

Faithful Citizenship

Principles and Strategies to Serve the Common Good

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The Death Penalty – Another Threat to a Culture of Life

Response to Teresa Collett

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Introduction

[1] “The Responsibility of Citizens to Advance the Culture of Life against Judicial Opposition” is an intriguing title. One could focus the argument of such a paper in variety of directions, and Dr. Collett’s essay has reminded us how complex the legal discussion of life issues has become as the result of technological and social developments, including *in vitro* fertilization, embryo adoption, and the advocacy of Physician Assisted Suicide and/or euthanasia. It is increasingly difficult to speak of a culture of life without invoking a range of issues. In light of these realities, it is helpful to remember that 2008 marks the twenty-fifth anniversary of the late Cardinal Bernardin’s articulation of the need for a “comprehensive and consistent ethic of life” (Bernardin: 491).¹ *Forming Consciences for Faithful Citizenship* emphasizes this approach, asserting: “The consistent ethic of life provides a moral framework for principled Catholic engagement in political life and, rightly understood,

¹ Thomas Nairn has recently edited a complete edition of Bernardin’s writings. For background on the U.S. bishops’ responses to the death penalty debate, see Megivern: 339-50, 360-69, 376-80, 383-87, 388-95, 396-97, 399-401, 404, 408-409, 411-14, 415-16.

neither treats all issues as morally equivalent nor reduces Catholic teaching to one or two issues” (USCCB 2007: no. 40).

[2] Within its explanation of the concerns relevant to the consistent ethic of life, *Forming Consciences* observes: “Catholic teaching about the dignity of life calls us to oppose torture, unjust war, and the use of the death penalty . . .” (USCCB 2007: 45). Although capital punishment does not receive an extended analysis within this document, *Forming Consciences* does invoke it several times, especially in reference to the rejection of a “culture of violence” and the use of “violence to address fundamental problems” (USCCB 2007: 85, 90). Continued recourse to the death penalty cannot be justified, the document argues, because our society can protect itself by alternative means “that are more respectful of human life” (USCCB 2007: 69). This emphasis upon the connection between respect for life and rejection of the death penalty reflects an argument that the conference developed more extensively in the USCCB 2005 document, *A Culture of Life and The Penalty of Death*. “It is time for our nation to abandon the illusion that we can protect life by taking life,” the bishops explain. “Ending the use of the death penalty would be one important step away from a culture of death toward building a culture of life” (14).

Cultures of the Death Penalty in the United States

[3] Several facets of the death penalty debate make it a particularly interesting test case regarding civic responsibilities for advancing the culture of life. First, one can reasonably describe capital punishment as a cultural action, i.e., as public policy accepted or rejected by people living within a particular cultural milieu. While all “life” issues have public significance, capital punishment is carried out by public authority and was traditionally defended in Catholic ethics as a means of protecting the common good (Noldin and Schmitt: 316-17; Sabetti and Barrett: 271). By definition, its retention or abolition are matters of social choice. As *A Culture of Life and the Penalty of Death* points out, “in many ways the death penalty is about us: the actions taken in our name, the values which guide our lives, and the dignity that we accord to human life” (USCCB 2005: 14).

[4] In the United States today, however, public policies regarding capital punishment are more strongly tied to local cultures than to national sensibilities. It is important to remember that the vast majority of persons executed in the United States since 1977 – the year when executions resumed in this country after a ten-year hiatus – have been convicted under state rather than federal or military law (Death Penalty Information Center 2008a: 3).² As of May 9, 2008, executions under state law represented 1097 out of the 1100 death sentences carried out over the past thirty-one years (Death Penalty Information Center 2008a; Barnes). However, there are marked differences between the practices of individual states. Currently, fourteen of the fifty states do not have the death penalty for state crimes, and a similar number – thirteen states – account for 89% of the executions that have taken place under state law since 1977 (Death Penalty Information Center 2008a). Sixty-five percent of these executions have been carried out by five states (Texas, Virginia, Oklahoma, Missouri, and

² For the historical background for the moratorium on executions in this country between June of 1967 and the Supreme Court’s action in 1976, see Megivern: 332-33, 340-41, 351-52.

Florida), with Texas's total of 405 representing 36% of the whole.³ Though there are regional differences, this is not a simple "red state, blue state" dichotomy; California has the largest death row population in the country (albeit with few actual executions) while there is no capital punishment for state crimes in Alaska, North Dakota, or West Virginia (Death Penalty Information Center 2008a). It is difficult to look at these differences without concluding that there are different cultures of death – or better, cultures of the death penalty – operative within our country.

[5] All of this has important implications for citizens' responsibilities regarding capital punishment. Important decisions about the death penalty are being made at the state and local levels, where individuals and small groups have wider opportunities to influence public policy than they enjoy on the national stage. State governments can eliminate capital punishment for violations of state laws, as New Jersey's legislature chose to do in December of 2007 (Richburg). Prosecutors can decide whether or not to seek the death penalty in specific cases, even when the law allows for such punishment. However, the legal possibility of imposing the death penalty does not necessarily translate into actual executions. New Hampshire, for example, retains the death penalty; yet the state carried out its last execution in 1939 (Saltzman). Ordinary citizens have opportunities to influence the local ethos regarding the death penalty within their own communities, not least by the candidates they support for public office.⁴ Those who oppose capital punishment should give careful consideration to importance of subsidiarity. While national abolition campaigns are useful and necessary, local efforts seem likely to produce the greatest results in the immediate future. *A Culture of Life and the Penalty of Death* offers a reasonable prediction about the eventual end of the death penalty in America. Its demise, the bishops suggest, will not come from a federal statute or Supreme Court ruling; rather, "the death penalty will be abandoned and wither away through the everyday choices of prosecutors and legislators, judges and jurors, and ordinary citizens who make a commitment to respect human life in every situation" (USCCB 2005: 19).

The Challenges of the Past Fifteen Years

[6] The death penalty raises interesting questions about our responsibilities to advance the culture of life; one can trace noteworthy shifts in public opinion and practices regarding this moral problem over the last decade. I began discussing capital punishment with my undergraduate students in the mid-1990s. At that time, Gallup data showed that public

³ I calculated the figures of 89%, 65%, and 36%, respectively by comparing the state-by-state data regarding numbers of executions on page 3 of the Death Penalty Information Center's fact sheet (2008a: 3) to the total number of executions. For example Texas (405), Virginia (98), Oklahoma (86), Missouri (66), Florida (64), North Carolina (43), Georgia (41), South Carolina (37), Alabama (38), Louisiana (27), Arkansas (27), Arizona (23), and Ohio (26) have executed 981 persons; this is 89% of the 1100 executions that have taken place since 1977. The 719 persons executed in the first five of these states represent 65%; while Texas's 405 represent 36%.

⁴ Such opportunities might include activities such as lobbying state legislators, writing letters to the editor, volunteering to assist persons on death row and their families, participating in or leading educational programs, raising the issue at candidate forums, donating money to abolition groups or to innocence projects, and working with at-risk youth (see USCCB 2005: 17).

support for the death penalty was 80% (Death Penalty Information Center 2008a: 4; cf. the Pew Research Center's figure of 78% in 1996). Three hundred people – sometimes more – were being sentenced to death in the United States every year; execution numbers were increasing at the rate of twenty every other year (Death Penalty Information Center 2008a: 3, 1). In 1999, I realized that, if this rate of increase were to continue, the United States would reach 200 annual executions by 2009 or 2010, thus surpassing 1935's 199 executions – the highest number carried out in this country during any year of the twentieth century (U.S. Department of Justice 2007a). The late 1990s was not a promising period for analyzing this issue with students, or for trying to explain the complex arguments of *Evangelium Vitae* regarding capital punishment. Despite the 1995 encyclical's reference to "growing public opposition to the death penalty" as one of the "signs of hope" in the modern world, this was not always apparent in the United States during this period (John Paul II: no. 27). Even Roman Catholic support for capital punishment exceeded 70% (USCCB 2005:10).

[7] In the late 1990s, one might also have reasonably anticipated that American Catholic attitudes towards the death penalty would be slow to change. The following citation from the 1911 *Catholic Encyclopedia* probably reflects what most older Catholics were taught regarding the Church's view of the death penalty: "The infliction of capital punishment is not contrary to the teaching of the Catholic Church, and the power of the State to visit upon culprits the penalty of death derives much authority from revelation and from the writings of theologians" (Willis: 567-68). *Evangelium Vitae's* new approach to capital punishment surprised many Catholics, including Supreme Court Justice Antonin Scalia (Megivern: 1-2; Holland; Brugger: 123). Even the recent *Catechism of the Catholic Church* required revision in 1997, to bring the text's treatment of the death penalty into closer conformity with *Evangelium Vitae* (Congregation: 261; Brugger: 129). Moreover, the teaching of the encyclical itself has been subject to varied interpretations (Brugger; Long; Megivern: 444-46). What precisely does it mean to assert that cases "of absolute necessity . . . when it would not be possible otherwise to defend society" except through capital punishment, are "very rare, if not practically non-existent" (John Paul II: no. 56)? The new teaching on the death penalty is complex, nuanced, and not easily expressed in a "sound-bite."⁵ One might logically have expected its reception among U.S. Catholics to be a very long, challenging process.

Surprising Progress

[8] Fortunately, recent developments regarding capital punishment in the United States have not followed the trends of the late 1990s. Currently, a majority of Americans support capital punishment, but according to a 2007 survey that support has declined to 62% (Pew Research Center). Data cited in *A Culture of Life and the Penalty of Death* indicates that support among Roman Catholics has dropped even more dramatically, standing at 48% in 2005 (USCCB 2005:10). The 2007 survey also reports a decline of support for the death penalty among Catholics, although a smaller one than *A Culture of Life* describes (Pew Research Center). In addition, the Zogby International polling data cited by the bishops reveals that opposition to

⁵ In my judgment, the developments of *Evangelium Vitae* are best understood by drawing an analogy between capital punishment and just war theory rather than between capital punishment and self-defense. In essence, the encyclical adds a last resort criterion to the conditions that must be met before capital punishment can be justified.

the death penalty is particularly strong among younger Catholics and weekly Mass attendees (USCCB 2005).⁶ Finally, whatever people's position on capital punishment in the abstract, it is clear that both the number of executions and the number of death sentences have decreased dramatically in recent years. There were ninety-eight executions in 1999, seventy-one in 2002, fifty-nine in 2004, and fifty-three in 2006. In 2006, 115 people were sentenced to death – the lowest number since 1977 (Death Penalty Information Center 2008a) and the number of persons in this country living “under sentence of death” decreased for the “sixth consecutive year” (U.S. Department of Justice 2007b).

Leadership at All Levels

[9] In recent years, something has changed in America regarding the death penalty and the culture of life. Something has certainly changed in the U.S. Church since Cardinal Bernardin proposed the consistent ethic of life in 1983, drawing connections that made many uncomfortable or even angry. To explain these developments, one must emphasize the contributions of church leaders, especially John Paul II, who challenged Catholic sensitivities about the death penalty through *Evangelium Vitae*, through his public statements, especially in St. Louis in 1999, and perhaps most poignantly, through the witness of his life, including his forgiveness of the man who had tried to kill him (no. 56; USCCB 2005: 13, 14). One must also point to the influence of Cardinal Bernardin and to the impact of the USCCB's repeated statements on the capital punishment. *A Culture of Life and the Penalty of Death* is an exceptionally clear and cogent presentation of the Church's new teaching. Several of my students have described it as “user-friendly,” noting with approval its use of personal narratives and statistical data to support its arguments. They also appreciate its frank acknowledgment that “people of goodwill disagree” about capital punishment (USCCB 2005: 6). As a teacher, I am very grateful that our Church leaders have made such resources available.

[10] As important as magisterial evangelization has been, one suspects that the work of many other persons has also affected American Catholic opinions on capital punishment. Where would we be without the efforts of activists – both the famous, like Sister Helen Prejean, and the unknown – who have spent years working on death row, lobbying state legislatures, and educating civic groups and church communities? One cannot reflect upon the recent history of the death penalty debate in the United States without realizing how many people have demonstrated their own faithful citizenship by participating in it, or by taking actions that brought it to public attention. Actors Susan Sarandon and Tim Robbins, for example, decided to make a feature film from Sister Prejean's *Dead Man Walking*, and publicity surrounding that the film helped advance her book to the top of the New York Times' bestseller list (Prejean; Loeterman). Throughout the country, litigators, university faculty members, and students are devoting time to innocence projects, and their efforts have led to the exoneration of a number of death row inmates, as well as of other persons wrongfully

⁶ During the symposium, John Carr reported that these results so surprised the staff that they asked for a second administration of the poll! Participants in the symposium also noted that those who attended church weekly were more likely to support President Bush rather than Senator Kerry in 2004; so the change of opinion among weekly Mass attendees is not what one might have anticipated. The Pew Research Center's 2007 survey report found significantly lower support for the death penalty among Catholics who attended mass weekly.

convicted (Innocence Project, “Mission”; “Other Projects”). Family members of murder victims have offered poignant testimony about the possibility of embracing forgiveness rather than retribution (see, for example, USCCB 2005: 16). It is hard to imagine how attitudes toward capital punishment would have begun to change, without the many people from all walks of life who have contributed to our public reflections.

A Sign of Hope for the Church?

[11] Declining support for capital punishment among U.S. Catholics is a salutary reminder that good arguments can change minds, especially when they are expressed in actions as well as words. As a moral theologian, I would love to know why this shift has occurred, for one could posit many plausible explanations. Has the cogency of the call for a consistent ethic of life persuaded some Catholics to change their views about capital punishment?⁷ Is the teaching persuasive because Catholics can offer a clear alternative – life without the possibility of parole – in making the case against the death penalty?⁸ Has the tenor of the discussion made a difference? To what degree do shifting American Catholic attitudes reflect developments in the wider culture? Consideration of these hypotheses lies beyond the scope of this paper. Even without a definitive explanation for shifting Catholic attitudes, one can interpret them as a sign of hope for the Church. As previously mentioned, contemporary Catholic teaching on capital punishment is nuanced and complex. It poses a challenge for those comfortable with the older tradition of the moral manuals. One suspects that it has enjoyed less publicity and has had fewer resources devoted to its propagation than some of the Church’s teachings on other issues. To my knowledge, there is no serious threat of ecclesiastical sanctions for those who reject it. And yet, growing numbers of U.S. Catholics seem to be receiving it and making it their own. Surely that is good news, albeit limited, for our commitment to building a culture of life.

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⁷ During the symposium’s general discussion, John Carr suggested that the Conference’s research would support this conclusion.

⁸ Sue Crawford offered this suggestion during the symposium, pointing out that arguments against established practice are typically more successful if one can offer an alternative.

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