

# IS CAPITAL PUNISHMENT EVIL?

By Emmanuel Valenza

The error of conceiving capital punishment as a moral evil is pervasive in the Catholic Church today. Arguments against the death penalty, as voiced by Catholics, have a common denominator, namely, the punishment is unchristian. The charge is most unusual because the Church perennially has defended the right of the State to put a criminal to death. In effect the current anti-capital punishment sentiment accuses the Church of uncharitable behaviour for two millennia because she has sanctioned the State's right to "carry the sword," as St. Paul puts it (Romans 13:4).

I say "in effect" because in most cases the Church's traditional support of the death penalty is simply ignored. The abolitionists claim, for sundry reasons, that the punishment is uncharitable —period.

In the following article, I will attempt to bring to evidence, by appealing to Scripture, tradition and reason, and stressing the insights of St. Thomas Aquinas and Immanuel Kant [*while the Catholic Church has condemned Kant's liberal system of philosophy, nevertheless, his quotes are important as they show remarkable support for capital punishment from one of the most influential apologists of liberalism*], that capital punishment is a just and therefore charitable punishment because:

1. it respects man as an image of God;
2. it is a punishment which is proportionate to certain heinous crimes;
3. it has a purgatorial effect on the soul;
4. it protects the common good; and
5. it treats the criminal as a person, as an image of God.

The defense of the death penalty will be clustered around three arguments against capital punishment in vogue among Catholics. I will state the objections to the death penalty in the form of propositions. They should be recognizable to anyone even remotely acquainted with the subject of capital punishment.

Argument: Modern man's rejection of capital punishment as morally wrong is indicative of his growing awareness of the dignity and value of human life. Those who support the death penalty, on the other hand, treat human life irreverently. If we are to revere life we must revere all life, including the life of the criminal.

Ironically, the death penalty is first sanctioned in Genesis 9:6, precisely because the act of murder violates man's integrity as made in the image of God. Genesis 9:6 reads: "Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God man was made." The sacred writer warrants the death penalty —not its abolishment —on the basis that it is a sign of reverence for the life of the murdered man. Recognition of the dignity, value and preciousness of man demands that the murderer be put to death. Hand in hand with the recognition of the dignity and value of man is the conviction that only the punishment of death is commensurate with the crime.

Conversely, the sacred writer implies that the failure to ratify capital punishment when a man is murdered bespeaks a lack of reverence for man as an image of God. The preciousness of the person, his dignity, his ontological value qua person —which the murderer blatantly disregards —is not esteemed unless the villain is put to death. That man is made in the image of God is a gift of priceless value. Genesis 9:6 warns us, albeit indirectly, that the worth of the gift is grossly underestimated when the murderer is allowed to live.

Apropos of society's willingness to discard the death penalty, it is incontrovertible that such a desire cannot be adduced as indicative of an increased appreciation of the value of human life. On the contrary, the demand for the abolition of capital punishment is a sign of blindness, not appreciation; for the diabolical consequences of our irreverent attitude toward human life are myriad. Since the Roe vs. Wade decision, some twenty million babies have been murdered. Pornography in all its satanic forms permeates society. Suicide is a national plague. The many abuses in the realm of sex are omnipresent. Euthanasia is not without its proponents and practitioners. In light of this moral wasteland, the assertion that abolitionists witness to modern man's recognition of the value of life is preposterous.

## What Constitutes Man as an Image of God?

Since Genesis 9:6 sanctions the death penalty on the grounds that man reflects God in a particular way, it is

important to understand the nature of this reflection.

According to the traditional teaching of theologians, God is reflected in His creatures in the following ways: as a trace (vestigium), which is characteristic of all material entities; as an image (imago), which is characteristic of spiritual beings in their natural state; and as a likeness (similitudo), which is characteristic of spiritual beings in a supernatural state. For example, man's body is a trace; his soul, lacking grace is a divine image; and his soul perfected by grace, is a divine likeness.

Man is an image of God because of the rational soul's powers of intellect, will, and love. He is able to grasp truth, choose the good, and love all that is true, good, and beautiful. These three powers —intellectual, volitional, and affective constitute man as an image of God. Divine likeness is achieved only in the state of grace, when "a partaker of the divine nature" (2 Peter 1:4).

Indeed, the soul is man's crowning glory. So precious is our soul that it is worth the blood of the Son of God. We have been redeemed "...not with perishable things, with silver or gold, but with the precious blood of Christ, as a lamb without blemish and without spot" (I Peter 1: 18-19).

### **Heretics and the Soul**

Man is composed of body and soul. His material body is a trace of God; his soul, a spiritual substance is an image of God. If the murderer is rightly condemned for destroying the life of the body, all the more should the "murderer" of the soul be put to death. St. Thomas Aquinas argues in a similar vein when he answer the question: "Are heretics to be tolerated?" The Angelic Doctor writes:

On their side [the heretics'] is the sin whereby they have deserved, not only to be separated from the Church by excommunication but also to be banished from the world by death. For it is a much heavier offense to corrupt the faith, whereby the life of the soul is sustained, than to tamper with the coinage, which is an aid to temporal life. Hence if coiners, or other malefactors, are at once handed over by secular princes to die a just death, much more may heretics, immediately after they are convicted of heresy, be not only excommunicated, but also justly done to die. (Summa Theologica [here after ST], IIa IIae, q. 11, art. 3)

The person is not taken seriously as a spiritual creature, as a divine image, if heretics, who "corrupt the faith, whereby the life of the soul is sustained," are not punished —dare I say it? —with excommunication. What greater crime is there than the spiritual harm caused by heretics? Yet these contumacious individuals are not even admonished. In fact, they are the putative heroes of the day. Instead of being extirpated they are held in high esteem for their perfidiousness.

The Church hierarchy stresses the dignity of the person in many of its official pronouncements. Fine. They point out that the main duty of public authorities is to protect the community and the common good. Great. But Church officials do not provide a good example when they permit nefarious Church members to cause unbridled scandal in their own domain. To avoid the charge of hypocrisy, the guardians of the Catholic Faith should be solicitous for the spiritual well-being of Catholics before expecting secular authorities to administer to the common good.

Argument: Capital punishment is morally wrong because barbarous acts—murder, treason, etc.—are punished with a barbarous act. The punishment is just as evil as the crime.

This objection would be cogent if the penalty of death were totally disproportionate to the crime. For example, condemning a person for stealing a candy bar. In this case the punishment of death is barbarous. But when the punishment is proportionate to the crime, then the former is quite just. With regard to murder, Immanuel Kant, in *The Metaphysics of Morals*, exposes the soft underbelly of the abolitionists' objection:

If however, he has committed a murder, he must die. In this case, there is no substitute that will satisfy the requirements of legal justice. There is no sameness of kind between death and remaining alive even under the most miserable conditions, and consequently there is also no equality between the crime and the retribution unless the criminal is judicially condemned and put to death...

It may also be pointed out that no one has ever heard of anyone condemned to death on account of murder who complained that he was getting too much punishment and therefore was being treated unjustly; everyone would laugh in his face if he were to make such a statement. (translated as *The Metaphysical Elements of Justice*, New York: The

Bobbs-Merrill Company, Inc., 1965, pp. 104, 106)

Moreover, the objection that capital punishment is an unjust act would be convincing if it referred to the act of the vigilante. Acts of vengeance by the private individual, for example, lynching, are indeed evil. But the objection is discredited once it is understood that the State has the right to use the death penalty.

### **Capital Punishment and the State**

The Church has acknowledged continuously the State's authority to put a person to death. For example, St. Paul, after he points out that rulers act as God's representatives in punishing the criminal, speaks of the Roman policy of capital punishment with approval:

Let everyone be subject to the higher authorities, for there exists no authority except from God, and those who exist have been appointed by God. Therefore he who resists the authority resists the ordinance of God and they that resist bring on themselves condemnation. For rulers are a terror not to the good work but to the evil. Dost thou wish, then, not to fear the authority? Do what is good and thou wilt have praise from it. For it is God's minister to thee for good. But if thou dost what is evil, fear, for not without reason does it carry the sword. For it is God's minister, an avenger to execute wrath on him who does evil. (Romans 13:1-4)

When the proper authority punishes —an instance of forceful correction, according to Saint Thomas —it is an act of justice. Needless to say, the act is good, too, since it is an act and perfection of virtue.

Examined from the point of view of the one punished, punishment is a physical evil; pondered from the side of the authority empowered to punish, however, punishment is a good.

### **Punishment: Suffering as Expiatory of Evil**

Socrates revolutionized ethical theory with the discovery that it is better to suffer injustice than to commit it. Evil, for Socrates, does not consist in inflicting pain on others (physical evil). He is concerned with moral evil. Callicles and Polis find this teaching absurd. They think injustice is bad because the individual exposes himself to punishment. Hence, according to them, to do evil and get away with it is a great good. For Socrates, on the other hand, this is the worst evil for man (Gorgias, 479d). Why? Because the person will carry the burden of the evil in his soul as long as he does not undergo the cleansing power of a just punishment (Gorgias, 477; 480). By submitting to justice, the person is released of the burden of injustice and he is much happier for doing so. This is the paradox of punishment (Gorgias, 473).

In order for this purification to take place, however, certain conditions must be met.

1. The criminal must freely submit to the punishment; and
2. the authorities must be willing to punish the offender.

St. Thomas Aquinas emphasizes the purgatorial power of punishment too. The Common Doctor avers that punishment orders guilt: retribution has as its object the maintenance or restoration of justice and order in the soul. For this reason he holds that punishment is an act of virtue (ST, IIa, q. 12, art. 2).

One popular argument against capital punishment also recommends that punishment be abolished altogether in favor of forgiveness. I will now consider this objection.

Argument: Did not Christ replace the law of *lex taliones* with the law of love? Would not it be more charitable to forgive the criminal than to punish him?

Christ did replace the law of retribution with His commandment of love. He urges Christians to relinquish their individual rights for the sake of charity:

You have heard that it was said —'An eye for an eye and a tooth for a tooth.' But I say to you not to resist the evildoer; on the contrary, if someone strike thee on the right cheek, turn to him the other also... (Matt. 5:38-39)

However, these words of Christ, which are often cited by the abolitionists as supportive of their position regarding capital punishment, refer to the offended individual, not to the State. As Dietrich von Hildebrand has shown, only the injured person (or someone closely related to the person) can forgive the objective evil done to him or her. In other words, the formal object of human forgiveness is the objective evil for the person; the wrong inflicted on the individual. The pardon refers to the evil intention of the villain inasmuch as it has the negative importance of an

objective evil for the person. Note, however, that this does not mean the moral disvalue of the criminal's act is pardoned by the injured person; for only God (or His representatives on earth whom He has empowered to "bind and loose") can forgive this aspect of the morally evil act.

Hence for Christians to suggest that the State should pardon the evildoer is to ask for something which is metaphysically impossible for the State to perform. The situation is akin to affirming that contradictory judgments can both be true: the words can be said but the judgment can never correspond to reality. Similarly, the State can make a declaration of forgiveness, but the act can never be exercised in reality.

### **The State Protects the Common Good**

The purpose of the State is to protect the community and the common good. Pope John XXIII defines "common good" in *Pacem in Terris* as follows: "The common good of all embraces the sum total of those conditions of social living whereby men are enabled to achieve their own integral perfection more fully and easily" (58).

And so the State has as its goal the perfection of persons, which in turn makes possible the perfect State. According to St. Thomas, the end of the State —the perfect State —is realized when men are living virtuous lives. Moreover, the virtuous life is lived by adhering to the dictates of the natural moral law; such adherence is a divine good insofar as it is a participation in the eternal law (ST, Ia IIae, q. 94, art. 2).

Hence inasmuch as the State guards the common good by sentencing a man to death, it is acting justly. As St. Thomas puts it:

The slaying of an evil-doer is lawful inasmuch as it is directed to the welfare of the whole community, and therefore appertains to him alone who has charge of the community. Now the care of the common good is entrusted to rulers having public authority; and therefore to them is it lawful to slay evil-doers, not to private individuals. (ST, IIa IIae, q. 64, art. 3)

### **The Law of Lex Taliones**

Far from being unjust or uncharitable, the law of retribution assures the actualization of justice because the criminal is punished in accord with his or her crime. "All other standards," Kant writes, "fluctuate back and forth, and because extraneous considerations are mixed with the, they cannot be compatible with the principle of pure and strict legal justice" (op. cit., p. 101).

Granted, there are criminal acts which cannot be punished "eye for an eye" Two such acts are bestiality and rape. When the law of retribution cannot be strictly applied, the villain should suffer "that which according to the spirit of the penal law —even if not to the letter thereof —is the same as what he has inflicted on others," Kant rightly asserts (op. cit., p. 133).

In the Old Testament the law of retribution is sanctioned in Exodus 21:23-25, and in Lev. 24:17-21. In addition, the law proclaimed on Mount Sinai ratified the death penalty for the following crimes:

- \* murder (Ex. 21: 11,14);
- \* assaulting one's mother or father (Ex. 21: 15);
- \* kidnapping (Ex. 21: 16);
- \* cursing one's mother or father (Ex. 21: 17);
- \* housebreaking at night (Ex. 22: 1);
- \* and bestiality (Ex. 22: 18).

### **Punishment is a Matter of Justice**

Punishment is a matter of justice: injustice ought to be punished. Retribution is due the criminal. To the degree that punishment gives the criminal what is due him, it is just; and insofar as it is just, it is also charitable. Thus, the primary question with regard to punishment should be: "Is the punishment just?" All other deliberations —utilitarian, pedagogical, or deterrent —are as Kant points out, "extraneous considerations." There is a due relation between crime and punishment; the individual should be punished if and only if he has committed a crime. Kant explains:

Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime ...He must first be found to be deserving of punishment before any consideration is given to the utility of this punishment for himself or for his fellow citizens. The law concerning punishment is a categorical imperative, and woe to him who rummages around the winding paths of a theory of happiness looking for some advantage to be gained by releasing the criminal from punishment or by reducing the amount of it. (op. cit., 100).

So seriously does Kant take the concept of due relation between crime and punishment —and this is as it should be—that he correctly asserts:

Even if a civil society were to dissolve itself by common agreement of all its members, (for example, if the people inhabiting an island decided to separate and disperse themselves around the world), the last murderer remaining in prison must first be executed, so that everyone will duly receive what his actions are worth. (op. cit., p. 102).

### **No Punishment, No Person**

If the concept of due relation between crime and punishment is not considered, the question of justice is left out altogether. Once the question of justice is discarded, then the criminal is treated as something less than a person, an image of God. Instead of being treated as a person who is morally responsible for his actions, he becomes the object of experiments ("Let us see how he reacts in this environment") deals ("If you supply us with information, your sentence will be reduced"), and ridicule (when used as a scapegoat). As C.S. Lewis observes in his essay, *The Humanitarian Theory of Punishment*:

Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a 'case'.

Moreover, if curing the criminal or deterring others are the only considerations, then the doctrine of determinism is tacitly, if not explicitly, introduced. You see, criminals cannot be punished because man is not free; he is the product of circumstances; the plaything of experiences. What he wills he cannot help but will; for his character has been determined by irrational factors such as upbringing, social and economic conditions, psychological and biological considerations, and the like. Man does not determine his character; his character is the result of experiences and circumstances beyond his control.

The determinist cannot use words like "deplorable," "wicked," "shameful," and "disgraceful" to describe heinous acts because these words make sense only if the criminal is free to choose between good and evil, and therefore is responsible for his actions. If the determinist recommends punishment it is to cure the offender, or to use him to deter others —sometimes both—but never as a means of retribution for criminal acts. Therefore the criminal is treated as something less than a person. And to consider the criminal in this manner is to remove him from the realm of justice altogether. Justice presupposes a person; an animal or an inanimate object can neither possess the perfection of justice nor be the object of it.

### **Capital Punishment and the Bishops**

The objections to capital punishment analyzed in this article were given an impetus by the "Statement on Capital Punishment" issued by the bishops in 1980. J. Brien Benestad, in his book *The Pursuit of a Just Social Order* (Ethics and Public Policy Centre, Washington, D.C., 1982), summarizes the arguments used by the bishops to annul the death penalty. He writes:

The bishops asserted that abolition of the death penalty would promote four Christian values. It would:

1. show that we can break the cycle of violence characteristic of modern society;
2. manifest belief in the dignity of all human beings, who have great worth because they are created in the image of God;
3. testify to the Judeo-Christian and Islamic belief that God is the Lord of life and strengthen the defense of all life, including that of the unborn, the aged, and the infirm; and
4. be most consonant with the teaching and example of Jesus Who practiced forgiveness (pp. 75-76).

Although the bishops concede that support of the death penalty is not incompatible with the teachings of Catholicism, they maintain —and want Catholics to maintain —that it is more appropriate as Catholics, more in keeping with the commands of Christ, to advocate abolition of the death penalty. Are not the bishops guilty of double-think? They fail to realize that if their arguments against capital punishment are valid, then support of the death penalty is unjust, uncharitable, and unchristian. One thing is certain: When the bishops speak individually on the subject of capital punishment, they clearly assert that to uphold the death penalty is incompatible with the principles of the Catholic Faith.

The bishops' failure to uphold the death penalty is yet another example of their propensity to reject the traditional teaching of the Church. Unfortunately, many Catholics follow their lead. Thus the ever-increasing phenomenon of considering both the Church itself and Catholics who defend her teaching, as unchristian.

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