far better to avoid any occasions for the direct taking of human life." Haas's reading does not take into account that the pope's stated concern—indeed, his sole stated concern—is that punishment itself be in accord with human dignity, nor what *Evangelium Vitae* and his other writings indicate about his understanding of human dignity, as I have explained. Furthermore, Haas's reading is inconsistent with his recognition that the teaching that "the continued existence of the malefactor must somehow constitute a threat to

the community” for capital punishment to be permissible is “the ‘development’ in doctrine to which Cardinal Ratzinger referred.” Were the teaching grounded only in prudential considerations, it could be only a change of discipline, not a development of doctrine.

⁵⁰See Miller, “The Incompatibility of Contraception with Respect for Life.”

⁵¹See Kevin E. Miller, “The Politics of a Culture of Life,” *Life and Learning VI*, ed. Joseph W. Koterski (Washington: UFL, 1997) 245–66.

⁵²*Cf.* the goals and methodology of *Gaudium et Spes*: “Inspired by no earthly ambition, the Church seeks but a solitary goal: to carry forward the work of Christ under the lead of the befriending Spirit” (#3). “To carry out such a task, the Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the Gospel” (#4; see the important observations about the history of “signs of the times” in GS in Moeller, “History of the Constitution” 35). “Hence, under the light of Christ, the image of the unseen God, the firstborn of every creature, the Council wishes to speak to all men in order to shed light on the mystery of man and to cooperate in finding the solution to the outstanding problems of our time” (#10). “[F]aith throws a new light on everything, manifests God’s design for man’s total vocation, and thus directs the mind to solutions which are fully human. This Council, first of all, wishes to assess in this light those values which are most highly prized today and to relate them to their divine source. Insofar as they stem from endowments conferred by God on man, these values are exceedingly good. Yet they are often wrenched from their rightful function by the taint in man’s heart, and hence stand in need of purification.... Thus the mission of the Church will show its religious, and by that very fact, its supremely human character” (#11). “Above all the Church knows that her message is in harmony with the most secret desires of the human heart when she champions the dignity of the human vocation” (#21; *cf.* #45). “The truth is that only in the mystery of the Incarnate Word does the mystery of man take on light.... Christ, the final Adam, by the revelation of the mystery of the Father and His love, fully reveals man to man himself and makes his supreme calling clear. It is not surprising, then, that in Him all the aforementioned truths find their root and attain their crown” (#22). “The Church, therefore, by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered. Yet these movements must be penetrated by the spirit of the Gospel and protected against any kind of false autonomy” (#41). *Cf.* also *Redemptor Hominis* #14.

This approach can be set in sharper relief by contrasting it with a Rahnerian one. The distinction between the two is not a moot point: Hughson, after citing Schindler’s observation that de Lubac’s *Catholicism* provides a source for GS #22, adds: “In order to prevent any implication of polarity with, *e.g.*,

Karl Rahner's theology, it should be noted that Rahner's transcendental christology involves a christocentric anthropology" ("John Courtney Murray and Postconciliar Faith" 507 n.84). But Rahner's Christocentrism differs from de Lubac's, setting up at least a potential polarity, and the Christocentrism of *Gaudium et Spes* and John Paul II can be identified with de Lubac's over and against Rahner's.

In summary, Rahner's transcendental Christology seems to be motivated by concerns about what has been called "the scandal of particularity"; it seeks to show the universal relevance of Christ. But it does so by means of a logic that tends inexorably to minimize the importance of the particularity of Christ insofar as—this is the crucial point—it takes a transcendental anthropological *a priori* (see, e.g., his *Foundations* 31-39) as its hermeneutical principle (see 176–203, 206–12 for this use of the anthropological *a priori*). (See Duffy, *The Graced Horizon* 206–18 for a summary sympathetic to Rahner.)

One can perhaps best see the important consequences of this in Rahner's attempt to specify the Christological (hence salvific) character of actions in cooperation with grace, especially as performed by persons who are (invincibly) ignorant of Christ. De Lubac would not disagree with Rahner that the possibility of such cooperation is offered to all (and cf. GS #22). But Rahner says that "anyone who, though still far from any revelation explicitly formulated in words, accepts his existence in patient silence (or, better, in faith, hope and love)...is saying 'yes' to Christ even if he does not know it" (228). In short—reflecting the crucial point indicated above, the use of anthropology to interpret Christology—(implicit) openness to (the particular) Christ is thus reduced to openness to the self's transcendental horizon, rather than vice-versa. Rahner therefore speaks of "anonymous Christianity" (e.g., 176). Indeed, for Rahner, "[i]nsofar as there is nothing historically tangible in man's existence which could not be the material and the concrete corporeality of transcendental knowledge and freedom, the history of salvation as such is necessarily coexistent with all history" (144). The historical phenomenon of Christianity is but "the process by which the history of revelation reaches a quite definite and successful level of historical reflection, and by which this history comes to self-awareness historically and reflexively, a history which itself is coextensive with the whole history of the world" (146).

Whatever may have been Rahner's intention, all of this sets up an understanding of the Church-world relationship that undermines the foundations for the Christological "scrutinizing" envisaged by *Gaudium et Spes*. Rahner explicitly admits the possibility of sin in history (142). But his transcendental Christology does not seem to leave a clear role in principle for the Church *qua* Church (i.e., *qua* proclaimer of the particular Gospel of Jesus Christ) in identifying sin and providing the means for overcoming it; anyone should be able to distinguish between acceptance and rejection of his or her own existence, and anyone will have the resources needed to accept it.

John Milbank summarizes the consequences: “For what precisely happens when an attempt is made to introduce a social dimension into the Rahnerian version? One of two things, or else both at once. Either the transcending impulse remains essentially individual in character, and merely provides motivation and creative energy for social and political action which retains its own immanent norms. Or else the social process itself is identified as the site of transcendence, of a process of ‘liberation’ which is gradually removing restrictions on the human spirit” (*Theology and Social Theory: Beyond Secular Reason*, Signposts in Theology [Oxford: Blackwell, 1990] 229). The danger of the latter alternative, the acceptance of counterfeit forms of “liberation,” should be stressed. With neither nature (see n.32, *infra*) nor a more particular historical manifestation of grace available as a point of reference, ideologies that appeal to the laws of history in fact become difficult to resist as guides for acceptance of one’s existence, especially when the tendency said to be given to history by these laws is some form of liberation. See also Joseph Ratzinger, *Principles of Catholic Theology: Building Stones for a Fundamental Theology*, trans. Mary Frances McCarthy (San Francisco: Ignatius, 1987) 161–71. In either case, the Church’s “scrutinizing” is, if not wholly superfluous, at least not essential in the way that *Gaudium et Spes* seems to envisage.

De Lubac, in contrast to Rahner, fundamentally interprets man in light of Christ. One notes that for de Lubac, “there is no ‘anonymous Christianity’ but at best ‘anonymous Christians’ in virtue of the grace that can produce effects even in deficient systems” (Hans Urs von Balthasar, *The Theology of Henri de Lubac: An Overview*, trans. Joseph Fessio and Michael M. Waldstein [San Francisco: Ignatius, 1991] 39 n.8). It is de Lubac’s kind of Christocentrism that can ground a genuine Christian critique of history and, finally, liberation.

For further helpful elaboration of the distinction, arguing that de Lubac’s version of Christocentrism leads to more genuine liberation than Rahner’s, see also Milbank, *Theology and Social Theory*, ch. 8. However, two caveats are in order. First, Milbank says that de Lubac and the subsequent Magisterium have not followed through in proposing or admitting some of the particular elements of such a liberation: “Not without distress do I realize that some of my conclusions here coincide with those of reactionaries in the Vatican. But in no sense is it left-wing politics to which I wish to object” (208); “The liberation theologians would still, however, be right to point out that thinkers like de Lubac...do not fully follow through the implications” (209). These comments seem to be based on an problematic (perhaps more precisely, exaggerated) understanding of what it means for the world to be formed by charity, of what this entails for the Church-world relationship; thus, Milbank says: “In theory, political theology might have proceeded in the line of the supernaturalizing of the natural. This would have implied a strong emphasis on the Church itself as the ultimate location of the just society, and a general suspicion of all merely political associations which

continue to rely upon coercion.... One might suggest that what this *ought* to mean is that the project of the Church is the establishment of a new, universal society, a new *civitas*, in which...intimate relationships are paradigmatic: a community in which we relate primarily to the neighbor, and every neighbor is mother, brother, sister, spouse (228).”

Milbank may not sufficiently appreciate that worldly realities have a genuine autonomy (cf. GS #36 and esp. 41 on this in general, #55, 56, and 59 specifically in relation to culture, and #76 in relation to politics) and that their autonomy is realized in direct, not inverse, proportion to their being informed by charity, as implied by #41: “For though the same God is Savior and Creator, Lord of human history as well as salvation history, in the divine arrangement itself, the rightful autonomy of the creature, and particularly of man is not withdrawn, but is rather re-established in its own dignity and strengthened in it. The church, therefore, by virtue of the Gospel committed to her, proclaims the rights of man; she acknowledges and greatly esteems the dynamic movements of today by which these rights are everywhere fostered. Yet these movements must be penetrated by the spirit of the Gospel and protected against any kind of false autonomy.” (See also Schindler, “Christology and the *Imago Dei*” 160–61, 184.) This, too, is consistent with de Lubac’s anthropology (cf. n.32, *infra*, on the integrity of nature in de Lubac). And one can note how far the Church has in fact gone, consistent with the above, in teaching the world about the requirements of charity. One example of this is precisely the pope’s treatment of capital punishment as I have discussed it. This treatment seems consistent with Milbank’s contention “that evil must be coped with, not simply by judicial punishment, but, more finally, by forgiveness and forbearance” (*Theology and Social Theory* 231). A second is recent Magisterial treatment of the subject of peace in the community of nations, as in *Gaudium et Spes* (especially #82 on the need for an appropriate universal authority to help ensure peace) and in further developments by John Paul (in *Evangelium Vitae* and elsewhere) on the organization of the international community and on the wrongness of war (on the latter see for discussion William L. Portier, “Are We Really Serious When We Ask God to Deliver Us from War? The Catechism and the Challenge of Pope John Paul II,” *Communio: International Catholic Review* 23 [1996] 47–63). These teachings remind one of Milbank’s call, cited above, for a “new, universal society.”

Second, in view of the possibilities for lay action, Milbank criticizes the limitations de Lubac (and, by implication, *Gaudium et Spes*) would place on the Church’s role in addressing the world (*Theology and Social Theory* 226). But the principles of worldly realities are not all moral principles. Hence, in governing these realities (*e.g.*, in politics), prudential judgments are necessary, judgments that take account of other principles in applying moral ones. It is because such judgments do not proceed exclusively from moral principles that they are beyond the competence of the Church *qua* Church (not simply beyond the competence of the hierarchy; cf. GS #42), and that

when the lay faithful with the relevant expertise make such judgments, they do not act in the name of the Church (cf. GS #43, 76). And that these judgments are not made in the name of the Church does not mean that they need not be informed by charity; the Church clearly calls the lay faithful genuinely to apply (not evade) charity in all such judgments (cf. GS #21, 43; also the Second Vatican Council, Decree on the Apostolate of the Laity *Apostolicam Actuositatem* [1965] #7, 29; and idem, Dogmatic Constitution on the Church *Lumen Gentium* [1964] #31).