



JUSTICE & MERCY: REASSESSING THE DEATH PENALTY (1987)

The Present Situation

We are troubled by the increasing use and acceptance of the death penalty throughout the United States, and in particular by the prospect of the resumption of its use in Ohio.

The death penalty has been employed with increasing frequency in our country in recent years. After a moratorium between 1967 and 1977, twelve states¹ have resumed executions. Several other states, including Ohio, have imposed the death sentence and could commence executions.

In Ohio it has been twenty-four years since the last execution of a death sentence. During this time our state law providing for the death penalty was twice determined to be unconstitutional.² The current law was enacted in 1981. Seventy persons have been sentenced and are awaiting the death penalty in Ohio.³

Many conscientious citizens favor the restoration of the death penalty. They are outraged over frequent murders and senseless acts of brutality. They know that the state has the right and the duty to protect citizens by punishing those guilty of violent crime and protecting society from their threat, and that the state must have the means to perform this task effectively.

When the bishops of Ohio addressed this issue in 1977 we stressed our belief that more destruction of human life through capital punishment would not enhance people's respect for the sacredness of the life of every person.⁴

Often people are deluded into believing that problems can be solved through violence and killing. This readiness to end troublesome life is expressed in abortion and euthanasia, in political terrorism and assassinations, in the murderous policies of some political regimes, in the threat of nuclear war, and even in violent crime itself. Killing may seem to be a solution to the problems of society, but, rather than solving our problems, killing contributes to the lack of respect for human life which is at the source of such problems.

In writing on the death penalty, we invite our Catholic people, all Christians, and all people of good will to reflect with us on this matter and to work with us to promote respect for Life.

Moral Principles

Our opposition to the death penalty is consistent with our religious heritage. In searching the Scriptures for a perspective on any issue we seek the point of the divine teaching rather than proof texts for or against particular practices. There are passages throughout the Scriptures which can be understood to affirm or oppose capital punishment. Often the fact that Jewish law prescribed the death penalty for certain crimes is used as a rationale for its practice today. These laws mandated death not only for murder, but for other crimes as well, including adultery, profaning the Sabbath, and striking one's parents. Yet these were rules of organization appropriate for the Israelite people of that age, and not for all humankind for all ages. The religious contribution of the Biblical injunctions was not that all people who committed a given crime were to receive a given punishment, but that the punishment be restricted and vengeance be purged.

The Biblical principle of "an eye for an eye and a tooth for a tooth" (Ex. 21:24) is frequently cited in modern day arguments. It is often forgotten that this was a guard against personal vengeance and disproportionate retaliation: payment must not be made to exceed the actual debt incurred. Thus, only an eye - and not a life - should be required of the person who had destroyed the neighbor's eye. Far from advocating revenge, it emphasized the dignity even of the violent offender.

In the Sermon on the Mount, Jesus taught us to love our enemies and pray for those who persecute us (Matt 5:44), to avoid anger and judgment (5:22-26; 7:1-5). In his encounter with a woman about to be stoned for adultery (John 8:1-10) he refused to condemn, but spoke words of mercy and encouraged her to reform her life. When Christ himself was executed, he prayed for his enemies in his dying words: "Father, forgive them" (Luke 23:34). The apostle Paul repeated this message of forgiveness to the community at Rome, telling them to bless their persecutors, to repay injury with love, and to leave vengeance to God (Rom. 12:14-21). The Scriptures

consistently challenge us to be compassionate, forgiving, and respectful of God's gift of life.

In the first centuries of the Church, Christians faced the death penalty as victims, not as executioners. Since they were considered dangerous outsiders, they were often, like their Lord before them, put to death unjustly.⁵ In time an outlook favorable to the death penalty developed in the Church's teaching. The perspective of this teaching was that, given the existence of the death penalty in contemporary legal practices the exercise of such a penalty must be tempered and limited, that it must meet strict criteria of justice in punishment. The Church insisted that the person to be executed be truly guilty of serious crime; that the sentence be proportional to the crime; that the punishment not be executed in a vindictive spirit; that trial and sentence be carried out by none other than the proper authority; and that the death penalty not be employed when other options were available to protect society and restore order. The Church was not so much mandating the use of the death penalty, as tolerating a policy which society considered normal, and placing a limitation on its exercise.

In the past generation, the Church has been challenged to think further about this difficult issue in the context of our complex situations. Many individual bishops and national and regional conferences of bishops (in Ohio, in many other states, and around the world) have called their people to reject the use of this penalty. Indeed, many other religious communities have stated positions in opposition to capital punishment.⁶ These positions have come about as a result of prayerful reflection on our country's experience with the death penalty and the state of our criminal justice system.

In 1980, the National Conference of Catholic Bishops asserted that under the present circumstances the use of the death penalty does not meet the Church's traditional moral criteria.⁷ While not denying the state's right or authority to carry out such punishment, we concluded that such a right ought not to be exercised. Our conviction was and remains that capital punishment is not the most effective way for today's society to punish criminals and protect society; it does not rehabilitate; it is no more effective as a deterrent to violence than other less dire penalties; and as a form of retribution, it adds to the confusion in our society about the sacredness of life.

Pope John Paul has consistently urged clemency for those condemned to die. He expressed this in his 1983 Address to the Diplomatic Corps⁸ and in calls for mercy for condemned persons in several individual cases, in the United States and in other countries.⁹ His attitude was poignantly expressed in his public forgiveness of Mehmet Au Agca, who had attempted to murder him in 1981.¹⁰ The Holy Father's point of view has been elaborated in

the statement of the Pontifical Commission for Justice and Peace¹¹ and in other authoritative expressions by representatives to the Holy See.¹²

The Church's traditional teaching on this matter has developed, while remaining true to the fundamental insight of the teaching of Jesus. It has continued to proclaim that God endowed human life with dignity precisely by creating humanity in the Divine image and likeness. Because respect for human life faces an unprecedented crisis today, reflection on the death penalty has taken on a new seriousness, depth and urgency. The new situation has led to new emphases in the Church's teaching. In this century, state power has been misused in horrible ways by regimes which have unjustly used the death penalty on millions; an ethos of abortion and euthanasia has spread like a plague; starvation stalks millions; nuclear war is treated as one among many military options even though it is capable of destroying all human life. It is no exaggeration to say that human life is threatened as seriously in our time as it has ever been threatened.

In such a context, it is important to remember that all persons have value that comes from God, even when they might seem utterly lacking in any value. Therefore, persons convicted of crimes must not be treated as though they were not persons but only objects of fear and vengeance. No human life, no matter how wretched or how miserable, no matter how sinful or how lacking in love, is without value. Precisely when persons appear worthless and expendable and when people are tempted to destroy them, the Church must speak out in defense of their lives.

We advocate working toward a consistent ethic of life - a linkage of life issues which, while recognizing the distinctive aspects of each issue, would place them in the larger moral framework of our obligation to protect and nurture God's holy gift of life. We affirm that the human person's dignity is unrelated to the person's usefulness or society's convenience. We counsel a policy of mercy, not because we minimize or excuse violent criminal acts, but because we believe that our society is enriched when it shows mercy. Justice must be done, but it would be a mistake to employ the death penalty for termination of life is so often and so erroneously seen as the solution to the problem of undesired life.

Healing and Reconciliation

So much of life is broken and wounded by violent crime. Its destructive effects extend to many people and last for many years. We all feel rage and hurt when we, the people we love, casual acquaintances, or any members of our society are confronted or touched by acts of violence. The desire to strike back is strong. Yet Christians

know that this response is contrary to the human vocation to love, show mercy, and forgive.

If we seek Divine help, we will transform the desire for revenge or feelings of bitterness which hinder our move beyond such tragedy. Christians believe that all people are challenged to heal society's wounds by making ourselves and our resources available to victims and survivors of violence, by gently leading them to understand that the death of the criminal will not restore life to the murdered or peace to the survivor.

The care and support we give must include the relief of financial distress caused by crime and medical and spiritual aid as well. Criminal justice personnel can be demeaned by violent crime. Working in a situation of danger, such persons must be given adequate training and compensation. They must also be supported in their efforts to keep lively the insight that all persons are loved by God and that even the life of the criminal is holy. The use of the death penalty will not contribute to this.

Those found guilty of violent crime can also become victims of a wounding situation. Their human dignity, diminished in commission of the crime, is often further diminished by society's response. Society often judges them to be incorrigibly evil, beyond any hope of rehabilitation. Society can cooperate with God's merciful forgiveness by extending the opportunity for conversion. A stay in prison is not intended to be pleasant. But it often becomes inexcusably degrading and demoralizing because of overcrowding and dangerous living conditions, lack of real correctional or restitutional opportunities, and separation from loved ones.

There are inevitably imperfections in human justice; these are especially serious when human life hangs in the balance. Despite commendable efforts by the United States federal court system, the application of the death penalty remains highly selective. Only a very small percentage of eligible capital cases ever results in the sentence of death, even fewer in an execution.

The burden of this penalty continues to fall heavily on the poor and on members of racial minorities. For example, only one of those currently on death row in Ohio was able to assume the cost of his or her own defense;¹³ over half are black. Finally, miscarriages in the criminal justice system do occur; several studies have concluded that innocent persons have been put to death in the United States.¹⁴ All these problems are particularly disturbing in light of the irrevocability of the death penalty.

Society must be able to protect itself in a secure, just and orderly way. To make it clear that violent crime will not be tolerated, it must create a firm and effective alternative to the death penalty. The rejection of the death penalty will not make society any more vulnerable to violence. In

the states which do not have death penalty statutes, murder rates are the same as, or lower than, in capital punishment states; police officers and prison employees suffer no greater rate of criminal assault.¹⁵ Many people believe that capital punishment is the most effective deterrent to murder. However, the majority of the statistical studies does not offer any support for this conclusion.¹⁶ The reasons for violent crime are complex. Reforms in society and in the criminal justice system may help prevent crime; selective use of the death penalty will not.

Society can defend itself without resort to the further taking of life. But meaningful correctional reform must be instituted to achieve this. Such reform must begin with the humanizing of institutional regimens; there must be a reemphasis on offender rehabilitation and, to alleviate overcrowding and more effectively restrain violent offenders, developing community-based alternatives and shorter terms of incarceration for property offenders. We are particularly concerned that all prisoners have access to religious materials and services, family contacts, and physical exercise.

Seeking Changes

We call upon Ohioans to resist the allure of death as the oversimplified solution to public problems. We join with such groups as the Ohio Council of Churches and the Ohio Coalition Against the Death Penalty in encouraging citizen efforts to abolish the practice of capital punishment in our state and country.

We particularly urge our governor to commute capital sentences to long term imprisonment. Effective means have been found elsewhere to integrate death row inmates safely into the general population of maximum security facilities.¹⁷

And so, we submit the following specific recommendations:

- 1. That Ohio Catholics associate themselves with legislative and other actions which would lead to abolition of the death penalty;**
- 2. That the Governor exercise his authority to commute death sentences, while at the same time assuring real punishment of crime and the safety of society;**
- 3. That the Department of Rehabilitation and Corrections take significant steps to improve living conditions, especially in maximum security areas;**
- 4. That parish leaders study, discuss, and become as actively involved as possible in the effort to abolish the death penalty;**

5. That the study guides and curricula on the issue of the death penalty, which are being developed by the Catholic Conference of Ohio, be used in our adult and secondary level educational programs;

6. That capital punishment be expressly included in the agenda of the life issues, which are at the heart of Catholic social teachings.

We urge all Ohioans to support and pray for the many persons whose lives are changed by the commission of violent crime and the threat of this dire penalty; victims, survivors, police and prison personnel, judges and jury persons, attorneys, families, persons charged with the awful task of administering the death sentence, and especially in accord with Our Lord's injunction to love our enemies and to pray for those who persecute us (Matt. 5:43), persons who have been condemned to die and who have been put to death. The use or threat of capital punishment in Ohio in our time can only lead to the erosion of respect for life in our society. We reaffirm our opposition to the death penalty and we challenge Catholics, other Christians and all people of good will to examine the issue in the light of the fundamental moral issues it involves. We place our opposition to capital punishment in the framework of a consistent ethic of life, an ethic that gives witness to the sacredness and value of every human life from conception until natural death.

FOOTNOTES

1. Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Texas, Virginia and Utah.
2. The United States Supreme Court declared the Ohio death penalty statute to be unconstitutional in 1972 in *Crempton v. Ohio*, issued concurrently with *Furmon v. Georgia*, and in 1978 in the companion cases *Lockett v. Ohio* and *Bell v. Ohio*.
3. Ohio Public Defender's Office, December 9, 1986.
4. The Catholic Conference of Ohio, Bishops' Statement on Capital Punishment, March 30, 1977.
5. The law of the Church decreed that judges who sentenced to death and executioners of that sentence were to be excluded from Holy Communion and Holy Orders. This perspective continued even into recent times; the 1917 Code of Canon Law (CIC 984:6) declared that a judge who had pronounced the sentence of death was ineligible for Ordination.
6. See the National Interreligious Task Force on Criminal Justice, *Capital Punishment: What the Religious Community Says* (Washington, DC: Board of Church and Society, 1978).
7. "Statement on Capital Punishment," *Origins* November 27, 1980.
8. "The Pope's Address to Diplomats: A Voice for the Voiceless," *Origins*, January 27, 1983.
9. *Origins*, March 17, 1983.
10. *Origins*, January 5, 1984.
11. "The Church and the Death Penalty: Study Paper Prepared by the Pontifical Commission on Justice and Peace at the Request of the U.S. Bishops," *Origins*, December 9, 1976.
12. See John Langan, "Capital Punishment in America Today," *Respect Life* (Committee for Pro-Life Activities, NCCB: Washington, 1984).
13. Ohio Public Defender's Office, December 9, 1986. For a discussion of the significance of this factor, see Joe M. Doss, "Capital Punishment: Morality and the Law," *The Witness*, April 1985.
14. Hugo A. Bedau and Michael Radalet, *Miscarriages of Justice in Potentially Capital Cases*. Medford, MA: Tufts University Press and Gainesville, FL: Florida University Press, 1985. For a concise summary of these findings see the Knight News Service report of the national media conference by Bedau and Radalet, November 17, 1985.
15. New York State Catholic Conference Update, March, 1986.
16. Prior to 1965, when Isaac Ehrlich published the results of his research, not a single study appeared in the literature indicating that the death penalty was a marginal deterrent. In turn, replication of Ehrlich's much criticized study have yielded findings in conflict with his own. It is generally acknowledged that all deterrence research is methodologically imperfect. Nevertheless, it has not been established that the death penalty is a superior deterrent. For example, see Alfred Blumstein, Jacqueline Cohen and Daniel Nagin, eds., "Deterrence and Incapacitations: Estimating the Effects of Criminal Sanctions on Crime Rates" (Washington DC: National Academy of Sciences, 1978).
17. The experience of such states as Minnesota, Wisconsin, Kansas, Michigan and West Virginia which do not have the death penalty illustrates that there need be no insurmountable problem in the integration of capital offenders with other prisoners.