

The Necessity and Legitimacy of Pope Francis' Complete Ban of the Death Penalty

(by Helen “Nan” Payton)

The Spirit of God has rested upon human beings. The Spirit inhabits the body of man as its temple, sanctifying man by its Presence. There is no distinction of persons who receive the gift of God in their soul. The gift is the Holy of Holies penetrating their very being dignifying their nature in its corrupted, original state, so that, though man may corrupt himself in sin or offences against the natural law of rational conscience (even if these offences are deserving of death). regulated by laws under the State by which the natural law is encapsulated within God's divine Law, man's countenance is not so defiled to destroy his right to life in dehumanizing his nature as a creature created and fortified by the hand of a compassionate creator. The State also, bound by human fallibility, is incapable, in its corrupt state, to follow its high ideals of justice and truth, of which the former may be corrupted by the corruption of the latter. Thus, although the secular and religious arguments promoting the death penalty (i.e., deterrence and scripture and the tradition of the Church) are very tempting to promote, its propositions are fallible (regarding deterrence) and misconstrued (regarding the tradition of the Church). Therefore, in this fallibility, the death penalty does not deter crime because the Judicial System is corrupt, biased, and flawed, and the Church Magisterium should strongly consider Pope Francis' insistent revision of the teaching promoting the death penalty and it is necessary because the key reasons for supporting the death penalty, in particular, the deterrence rationale, has failed; further, the legitimacy of the new insights into the morality of the death penalty offered by the late St. John Paul II is influential and consistent with Catholic Social Teaching as it pertains to the dignity of the human person created in God's image, so this new teaching then is the best modern

expression of Scripture and the Church's consistent traditions on the dignity of life and the proper use of political force.

The argument in favor of the death penalty is that it should be maintained and promoted because, it prevents future crime, and, by so doing, secures the safety of the public from the deviant. Deterrence is the emotional appeal argument for the death penalty. It is through the pain, brutality toward the to-be executed, and the humiliation which is the desired result of such torture and pain which is said to deter crime. As Avery Cardinal Dulles in his essay *Catholicism & Capital Punishment* explains: "Executions, especially where they are painful, humiliating, and public, may create a sense of horror that would prevent others from being tempted to commit similar crimes. (p. 8-9) The argument for deterrence has been used for decades in the United States. As Richard Berk affirms in his article, *Does the Death Penalty Deter Crime?* "There have been claims for decades that in the United States the death penalty serves as a deterrent." (Berk, 2020) This claim is alluded to by David Muhlhausen, Ph.D., Research Fellow, at The Heritage foundation that there are statistics which demonstrate the effectiveness of the death penalty in deterring crime, which he gives no evidence, and "...the majority of studies that track effects over many years and across states and countries find a deterrent effect." (Top 10 Pro and Con Arguments, 2016) The statistics and the evidence from states and countries over many years is lacking. John J. Donohue III JD, Ph. D Professor of Law at Stanford University claims that there is no deterrence because of the extended time which those with the death sentence spend on death row before their execution, "[L]ast year roughly 14,000 murders were committed but only 35 executions took place. Since murderers typically expose themselves to far greater immediate risks, the likelihood is incredibly remote that some small chance of execution many years after

committing a crime will influence the behavior of a sociopathic deviant who would otherwise be willing to kill if his only penalty were life imprisonment.” (Top 10 Pro & Con Arguments, 2016)

The death penalty then is not necessary to deter crime because there are other, more effective “law enforcement resources” which reduce violent crime. (Failure to Deter Crime, 2019) It is also noted by the North Carolina Coalition for Alternatives to the Death Penalty, it states:

“Normally, rates are significantly lower in states that don’t use the death penalty than in those where the death penalty remains on the books - and have been for the past two decades. In some years, the murder rate in non - death penalty states was nearly 50 percent lower than in death penalty states.”(Failure to Deter Crime, 2018) And a source from the Death Penalty Information Center corroborates with these findings. “When comparisons are made between states with the death penalty and states without, the majority of death penalty states show murder rates higher than non - death penalty states. The average of murder rates per 100,000 population in 1999 among death penalty states was 5.5 whereas the average murder rates among non - death penalty states was only 3.6.”(Murder Rate of Death Penalty States Compared to Non-Death Penalty States, 2010) Science also confirms this: “Scientists agree, by an overwhelming majority, that the death penalty has no deterrent effect. ... States without the death penalty continue to have significantly lower murder rates than those that retain capital punishment.” These scientists were asked in a survey, and 88.2% did not endorse the argument that the death penalty deters crime. (A Clear Scientific Consensus That The Death Penalty Does Not Deter Crime, 2009) There are also some recent studies claiming there is a “deterrent effect” though these “have failed to impress the larger scientific community, which has exposed them as flawed and inconsistent.”(2009) Thus the deterrence argument is flawed as it is not a useful argument to promote the death penalty and it is inconsistent with both the data presented against it and by

practical reasons as the emotional appeal thereof has been stripped as executions are not public since executions are conducted privately with only a few people present.

The judicial system is corrupt, biased, and flawed. Because of this broken system, the death penalty is incapable of deterring crime because the system is unjust, racist, and discriminates against the poor and vulnerable in society. First, the judicial system is unjust because its promotion of the death penalty threatens innocent life. The American principle of a suspect being innocent until proven guilty is upheld by the 6th Amendment and is under article 11 of the UDHR states, “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”(Universal Declaration of Human Rights, 1997) However, the U.S. Court has not upheld her principles laid out in the first ten amendments to the Constitution, nor has she upheld the inviolable rights of every human person plainly stated in the UDHR, according to a 2014 study which found that, “...at least 4% of those sentenced to death in the United States are innocent. The 161 people and counting who have been exonerated due to their innocence since 1973 exemplify the fact. For every 9 people who have been executed since the death penalty was reinstated in 1976, one person has been exonerated after being proven innocent.” (Catholic Social Teaching & The Death Penalty, Catholic Mobilizing Network) Therefore, since the death penalty and the Court threatens the innocent, then the death penalty must be abolished. Second, the judicial system is biased and racist toward those of minority groups. As Catholic Mobilizing Network argues, referencing the Death Penalty Information Center, the death penalty disproportionately affects people of color. “More than half of the people on death row in this country are people of color.” (i.e., 55.03: African American and

Latino combined, Catholic Social Teaching & The Death Penalty) It is because racism toward poor minorities (e.g. African American and Hispanic) are more likely to be condemned to death. “Nationally, almost half (47%) of all murder victims since the 1970’s have been Black. Yet, for cases ending in a death sentence, only 17% of murder victims.” (Catholic Social Teaching & the Death Penalty) Third, the death penalty should be abolished because its practice, through the institution of the court system discriminates against the poor and the vulnerable of society. As evidenced by the Catholic Mobilization Network and referenced by the Death Penalty Information Center, “Almost all of death row inmates were unable to afford their own attorney at trial. Court-appointed attorneys often lack the experience necessary for capital trials, are overworked, and underpaid. This often results in poorly handled cases where mitigating factors and tools such as DNA evidence, severe mental illness, or intellectual disability may not be brought up.” Although execution of the death penalty for persons with intellectual disabilities was determined unconstitutional in 2002, their wrongful convictions were still enacted, as referenced by the executions which took place in 2017. “In 2017 alone at least 20 of the 23 people executed (87%) had evidence of mental illness, intellectual disability, brain damage or severe trauma.” (“Catholic Social Teaching &...””) Therefore, the death penalty should be abolished because the system which upholds it is unjust to the innocent; is racist toward minority groups; and is discriminatory toward the poor and vulnerably mentally disabled in society.

The argument is held by conservative theologians, certain Doctors of the Catholic Church, and some Popes that the death penalty should be maintained and upheld as retributive justice for heinous crimes which violate the natural law of rational conscience by which God’s divine Law is its foundation. The argument is cemented and made as undeniable by nitpicking

scripture passages which support the authoritarian principle of the law which is that the State must be secure from threats which, coming from without or within, may invade the serenity of its subjects or the sovereignty of the State - murder and treason, being upheld as heinous crimes. (Dulles, p. 5) These crimes must be dealt as grievous matters which the State must not treat lightly, but act decisively and justly, as it has received the divine right to imitate the Just Judge of all mankind. It is by the authority of God by which the State holds its authority to determine the fate of the criminal through the inspiration of the Holy Spirit embedded in Sacred Scripture and expounded by Popes, Doctors of the Church, and theologians. The Old Testament, Hebrew Bible, is very blunt in its promotion of the death penalty. Avery Cardinal Dulles makes this explicitly clear: “In the Old Testament the Mosaic Law specifies no less than thirty - six capital offences calling for execution by stoning, burning, decapitation, or strangulation.”(Dulles, p.1) The strongest support for the death penalty in the Old Testament which can be evidenced as proof of the enforcement of the death penalty is found in Genesis 9:6 where God, in the verse before, demands all human beings to be responsible for their actions against their fellow man, and God demands in verse six there to be retributive justice for the murder of one man against another. Cardinal Dulles makes this clear: ““whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image” (Genesis 9:6) ... In other cases, individuals such as Daniel and Mordecai are God’s agents in bringing a just death upon guilty persons.” (Dulles, p.2) It is then understood that whoever harms his fellow man, or severely harms him in the act of murder, then the perpetrator of such a crime must be held accountable for this act by the code of retribution: “Whoever takes a human life shall surely be put to death. ...whoever kills a person shall be put to death.”(Lev. 24: 17; 21). The penalty for taking the life of another human being is very clear: it is stated twice that an individual must be killed by agents of God’s

justice to carry out God's command by fairness and truth. It is clear in the New Testament, that Peter was God's agent in (Acts 5:1-4) when Ananias and his wife Sapphira, commit the heinous sin of lying to the Holy Spirit, at which Peter responds by sentencing them to death by God's hand. The letter to the Hebrews and Paul's letter to the Romans is even clearer in the matter of God's agent's authority in condemning someone to death: "a man who has violated the law of Moses dies without mercy at the testimony of two or three witnesses" (Hebrews 10:28); and the ruler in authority "does not bear the sword in vain; for he is the servant of God to execute His wrath on the wrongdoer"(Romans 13:4).(Dulles, p.2) There is also unanimous support among the Fathers and Doctors of the Church in favor of the death penalty.(Dulles, p.2) St. Augustine, a Doctor of the Church, affirmed the Tradition of the Church in favor of the death penalty and Romans 13:4: "St. Augustine writes in the *City of God*: "...Since the agent of authority is but a sword in the hand, and is not responsible for killing, it is in no way contrary to the commandment, "Thou shalt not kill" to wage war at God's bidding, or for the representatives of the State's authority to put criminals to death, according to the law or the rule of rational justice."(Dulles, p.2-3) It has also been the consensus of Catholic theologians to be in favor of the death penalty, as John Duns Scotus, Thomas Aquinas, John Henry Newman, and Alphonsus Liguori were in favor of, or permitted the use of capital punishment for criminals convicted of certain heinous crimes. (Dulles, p.3) More recently, Edward Feser, Ph.D. has argued in favor of the death penalty from the evidence of scripture, tradition, and the moral argument. In support of the death penalty from the moral argument he comments, "Perhaps most importantly, in its supreme gravity it [the death penalty] promotes belief in and respect for the system of human law that derives from and supports the moral order."(Top 10 Pro & Con Arguments, 2016) Pope Pius XII also argued unanimously in favor of the death penalty when he stated: "Even when there is

question of the execution of a condemned man, the State does not dispose of the individual's right to life. In this case it is reserved to the public power to deprive the condemned person of the enjoyment of life in expiation of his crime when, by his crime, he disposed himself of his right to life.”(Dulles, p.6) Pope Pius XII argues above that the criminal has committed moral suicide in enacting the crime as he has “disposed himself of his right to life”(p.6). Dulles concisely summarizes the argument of Scripture and Tradition: “...Summarizing the verdict of Scripture and tradition, we can glean some settled points of doctrine. It is agreed that crime deserves punishment in this life and not only in the next. In addition it is agreed that the State has authority to administer appropriate punishment to those judged guilty of crimes and that this punishment may, in serious cases, include the sentence of death.”(Dulles, pp.3-4)

Scripture and Catholic Social Teaching promote the sanctity of all human life, from conception to *natural death*, and that the Fathers, Doctors, and Popes since the early church have misunderstood the Spirit of the Gospel - the way of Christian living, and the Church, the Body of Christ: living members of Christ's unified Body. This living Body of Christ is, in my opinion, not exclusive to the baptized congregation, but inclusive of all of God's children - whether in communion with the Church or not; whether guilty or innocent. Each member of that body, each individual person, is connected, by his dignity as in the image of God, to the universal body of the human family. (cf. Romans 12:5) It is in this argument, which is upheld by the Declaration of Independence and the UDHR, that human beings have the right to life as an “unalienable” right. This is supported and founded upon by the divine Law found in Sacred Scripture. It is agreed by some Catholics, Cardinal Dulles writes, that the death penalty “...is a violation of the right to life and an unauthorized usurpation by human beings of God's sole lordship of life and death.”(p.1)

The Letter of the Hebrews alluding to Proverbs 24:29 “We know that God said, “I will punish those who do wrong; I will repay them.” And he also said, “The Lord will judge his people.” (Hebrews 10:30) Jesus is against retributive justice fueled by hate and vengeance. “But I say this to you, love your enemies and pray for those who persecute you.”(Matthew 5:44) In loving one another we reflect and imitate God’s perfection.(cf. Matthew 5:48) In direct opposition to retribution Jesus states “Be compassionate just as your Father is compassionate. Do not judge, and you will not be judged; do not condemn, and you will not be condemned; forgive, and you will be forgiven.”(Luke 6:36-37; cf. 1 Peter 3:9-10) It is in the attributes of God’s mercy and compassion by which God safeguarded the life of Cain after he murdered Abel by marking him with his seal of protection. “Then the LORD said to him, ‘Not so! Whoever kills Cain will suffer a sevenfold vengeance’ And the LORD put a mark on Cain, so that no one who came upon him would kill him.”(Genesis 4:15) God would not kill Cain or permit anyone to kill Cain out of vengeance because Cain still had dignity as created in the image of God. The life and dignity of man is due to God’s nature as a God of the living as Jesus affirms, “...He is not the God of the dead, but of the living;...”(Mark 12:27). The Lord is the God of life, supporting and sustaining the life of all living creatures. It is the duty of the Catholic Church to defend life in any circumstances because human life is sacred and inviolable and “...the Church from biblical times, until our own day has failed to perceive the true significance of the image of God in man, which implies that even the terrestrial life of each individual person is sacred and inviolable.”(Dulles, p.4) Cardinal Dulles quotes Fr. Gino Concetti’s agreement of the Catholic Social Teaching: “In light of the word of God, and thus of faith, life-all human life-is sacred and untouchable. No matter how heinous the crimes... [the criminal] does not lose his fundamental right to life, for it is primordial, inviolable, and inalienable, and thus comes under the power of no one

whatsoever.”(p.4) The Church must not contradict her ethic of being pro-life.. Pope John Paul II in his encyclical *Evangelium Vitae* reminds the Church of the inviolable nature of this teaching: “The dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself without definitively denying criminals the chance to reform.”(Death Penalty/Capital Punishment 2020) Pope Francis in agreement with Catholic Social Teaching, and the pro-life ethic of faith and tradition, revises the Catechism of the Catholic Church on the death penalty in light of how this endorsement of at least its principle infringes upon the inviolable life and dignity of every human person, and that such an act is unnecessary since “...more effective systems of detention have been developed, which ensure the due protection of citizens, but, at the same time, do not definitively deprive the guilty of the possibility of redemption...”(New revision of number 226 of the Catechism of the Catholic Church on the death penalty, 2018). God showed mercy and compassion for Cain, though God, in his divine Law of justice, had the authority by his omnipotence to strike him dead. God protected him and gave him, by saving his life, the option to amend his life if he so chooses. The parable of the prodigal son teaches that it is never too late to make reparation and reform your life. No soul is ever too wayward for grace of redemption.

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