

Against Capital Punishment: A Teleological Argument

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IN THE CATHOLIC COMMUNITY a strong opposition to the practice of capital punishment has emerged in the magisterium over the past decades. Since 1974, the U. S. Catholic Conference, the public-policy arm of the nation's Catholic bishops, has issued a series of statements condemning the resumption of judicial executions.ⁱ Numerous state Catholic conferences have opposed legislative initiatives to establish capital punishment in their respective states.ⁱⁱ Pope John Paul II criticized the death penalty in *Evangelium Vitae* (1995): "It is clear that for these purposes [retribution and rehabilitation] to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity; in other words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent."ⁱⁱⁱ The Pope's opposition to capital punishment became even more categorical in his homily in Saint Louis, Missouri (1999): "I renew the appeal...for a consensus to end the death penalty, which is both cruel and unnecessary."^{iv}

The emerging opposition to capital punishment within the Catholic and other religious communities often operates on the level of a thin and opaque argument. The tone of the argument is often tentative if for no other reason than that the current rejection of the death penalty rests uneasily with the apparent support for the death penalty offered by religious authorities of several generations ago.

The degree of opposition varies. The New York State Catholic Conference (1998) categorically rejects the death penalty as unjustified violence, parallel to the recourse to abortion in the case of a problematic pregnancy.^v The United States Catholic Conference (1980), on the other

hand, opposes the death penalty as an unnecessary practice, but it recognizes that those Catholics who still support the death penalty are in conformity with Church tradition.^{vi}

The grounds of opposition also vary. Some statements opposing capital punishment criticize the practice in principle as immoral.^{vii} Others accept the legitimacy of the practice in principle but make a prudential case that the state should renounce the exercise of this power, at least in current circumstances.^{viii} Others focus on the inequities surrounding the current American practice of capital punishment: the presence of innocent people on death row; the arbitrariness of the decision to impose the penalty; the disproportionate burden upon the poor, especially poor racial minorities, in bearing the brunt of this punishment.^{ix}

The purpose of this paper is to develop a teleological case against capital punishment. It will attempt to demonstrate how capital punishment frustrates or destroys the three basic purposes of judicial punishment: retribution, deterrence, and reformation. It will argue that the convergence of these arguments can furnish a compelling, if not absolute, case against the death penalty.

RETRIBUTION

Retribution is civil society's imposition of a just penalty upon an offender who has violated the order of justice. The purpose of the punishment is to restore the order of justice so violated. The gravity of the penalty must reflect the gravity of the offense committed and of the degree of culpability of the person who committed the offense.

The concept of retribution is easily distorted in contemporary society. Retribution is not vengeance. Nor is retribution strict symmetry. A rapist is not punished by being raped by an officer of the court. A burglar is not punished by having his own home burgled by a police officer. A drunken driver guilty of vehicular manslaughter is not run over on a highway by jury members in a state of intoxication. Retribution is proportionate inasmuch as the severity of the civic punishment must vary according to the gravity of the crime committed.

Capital punishment poorly serves this end of retribution. First, rather than placing a penalty upon a person, capital punishment aims to

destroy the person himself or herself. The death penalty does not impose a grave burden upon a criminal member of society. It literally removes a person from society. Rather than disabling the freedom and other goods of the criminal as a just punishment for violation of the order of justice, the death penalty removes the criminal from any further participation in the social order. It is paradoxical, to say the least, to attempt to restore the order of justice among persons by using a judicial weapon that aims at the very annihilation of the person by destroying the criminal's life.

Earlier natural-law theorists supporting capital punishment often use telling analogies that inadvertently manifest the depersonalization of the criminal who is considered properly condemned to death. In a typical argument, Vernon Bourke claims that capital punishment is a type of social surgery: "A state may kill a criminal who has seriously offended against the common good of the community. Just as it is reasonable to cut off a diseased member of the human body, when the member threatens the welfare of the whole body, so it is reasonable to permit the body politic to cut off a bad member of society for the sake of the good of the whole society."^x This social-surgery argument clearly reduces the criminal to a means to an end. The personal dignity of the criminal, an ontological trait that cannot be destroyed by moral transgression, has evaporated in this image of the criminal as a diseased organ subordinate to the good of the whole.

Bourke deepens the anti-personalist traits of his argument by another consideration: "Capital punishment may also be justified on the reasoning that a serious criminal has receded so far from the order of reason that he is no longer worthy of treatment as a rational being."^{xi} This is an odd argument inasmuch as conviction of serious crime, such as first-degree murder, requires evidence of sanity. Indeed, conviction for the aforementioned crime requires evidence of rational premeditation. An irrational agent should be in a state hospital for the criminally insane, not in a prison nor in the electric chair.

Nonetheless, this argument that the grave criminal is "no longer worthy of treatment as a rational being" indicates how easily the case for capital punishment rests upon a depersonalization of the criminal. In this instance, the foundation of personal dignity, human rationality, is denied

the criminal. This refusal to recognize that the criminal is in fact a rational agent is precisely what grounds the abandonment of the inviolability of the life of a human person.

The retribution operated by the civil authority in punishment of the criminal is always a retribution proper to the order of persons. Capital punishment distorts this personalist structure of retribution by inflicting a sentence that both aims at the destruction of the person and that easily denies the very personality of the criminal.

Second, capital punishment fails to use death as a “last resort” in its treatment of the criminal. It has long been commonplace in ethical literature to argue that the state may only employ lethal force as a last-resort in defending the innocent against grave aggression. Hence, the recourse to war can only be justified after other, more pacific means of redress and negotiation have failed. The police use of lethal force is only reasonable when non-lethal means would probably not disable an imminent threat to the lives of police officers or innocent bystanders by an aggressor. Similarly, capital punishment cannot be justified when other, less lethal means of punishment can be used to restore the order of outraged justice. The capacity of contemporary penal practice to impose such punishments, as in the case of life imprisonment without parole for aggravated murder, would appear to rule out the use of capital punishment. As Pope John Paul II and other religious authorities have argued, it is difficult to see how capital punishment could function as a last-resort means of retribution when the methods of retribution open to the contemporary state are so ample and so effective.

The argument that capital punishment fails the “last resort” test presupposes a supreme, but not, absolute value placed upon life itself. It is the condition for the existence and development of all other goods of the human person. Its destruction can only be justified—and then tragically—when the very survival of innocent persons necessitates the destruction of a grave aggressor. One can imagine such scenarios in certain cases of self-defense, police action, and defensive warfare. However, it is difficult to imagine such a scenario in the case of the punishment of a criminal who is already disarmed, imprisoned, and subject to the substantial surveillance and punitive powers of the

contemporary state.

Just as the state may not depersonalize the criminal in its effort to restore the order of violated justice, it may not employ lethal means of punishment when non-lethal means can clearly effect the work of retribution. The incapacity of capital punishment to serve as a last resort in the defense of the innocent against aggression disqualifies it as an appropriate punishment.

DETERRENCE

The second major purpose of judicial punishment is deterrence of future crime, both by the criminal and, more importantly, by other members of society. If the state is to employ this lethal punishment, it should be able to demonstrate that the use of capital punishment clearly deters the commission of violent crime. In the absence of such evidence, the state is obliged to use other non-lethal means of punishment as a method of educating and discouraging the public from the commission of grave assaults upon the order of justice.

To put it mildly, criminal statistical evidence for decades has indicated that capital punishment has little, if any, deterrent effect upon the commission of violent crime. States vigorously employing the death penalty, such as Texas and Louisiana, do not have lower rates of criminal activity than do those which have abolished capital punishment.^{xii} Many of the abolitionist nations of the world (Japan, Western Europe) enjoy comparatively low levels of violent crime, while many nations employing capital punishment have high rates of criminal activity.

Obviously, such statistical correlations should be studied with caution. Many abolitionist societies are affluent, highly educated cultures that enjoy a high level of civic concord for reasons other than the single one of suppressing the death penalty. Nonetheless, supporters of the death penalty who claim that it does deter violent crime should be able to make a strong empirical case for its effects in crime reduction, if indeed it is such a powerful deterrent. In lieu of such evidence, however, and with substantial evidence to the contrary, capital punishment loses one of its traditional justifications. If the lives, potential or actual, of citizens are not in fact protected by recourse to this lethal means, the state is obliged

to confine itself to less violent methods of crime prevention.

The illusory allegiance to capital punishment as a deterrent often prevents society from endorsing less dramatic but more effective means of deterring the commission of serious crime. As recent criminological research has indicated, new penal practices (such as mandatory minimum sentences, greater difficulty in parole, firmer sentencing guidelines) and police practices (restoration of street patrols, community policing, “zero tolerance” approaches to non-violent crime) have contributed to the substantial reduction in violent crime witnessed by American society in the 1990s.^{xiii}

The illusory embrace of capital punishment as an effective deterrent also risks the further brutalization of our society. A violent solution to crime is avidly endorsed, despite the pointed evidence that it provides no reduction in criminality. As Bishop Joseph A. Fiorenza, President of the National Conference of Catholic Bishops, recently argued: “We oppose the death penalty not just for what it does to those guilty of heinous crimes, but for what it does to all of us: it offers the tragic illusion that we can defend life by taking life.”^{xiv}

REFORMATION

The final purpose of judicial punishment is to reform the criminal so that he or she may again participate in social life in conformity with the order of justice. By its nature, the death penalty precludes any long-term reformation of life by the criminal. Not only does it prevent any reintegration into society by the criminal. It even pre-empts any durable amendment of life and commitment to work and friendship possible for a prisoner with a life sentence. No process of rehabilitation is possible.

By its destruction of the end of reformation, capital punishment introduces a certain despair into the process of judicial punishment. It radically forecloses the future in a way unparalleled by any other species of punishment. Not surprisingly, many religious opponents of capital punishment argue that it defies the fundamental gospel values of mercy and reconciliation by its refusal of any possibility of a redemptive future to the convicted criminal. It signals society’s willingness to despair of the life of a criminal member of that society. By doing so, not only does

capital punishment attack the rehabilitative purpose of all punishment. It assaults the values of repentance, amendment, and conversion that constitute the heart of a humane social order and, *a fortiori*, the order of grace.

CONCLUSION

Capital punishment's violation of the central purposes of judicial punishment—retribution, deterrence, reformation—constitutes a compelling case against this practice. I do not believe that it constitutes an absolute case, inasmuch as the only absolute (that is, universal and exceptionless) norm in this area of human action is: One many never directly kill an innocent human being. There is a gap—and it is steep—between Ted Bundy's killing of his victims and the State of Florida's killing of Ted Bundy.

The growing and, I believe, justified opposition to capital punishment is not based upon a global pacifism that condemns all deliberate homicide as wrong. Nor is it rooted in a categorical denial of the state's right and duty to exercise the power of the sword in the defense of the innocent against the aggressor. It springs from the conviction that this power of the sword can only be used as a last resort, given the supreme worth of the life of every human person, regardless of his or her moral status. It perceives no need to use this last resort in a society which can effectively punish the violent criminal through imprisonment. The moral unworthiness of this punishment emerges even more clearly, given its failure as a deterrent and its assault upon the good of personal reformation. Like many violent solutions to our social problems, its popularity outdistances its necessity.

NOTES

i. Cf. Administrative Board of the U. S. Catholic Conference, *A Good Friday Appeal to End the Death Penalty* (1999) (www.nccbuscc.org/sdwp)

/national/criminal/appeal): 1-3.

ii. Cf. New York State Catholic Conference, "Statement on Capital Punishment" (1998) (www.nyscatholicconference.org/agenda/1H): 1.

iii. Pope John Paul II, *Evangelium Vitae* (Boston: Pauline, 1995): # 56, 91.

iv. Cited in USCC, *op. cit.*: 1.

v. New York State Catholic Conference, *op. cit.*: 1.

vi. U. S. Catholic Conference, *USCC Statement on the Death Penalty*, 1980 (www.nccbuscc.org/sdwp/national/criminal/death/uscc 80): 1-7.

vii. Cf. New York State Catholic Conference, *op. cit.*: 1.

viii. Cf. U. S. Catholic Conference, *USCC Statement on the Death Penalty*, *op. cit.*: 2.

ix. Cf. Joseph Cardinal Bernardin, "Testimony to the Judiciary Committee of the United States Senate" (1989) (www.nccbuscc.org/sdwp/national/criminal/death/bern89): 2.

x. Vernon J. Bourke, *Ethics* (New York, Macmillan): 354.

xi. *Ibid.*: 355.

xii. Cf. Federal Bureau of Investigation, "Synopsis of FBI Uniform Crime Report" (sun.soci.niu.edu/~critcrim/crime/ucr.95): 1.

xiii. The research of political scientist John DiIulio indicates how certain penal practices can reduce crime and effectively isolate violent criminals from society. Cf. John J. DiIulio, Jr., *Governing Prisons: A Comparative Study of Correctional Management* (New York: Free Press, 1987) and *No Escape: The Future of American Corrections* (New York: Basic Books, 1991).

xiv. Bishop Joseph A. Fiorenza (1999), cited by Catholics Against Capital Punishment (www.igc.org/cacp/): 1.