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### 9. Roman Catholic Teaching and the Death Penalty

#### Actual Use versus Hypothetical Use

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#### Abstract

Although implicit, the distinction between the actual use of the death penalty and its hypothetical justifiability has played an important role in Roman Catholic ethical thinking on capital punishment. Recent developments in official Church teaching under Popes John Paul II and Francis regarding the death penalty reflect the popes' negative consensus regarding its use under contemporary circumstances. While *Evangelium Vitae* limits, but does not exclude *a priori*, the possibility of justification for the hypothetical death penalty, the logic of Pope Francis's statements to date seems inconsistent with such theoretical justification.

Keywords: death penalty, capital punishment, Pope Francis, *Evangelium Vitae*, John Paul II

#### Introduction

When I ask my undergraduate students to tell me what they expect to study in an ethics class, they often mention the death penalty. The morality of capital punishment is a standard

topic of contemporary ethical discourse, so that the scope of the debate initially seems to require neither clarification nor justification. Yet analyzing the morality of capital punishment as a social practice can involve two distinct (albeit related) lines of inquiry.<sup>1</sup> One asks whether capital punishment *is* a legitimate exercise of political authority under specific historical and cultural conditions. The other considers whether the death penalty *might be* justified under circumstances posited in the imagination, whether such circumstances currently exist, or indeed, have ever existed. To simplify the discussion, I will call the first the *actual use* of the death penalty, and the second, its *hypothetical use*.

The relationship between these two ethical questions is complex, since one's stance regarding the actual use of capital punishment is grounded – at least implicitly – in conclusions about its hypothetical use. For example, if there is no hypothetical justification for the death penalty, its actual use must be illegitimate. However, the opposite premise produces more variable results: hypothetical justifications for capital punishment could, but not necessarily would, legitimate the actual use of the death penalty under specific historical conditions. Instead, the hypothetical standards necessary to justify capital punishment in the abstract might effectively proscribe its actual utilization. Moreover, one must distinguish the yardstick from what it measures. Analysis of the hypothetical death penalty exists primarily to clarify the ethical character of the actual death penalty.

Although the terms *hypothetical* and *actual* do not characterize recent Roman Catholic magisterial statements regarding capital punishment, the distinction illuminates the ongoing evolution of such teaching. In fact, comparison of John Paul II's seminal statements on capital punishment in *Evangelium Vitae* with Pope Francis's approach to the question reveals a clearer consensus about the actual imposition of capital punishment than about its hypothetical exercise. If official Roman Catholic teaching has recently evolved regarding the actual use of capital punishment, it now seems to be undergoing a parallel reevaluation of the death penalty's hypothetical justification.

To develop these arguments, it will be helpful first to consider a case study that illustrates the practical significance of the actual/hypothetical distinction regarding capital punishment. Next, I will briefly consider some of the historical, theological, and practical factors that have made the distinction advantageous for Roman Catholic social thought. Finally, juxtaposition of John Paul II's treatment of the death penalty with Pope Francis's statements on the subject will illustrate the ongoing evolution of Roman Catholic teaching, first regarding its actual use, and second, regarding its hypothetical exercise.

### **Preliminary Case Study: An Illustration from Nebraska**

In his letter of May 26, 2015, vetoing LB 268, which repealed the death penalty under Nebraska law, Governor Pete Ricketts offered several arguments as to why the state should retain capital punishment, including its necessity as a sanction for crimes by those already imprisoned. Governor Ricketts wrote:

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<sup>1</sup> Evaluating the death penalty as a social practice is distinct from analyzing the legitimacy of particular death sentences.

Retaining the death penalty is . . . vitally important to good prison management. This fact cannot be overlooked given the recent prison disturbance in the Tecumseh facility, during which two inmates were intentionally killed by another inmate or inmates.

If the death penalty is not in place, then an inmate has no concern about receiving a more serious sanction. It is not proper to force wardens, corrections officers, or the correctional system to have inmates who are fearless of additional sanctions for murders they . . . [perpetrate] within prison walls” (2).

In ethical terms, one might classify this as a deterrent argument, presumably concerned with prisoners already serving life sentences without the possibility of parole (i.e., since those serving shorter sentences would be subject to additional years in prison as a sanction).

It is interesting to note that this set of circumstances has no recent precedent in Nebraska. None of the three men executed in this state since Nebraska’s reinstatement of the death penalty in 1973, and none of the ten men on the state’s death row in April of 2016, were sentenced to death for a murder committed in prison (Death Penalty Information Center 2016c; *New York Times* 1994; Associated Press 1996a; Kulhanek; NBC News). However, since Nebraska’s recent executions have been few and its death row population is comparatively small, one may wish to expand the analysis to include the experience of other death penalty states.<sup>2</sup> How commonly, in this country, is an inmate executed for a murder committed in prison after he or she was already incarcerated?

Between 1977 and January 12, 2017, 1443 people were executed in the United States, all but three of them for capital crimes under state laws (Death Penalty Information Center 2016b). Only twenty-five of these inmates (1.7%) were executed for a murder committed in prison.<sup>3</sup> Clearly executions for such crimes are rare, in terms of the actual use of capital punishment in recent U.S. history.<sup>4</sup>

However, Ricketts’s argument has a different focus: the need for capital punishment as a sanction to deter crime in prisons. It assumes that the threat of capital punishment deters inmates from homicide and that other sanctions available to the state would not do so (on deterrent arguments, see Hood and Hoyle: 389-425). Both assumptions are essentially impossible to test, since a person who is deterred from a crime remains undetectable. We have no way to know whether any inmates have ever been deterred from killing in prison because they feared the death penalty. Similarly, we cannot know whether the fear of other possible sanctions (e.g., transfer to an institution with harsher terms of confinement) has

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<sup>2</sup> As of July 1, 2016, Nebraska ranked twenty-third in size among U.S. death penalty jurisdictions (see Death Penalty Information Center 2016a). Note that Nebraska reinstated the death penalty in November of 2016.

<sup>3</sup> I drew this conclusion by comparing the names of the executed with online news reports regarding their crimes.

<sup>4</sup> Note that the Bureau of Justice Statistics reports 762 inmate deaths in state prisons from *homicide* (which includes but is not limited to death at the hands of other inmates) between 2001-2013. Executed inmates are not included in this total (Noonan, Rohloff, and Ginder: 20).

deterred any prisoners from murder. In essence, therefore, this argument concerns the hypothetical benefits of the death penalty.

However, the historical record of the actual death penalty raises a different set of questions. Of the twenty-five men executed since 1977 for prison murders, three received another death sentence for a murder committed when they were already on death row (Lush; *New York Times* 1993; AZCentral.com). Clearly, the threat of capital punishment failed as a deterrent in these cases. Yet even more startling are the ten cases in which the prospect of capital punishment seems to have been an incentive for murder (Jouvenal; Associated Press 1996b; Wilson; WRAL.Com; Associated Press 2004; Carson; Conroy; Peterson; Associated Press 2012; Reuters). Journalist Ron Word described the motivation of one of these men, John Blackwelder, who was executed in 2004 for the murder of fellow inmate Raymond Wigley: “Blackwater said in a media interview Monday he manipulated the state, killing Wigley to ensure that he would get the death penalty because he couldn’t stand the idea of spending life in prison without parole, but couldn’t commit suicide. ‘I am sorry for killing Wigley, but to get what I wanted, I had to,’ he said” (A4). To insure a death sentence for such prison murders, some inmates have threatened to kill again, released provocative statements emphasizing their lack of remorse, or even refused to cooperate with authorities unless they sought the death penalty (see, for example, Carson; Peterson; Conroy). “Suicide by governor” – the characterization offered by a death penalty opponent in one such case – starkly illustrates how the possibility of a death sentence can become an incentive to rather than a deterrent from murder (Associated Press 2004).

If the need to prevent homicides in prison concerns the hypothetical functions of the death penalty, the history of its actual use in punishing such murders calls its deterrent value into question. For those already on death row and those seeking to die at the hands of the state, a death sentence represents, at best, the repetition of a sanction that can only be administered once, and, at worst, the means to a desired end. Yet more than half of those executed for prison homicides since 1977 fell into one of those two categories. Moreover, in the second scenario, the record of actual executions directly contradicts the goal of retaining them to deter prison violence. While the Governor Ricketts’ argument assumes that the threat of execution saves lives in prisons, the historical record indicates that the prospect of *suicide by governor* has incentivized prison murders.<sup>5</sup> For a debate regarding the ethics of the death penalty, therefore, the history of its actual use provides a yardstick for the assessment of its hypothetical functions.

### The Utility of the Distinction for Roman Catholic Ethics

The distinction between the hypothetical and actual use of capital punishment has played an important role in modern Roman Catholic ethical thought, although the tradition does not employ these terms explicitly. The distinction’s longstanding significance within

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<sup>5</sup> Nebraska death row inmate David Dunster, who died of natural causes in 2011, received his death sentence in 2000 for murdering his cellmate. According to *the Lincoln Journal Star*: “Dunster later pleaded guilty to first-degree murder for Witt’s killing and fired his court-appointed attorney before sentencing, at one point saying, ‘It is really a pain in the ass to get you people to kill me.’ He told a Lancaster County judge he would rather receive a death sentence than spend the rest of his life in prison” (Pilger).

Roman Catholic approaches to capital punishment reflects the impact of historical, theological, and practical influences.

The historical/cultural scope of Catholic social thought provides the first reason for Roman Catholicism's implicit reliance upon the distinction between the hypothetical and the actual use of capital punishment. Catholic social thought, even in its particular expressions, is connected to the faith of more than a billion people scattered across the globe, as well to the various historical instantiations of the Catholic community extending back nearly 2000 years, to those first disciples who claimed a crucified criminal as their risen Lord. Christian consideration of references to capital punishment in the Hebrew scriptures extends the scope of historical reflection even further. Catholic social thought on capital punishment emerges from an ethical heritage encompassing a wide variety of cultures and extending over several millennia. Thus, Roman Catholic questions about the application of the death penalty today are shaped by this historical and cultural backdrop, which necessarily extends the ethical inquiry beyond the borders of a particular culture, even our own. Awareness of this varied historical experience has encouraged the implicit recourse to a distinction between the actual and the hypothetical death penalty in Catholic social thought. Catholic ethical questions about the death penalty here and now have inevitable ties to questions about the death penalty there and then.

Second, an implicit distinction between the hypothetical and the actual use of the death penalty is grounded in the defense of capital punishment on teleological grounds, i.e., in the claim that civil authorities need this sanction to protect the common good. This argument, which has a long history within Roman Catholic moral theology, is quite distinct from deontological claims that biblical commandments or dictates of practical reason demand the execution of those who have committed specific crimes (see illustrations of the teleological argument in Tanquerey: 146, 147-48; cf. with Kant's defense of the *lex talionis*, as summarized by Brugger: 45-46; Kaczor: 140). While Catholic casuists invoked the Bible to defend the state's right to impose capital punishment, they tended to regard its practical utility as variable, and hence, as appropriate for limitation by human positive law, in light of the requirements of the common good in a particular place and time (see Molina: 4:18).

This teleological approach not only grounded a theoretical distinction between the hypothetical right of the state to impose capital punishment and the actual resort to executions under specific circumstances, but also raised the question of whether changing conditions could render recourse to the death penalty obsolete, if it no longer served the common good. The Jesuit Thomas Slater thus argued in 1908: "The right of the State to punish criminals with the infliction of death is either expressly conceded or clearly supposed in Holy Scripture," without presuming that the exercise of this right would always remain justifiable. "If the time should ever come when the infliction of less severe penalties will suffice to punish crime and safeguard life and property, then capital punishment should be abolished," Slater observed, "but that time does not seem to be at hand yet" (1:305). Thus, Slater interpreted capital punishment as a legitimate practice in his own time, but not as a practice that would inevitably remain so forever (see also Tanquerey: 150). The hypothetical use of the death penalty might become ethically distinct from its actual exercise. As we will see, the evolution in official Roman Catholic teaching on the death penalty with *Evangelium Vitae* is grounded in this theoretical possibility.

Finally, the implicit distinction between the hypothetical and the actual uses of the death penalty has had important consequences for Roman Catholic practice and teaching. On the one hand, the distinction allowed Church leaders to seek mercy for condemned individuals without challenging civil authorities' right to execute.<sup>6</sup> On the other hand, the distinction has served as a pressure valve for the tensions engendered by the change in Church teaching and practice regarding the death penalty.<sup>7</sup> According to John O'Malley (25), today a Roman criminological museum houses the Vatican guillotine, once used in the Papal States until their collapse in 1870. Between 1929 and 1969, Vatican City's statutes included a death sentence for an attack upon the pope, although the provision was never utilized (Megivern: 261-62). One suspects that earlier Catholic moralists would have been quite surprised by John Paul II and Francis's approaches to the death penalty. As attitudes about capital punishment have shifted, the distinction between its hypothetical and its actual use has smoothed the transition for the development of the Church's response.

Thus, historical/cultural, theological, and practical considerations have encouraged the reliance on an implicit distinction between the hypothetical and actual use of capital punishment in recent Catholic social thought. It has also fostered the evolution of magisterial statements on the topic under John Paul II and Pope Francis, both of whom took the opportunity to call for the abolition of the death penalty during visits to the United States (John Paul II 1999: 5; Francis 2015b). Despite their agreement on the condemnation of the actual death penalty, however, their approaches to the hypothetical death penalty differ. Indeed, comparison of their treatments of the subject suggests that the development of official Catholic teaching on the death penalty remains in process.

### *Evangelium Vitae*

According to E. Christian Brugger, the discussion of the death penalty in number 56 of *Evangelium Vitae*, issued by John Paul II in 1995, "received more notice than any other in the entire document" (10).<sup>8</sup> However, it is important to note that the third chapter's explicit analysis of the death penalty, like the consideration of self-defense that precedes it, serves as a prelude to the condemnation of the "direct taking of all innocent human life" in number 57.<sup>9</sup> Compared to its discussions of direct abortion and euthanasia, *Evangelium Vitae's* treatment of capital punishment is quite short and (as will become apparent) poses a number of analytical challenges for the interpreter. Not least among these is its appeal to the *Catechism of the Catholic Church*, given that this text's treatment of capital punishment would

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<sup>6</sup> See, for example, Sister Helen Prejean's account of her interaction with then Archbishop Hannan of New Orleans regarding an upcoming execution (54-55).

<sup>7</sup> Note, for example, the explanation of *Evangelium Vitae* offered by then Cardinal Ratzinger to a question from Father Richard John Neuhaus, as cited by Brugger: 11-12.

<sup>8</sup> Among the many discussions of the passage, see Brugger 23-27; Long: 511, 514-19, 536-52; Rourke; Kaczor; O'Donovan; Dulles: 142; Megivern: 444-46; United States Conference of Catholic Bishops: 3, 12-15;

<sup>9</sup> No. 57 begins with this transitional sentence: "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" (John Paul II 1995).

later require modification to bring its arguments into greater conformity with *Evangelium Vitae* (Brugger: 9-12).

The encyclical's first references to capital punishment appear in its opening chapter, which prefaces its account of contemporary threats to life with a reflection on the story of Cain and Abel (7-9). Emphasizing God's mercy toward Cain, the pope cites Ambrose's argument that God chose not to punish one homicide with another (9). Later, the text mentions the growth in "public opposition to the death penalty" as one of the signs of hope in today's world. "Modern society," argues the encyclical, ". . . has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform" (27).

Chapter 3's analysis of capital punishment reiterates these themes, first by invoking the growing tendency, both civil and ecclesiastical, to call for the severe limitation or abolition of the death penalty. This development, the pope argues, "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). Before applying this teleological concern to the death penalty directly, however, the encyclical offers a brief excursus on the purposes of punishment: retribution, defense of public order and public safety, and rehabilitation. Citing the *Catechism of the Catholic Church* (2267), it identifies the first as the "primary purpose of punishment" (56; on the interpretation of "primary" in this passage, see Kaczor: 136-37; Brugger: 25). The passage that follows, however, suggests that retribution is a necessary, but not a sufficient condition for the justification of the death penalty:

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: 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.

In any event, the principle set forth in the new *Catechism of the Catholic Church* remains valid: "If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person" [2267] (56; see also Kaczor: 136).

How should one interpret *Evangelium Vitae* in reference to the legitimacy of the actual and the hypothetical use of capital punishment? Does it concern only the actual death penalty under current historical circumstances, as some of have suggested? Or does it develop rather than simply apply traditional principles, by limiting the circumstances that might hypothetically justify the death penalty? (Brugger: 23-27; Kaczor: 141-49). Here it may be helpful to divide the encyclical's treatment of the present exercise of capital punishment from what it suggests about that exercise under other historical circumstances.

First, there is no doubt that *Evangelium Vitae* explicitly addresses the contemporary exercise of the death penalty. In fact, the text makes no overt claims about the legitimacy of capital punishment in the past, or about what might become true in the future, should there be a radical shift in social circumstances. By contrast, the encyclical speaks directly about capital punishment “today.” The primary focus of its argument thus concerns the actual death penalty.

In describing the present context for the evaluation of capital punishment, the document appeals to three different contemporary circumstances, two positive, and the third negative. The first, as previously mentioned, is the sign of hope embodied in growing public rejection of the death penalty (27). The second positive circumstance concerns the “steady improvements in the organization of the penal system” that have created alternatives to the death penalty (56). The precise nature of these improvements, however, remains unspecified within the text (see Kaczor: 143-44; Long: 544). Are these improvements the result of technological developments (e.g., security cameras) that allow for greater security in incarceration? Do they arise from the development of systems of public funding for prisons that render long-term incarceration economically viable? Are they better techniques for rehabilitating offenders, especially juveniles? *Evangelium Vitae* does not tell us. Instead, it emphasizes the ethical significance of these changes for the use of capital punishment. In essence, the document suggests that these “steady improvements” have created “bloodless means” for protecting public order and public safety.

Although *Evangelium Vitae* appeals to positive changes (in public attitudes and in penal systems) within its treatment of the death penalty, it also grounds its assessment of the practice in a negative critique of contemporary culture. Respect for all human life is particularly necessary now, the text suggests, because of current disrespect for innocent human life, as evidenced by the legalization of abortion and euthanasia (see 3-5, 12, 17, 26-28, 57). From this perspective, capital punishment feeds into the contemporary “culture of death.” This negative cultural critique has received far more commentary and analysis than the document’s positive claim regarding the evolution of the penal system. Different analyses, however, extend this critique in strikingly different ways. In *A Culture of Life and the Penalty of Death*, for example, the U.S. bishops cite not only capital punishment’s negative impact upon the culture of life, but also its discriminatory record of application and the recent record of exonerations suggesting that the risk of conviction errors is high (USCCB: 14-15, 3, 7-8). By contrast, Steven Long argues: “contemporary secular societies tend to lack the basis for imposing the death penalty in a virtuous fashion,” because they have lost “that reference to the transcendent order of justice which the imposition of the penalty is ordered to manifest” (547). In this view, capital punishment is *presently* problematic because cultures like our own have strayed from an orientation toward divine justice.<sup>10</sup>

As one might anticipate, such different interpretations of *Evangelium Vitae*’s approach to the actual death penalty correspond to an even wider range of interpretations of the hypothetical death penalty. The narrowest view interprets the text as a prudential statement

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<sup>10</sup> In response to this type of argument, see Kaczor’s (145) objection concerning the toleration of abortion, infanticide, and other abuses against human life in ancient societies.

about imposing the death penalty under contemporary circumstances, “pending the social restoration of those moral norms necessary for right social and legal order – at which time the death penalty may, if needed, be more likely to be rightly understood and virtuously imposed” (Long: 547). Use of the hypothetical death penalty, in other words, remains as a legitimate prospect for a better age. However, more expansive interpretations of *Evangelium Vitae*’s treatment of capital punishment regard the text as limiting the circumstances under which such a penalty might legitimately be applied – or perhaps even establishing a standard that could never be met in practice (compare Brugger: 23-27, 32-37 with Kaczor: 141,146-49). Support for such interpretations appears in the encyclical’s assertion that the state “ought not go to the extreme of executing the offender except in cases of absolute necessity, . . . *when it would not be possible otherwise to defend society*” (56, emphases added). This suggests that there could be a hypothetical justification for the death penalty only when it is employed as a remedy of last resort “to defend human lives against an aggressor and to protect public order and the safety of persons” (56, citing the *Catechism*).<sup>11</sup> One may reasonably wonder what kind of civic collapse would have to occur before a developed commonwealth with a functioning penal system would find itself without alternative means of pursuing these goals.

Yet if there have been different interpretations of what *Evangelium Vitae* says about the hypothetical use of capital punishment, there appears to be widespread agreement about what the document does not say. It does not claim that capital punishment would indubitably be wrong under all conceivable circumstances.<sup>12</sup> Applying the principles of the encyclical to discuss capital punishment within an American context, *A Culture of Life and the Penalty of Death* invokes the traditional language of moral theology to emphasize this point: “the death penalty is not intrinsically evil, as is the intentional taking of innocent life” (USCCB: 12). The legitimacy of the hypothetical death penalty may be the object of considerable skepticism, but the document does not exclude the possibility *a priori*.

### Pope Francis and the Death Penalty

In addition to his call for the abolition of the death penalty in his remarks to Congress – perhaps his statement on the subject that is most familiar to U.S. Catholics – Pope Francis has produced several public letters and addresses devoted, at least in part, to capital punishment, particularly his 2015 “Letter to the President of the International Commission on the Death Penalty” (2015b; 2015a). There is also a call for the abolition of capital punishment in section 8 of his 2016 Message for the Celebration of the World Day of Peace (2016a). A concise summary of the pope’s major arguments to date appears in a public statement translated and published online by the Community of Sant’Egidio (2016b).

Pope Francis clearly sees his approach to capital punishment as following in the footsteps of John Paul II, whom Francis describes as having “condemned the death penalty”

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<sup>11</sup> How broadly *defense* can be construed is another point of contention among the encyclical’s interpreters (see, for example, Long: 518-19, 540-41).

<sup>12</sup> In Brugger’s view, John Paul II “knew that to teach that capital punishment *as* intentional killing was intrinsically evil was beyond what the Catholic Church had ever taught” (x). Hence Brugger believes: “it is reasonable to conclude that its [the encyclical’s] intent is to leave open the possibility that the negative scope of the norm against homicide will in the future be judged by the Church to extend to all intentional killing” (27).

(2014b: 2a). Yet while Francis explicitly invokes *Evangelium Vitae* and its emphasis upon building a culture of life, his analysis of capital punishment develops and expands the encyclical's arguments in significant ways, especially in respect to the hypothetical death penalty.

Francis certainly shares and reiterates John Paul II's emphasis on the respect for human life in discussing capital punishment (2015a). Divine mercy, which plays an important role in *Evangelium Vitae's* treatment of capital punishment, functions as the overarching framework for Francis's analysis of the question (cf. John Paul II 1995: 9; Francis 2015a; 2014a: 3). Yet Francis also discusses capital punishment within a broader critique of contemporary criminal justice systems – a critique formulated in light of his emphasis upon God's treatment of sinful human beings.

For Pope Francis, capital punishment reveals a broader failure in contemporary culture: the mistaken belief that criminal sanctions can resolve social problems rooted in economic and political oppression (2014b: *Intro.*; 2014a: 1) In a passage reminiscent of Rene Girard, Francis compares modern attitudes toward criminals to the creation of scapegoats in ancient societies (2014b: *Intro.* b) Francis also emphasizes the selectivity and corruption common in modern penal systems, which are draconian in their treatment of the "little fish," while leaving the "big fish free in the ocean" (2014b: 3b). The pope's analysis of capital punishment thus stands against a backdrop of a broader indictment of the ways in which the criminal justice systems operate, and the ways in which they can be abused. The death penalty, the pope insists, is often a favorite tool of totalitarian regimes in repressing dissent, and Francis reminds his readers of the prevalence of "extra-judicial or summary executions" (2015a; 2014b: 2a). The death penalty, for Francis, is an illustration of a misused system gone wrong.

In explaining what is wrong with capital punishment, Francis assigns particular significance to its impact upon those condemned to death, since execution precludes further possibilities of repentance, confession, and reconciliation in this world (2015a; see also 2014a: 2-3). But even more striking is Francis's description of the immediate impact of a death sentence upon the condemned.

The death penalty is contrary to the meaning of *humanitas* and to divine mercy, which must be models for human justice. It entails cruel, inhumane and degrading treatment, as is the anguish before the moment of execution and the terrible suspense between the issuing of the sentence and the execution of the penalty, a form of "torture" which, in the name of correct procedure, tends to last many years, and which oftentimes leads to illness and insanity on death row (2015a)

Francis's concern for the suffering and for the dignity of criminals leads him to call, not only for the abolition of capital punishment, but also for the abolition of life sentences, which, in his terms, "may be considered hidden death sentences," because they deprive those condemned of any hope of a future outside of prison walls. While the justice system may justly claim criminals' time, Francis argues, "it must never take away their hope" (2015a). Francis also insists: "All Christians and men of good will are thus called today to fight not only for the abolition of the death penalty, whether legal or illegal, and in all its forms, but

also . . . [to work] to improve prison conditions, with respect for the human dignity of the people deprived of their freedom” (2014b: 2a; 2015a).

Francis’s analysis of the actual death penalty thus goes beyond his predecessors, especially in its call for the abolition of life sentences (on the debate of irreducible life sentences, see Hood and Hoyle: 469-91). Despite Francis’s explicit appeal to and reiteration of some of the themes of *Evangelium Vitae*, he gives us a distinctive approach to the death penalty in its current instantiation by setting it within the context of divine mercy as a prescriptive model for human justice.

If Francis expands his predecessors’ critique of the actual death penalty, his discussions of the hypothetical death penalty to date seem to allow virtually no room for its legitimation. It is true that some of his wording could conceivably be interpreted as leaving the historical question open: “*today* capital punishment is unacceptable” and “*for a constitutional state* the death penalty represents a failure, because it obliges the State to kill in the name of justice” (2015a, emphases added). Could the death penalty have been justified, one might ask, at some point in the past, especially before the advent of the constitutional state? Yet Francis flatly rejects the idea that capital punishment could be a legitimate means of societal defense, because those being executed are killed for offenses committed in the past, and have already been restrained by the state through incarceration. This point becomes evident when one juxtaposes *Evangelium Vitae* with a passage from Francis’s Letter of March 20, 2015: The state

. . . ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent (John Paul II 1995: 56).

The prerequisites of legitimate personal defense are not applicable in the social sphere without risks of distortion. In fact, when the death penalty is applied, people are killed not for current acts of aggression, but for offenses committed in the past. Moreover, it is applied to people whose capacity to cause harm is not current . . . (Francis 2015a).

Francis thus effectively precludes the hypothetical justification for capital punishment left open by *Evangelium Vitae*. An action that can only be hypothetically justified as a last resort for social defense becomes unjustifiable once the aggression is contained.

Finally, Francis’s use of the word “torture” to describe the suspense between the imposition of a death sentence and execution, and his characterization of capital punishment as “cruel, inhumane, and degrading,” strongly suggest that he envisions no justification, either concrete or hypothetical, for executions (2015a). In an earlier address to the delegates of the International Association of Penal Law, Pope Francis had insisted: “States are not allowed, juridically or in fact, to subordinate respect for the dignity of the human person to any other purpose, even should it serve some sort of social utility” (2014b: *concl.*). If capital punishment constitutes a violation of human dignity, then *legitimate capital punishment* would seem to represent a contradiction in terms.

## Conclusion

Roman Catholic teaching and Roman Catholic social thought about capital punishment are in the process of evolution. Perhaps nowhere is this more evident than in the distinction between the actual use of the death penalty and the hypothetical use of the death penalty. A little more than a century ago, Thomas Slater, S.J. took the existence of the actual death penalty as a necessary feature of civilized existence, but speculated that future conditions might someday make the hypothetical death penalty unnecessary. A little more than twenty years ago, *Evangelium Vitae* narrowed the scope of the hypothetical death penalty so extensively that the document could characterize legitimate applications of the actual death penalty today as “very rare, if not practically non-existent.” Four years later, John Paul II called for a “consensus to end the death penalty,” describing it as “both cruel and unnecessary” (1999: 5). Pope Francis’s language on the subject to date not only condemns the actual death penalty, but also seems to leave no logical room for legitimization of the death penalty under hypothetical conditions.

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