

"THE DEATH PENALTY IN OUR TIME"
ADDRESS TO CRIMINAL LAW COMMITTEE
CRIMINAL COURT OF COOK COUNTY
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May 14, 1985

I wish to acknowledge with gratitude your considerable contribution to the quality of life among the people of Cook County as you preserve the value of justice and implement it each day. The court system is an indispensable part of our great American heritage of "justice for all under the law." I am aware that your dedicated work involves considerable frustration as you constantly encounter the seamier side of human behavior.

I am grateful for your invitation to meet with you this afternoon and to share my reflections on an issue of mutual concern: capital punishment. I come before you as a pastor -- not a legal expert. It is my understanding that the constitutional principle of the separation of Church and State ensures religious organizations the right to engage in debate about public policy, expecting neither favoritism nor discrimination. At the same time, I firmly believe that they must earn the right to be heard by the quality of their arguments.

It has also been my longstanding conviction that civil law and social policy must always be subject to ongoing moral analysis. Simply because a civil law is in place does not mean it should be blindly supported. Encouraging reflective, informed assessment of civil law and policy keeps alive the capacity for moral criticism in society.

I also come before you as a citizen who cares deeply about the quality of life in our community.

I will address two dimensions of the topic this afternoon. First, I will situate the issue of capital punishment in the context of a consistent ethic of life and then examine the case for capital punishment in light of this ethic.

1. The Context: A Consistent Ethic of Life

Catholic social teaching is based on two truths about the human person: human life is both sacred and social. Because we esteem human life as sacred, we have a duty to protect and foster it at all stages of development, from conception to death, and in all circumstances. Because we acknowledge that human life is also social, society must protect and foster it.

Precisely because life is sacred, the taking of even one life is a momentous event. Traditional Catholic teaching has allowed the taking of human life in particular situations by way of exception, as, for example, in self-defense and capital punishment. In recent decades, however, the presumptions against taking human life have been strengthened and the exceptions made ever more restrictive.

Fundamental to this shift in emphasis is a more acute perception of the multiple ways in which life is threatened today. Obviously such questions as war, aggression and capital punishment have been with us for centuries; they are not new. What is new is the context in which these ancient questions arise, and the way in

which a new context shapes the content of our ethic of life.

Within the Catholic Church, the Second Vatican Council acknowledged that "a sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man" (Declaration on Religious Freedom, #1). This growing awareness of human dignity has been a dominant factor within Western culture. Within the United States, the struggle to appreciate human worth more fully is found in the civil rights movement and in the public debate about our foreign policy toward totalitarian regimes of both the right and the left.

This deepening awareness, as I intimated above, has been precipitated in part by a growing recognition of the frailty of human life today. Faced with the threat of nuclear war and escalating technological developments, the human family encounters a qualitatively new range of moral problems. Today, life is threatened on a scale previously unimaginable.

This is why the U.S. Catholic bishops and others have been so visible and vocal in the public debate this past decade or two, asserting belief in the sacredness of human life and the responsibilities we have, personally and as a society, to protect and preserve the sanctity of life.

Nonetheless, it is not enough merely to assert such an ethical principle. If it is to be acknowledged and implemented, it must impact all areas of human life. It must respond to all the moments, places or conditions which either threaten the sanctity of life or cultivate an attitude of disrespect for it.

A consistent ethic of life is based on the need to ensure that the sacredness of human life, which is the ultimate source of human dignity, will be defended and fostered from womb to tomb, from the genetic laboratory to the cancer ward, from the ghetto to the prison.

2. Capital Punishment in Light of This Ethic

As you undoubtedly know, since the time of St. Augustine, great thinkers in the Roman Catholic tradition -- St. Thomas Aquinas, for example -- have struggled with such ethical questions as the right of the State to execute criminals. Through the centuries, as I noted above, the Church has acknowledged that the State does have the right to take the life of someone guilty of an extremely serious crime.

However, because such punishment involves the deliberate infliction of evil on another, it always needs justification. Usually this has consisted of indicating some good which would derive from the punishment, a good of such consequence that it justifies the taking of life.

As I understand the current discussion about capital punishment, the question is not whether the State still has the right to inflict capital punishment, but whether it should exercise this right. In present circumstances, are there sufficient reasons to justify the infliction of the evil of death on another human person?

This is the question which the U.S. Catholic Bishops and others have been addressing recently -- the United States Catholic Conference in 1980, the Massachusetts Catholic Conference Board of Governors in 1982, the Oklahoma Catholic bishops in 1983, the Tennessee Bishops exactly one year ago today, and Florida church leaders last November. Although there are differences of presentation, basically the reasoning of these positions follows two lines of thought.

First, they review four traditional arguments justifying capital punishment: retribution, deterrence, reform and protection of the State. Based on their review, the religious leaders have argued that these reasons no longer apply in our age.

I don't have time this afternoon to present the reasoning in regard to all four areas, but I would like to use the question of retribution as an example. The 1980 USCC statement states:

We grant that the need of retribution does indeed justify punishment. For the practice of punishment both presupposes a previous transgression against the law and involves the involuntary deprivation of certain goods. But we maintain that this good does not require nor does it justify the taking of the life of the criminal, even in cases of murder. . . . It is morally unsatisfactory and socially destructive for criminals to go unpunished, but the limits of punishment must be determined by moral objectives which go beyond the mere infliction of injury on the guilty. Thus we would argue it is as barbarous and inhumane for a criminal who

had tortured or maimed a victim to be tortured or maimed in return. Such punishment might satisfy certain vindictive desires that we or the victim might feel, but the satisfaction of such desires is not and cannot be an objective of a humane and Christian approach to punishment.

Basing their judgment on this and similar lines of reasoning, many religious leaders conclude that, under our present circumstances, the death penalty as punishment for reasons of deterrence, retribution, reform or protection of society cannot be justified.

Nonetheless, our reflections on this issue do not stop at this level. As religious leaders we argue that there are gospel insights which bespeak the inappropriateness of capital punishment. First, there is the example of Jesus, offering forgiveness at the time of his own unfair death (Lk 23:24). ^{omit} More than that, he offers the human family an alternative to the violence of the human heart, a violence which led to his own death. Jesus taught that, when one is faced with injury, the fully human response is "to turn the other cheek" (Mt 5:38-40).]

Another challenging gospel theme is that of "God's boundless love for every person, regardless of human merit or worthiness. This love was especially visible in Jesus' ministry to outcasts, in his acceptance of sinners" (Florida church leaders). Consistent with this theme and flowing from it is the biblical imperative of reconciliation. Wherever there is division between persons, Christ calls them to forgiveness and reconciliation.

While these themes are specifically grounded in the New Testament, I do not believe they are unique to the Christian vision. People of good will recognize that these values ennoble human experience and make it more complete. Commitment to these values changes one's perspective on the strengths and weaknesses of the human family.

This change in perspective seems to have been in mind when the ecumenical leaders of Florida stated that Jesus shifted the locus of judgment in this matter to a higher court: a court where there is absolute knowledge of the evidence, of good deeds and of evil, of faith and of works of faith, of things private and things public -- a court in which there is both wrath and tenderness, both law and grace.

It is when we stand in this perspective of a "higher court" -- that of God's judgment seat -- and a more noble view of the human person, that we seriously question the appropriateness of capital punishment. We ask ourselves: Is the human family made more complete -- is human personhood made more loving -- in a society which demands life for life, eye for eye, tooth for tooth?

Let me acknowledge that your experience is probably quite different from mine. You have had to deal with heinous crimes, with persons so filled with hatred and violence as to chill the heart. You may be wondering whether my colleagues and I are naive or simplistic in our approach.

Perhaps I won't be able to dispel that perception with my response. Nevertheless, I want to affirm that the State does have the responsibility to protect its citizens. It deserves and merits the full support of all of us in the exercise of that responsibility. Although we don't have an adequate understanding of the causes of violent crime, society "has the right and the duty to prevent such behavior including, in some cases, the right to impose terms of lifetime imprisonment" (Florida ecumenical leaders).

I am not suggesting that society should be a prisoner of violence or violent crime. On the contrary, the consistent ethic of life requires that society struggle to eradicate poverty, racism and other systemic forces which nurture and encourage violence. Similarly, the perpetrators of violence should be punished and given the opportunity to experience a change of heart and mind.

But, having said this, I also think that capital punishment is not an appropriate response to the problem of crime in our land. To take any human life, even that of someone who is not innocent, is awesome and tragic. It seems to me and to others that, in our culture today, there are not sufficient reasons to justify the State continuing to exercise its right in this matter. There are other, better ways of protecting the interests of society.

Recently the Gallup organization conducted a poll about capital punishment -- something they had done on previous occasions. In 1966 42% of those polled favored capital punishment, in 1981 66% favored it, and this year the percentage was 72%.

Why has 24% of the population turned to favoring capital punishment in the last nineteen years? This question is even more urgent because that same poll reported that fully 51% of the respondents said "they would still support capital punishment even if studies showed conclusively it does not deter crime"! This is striking because people often use deterrence as a main argument to justify capital punishment. If it is not to deter crime, why do people support capital punishment? 30% of those who favored capital punishment indicated their reason was simple: revenge!

One might argue that the cycle of violence has become so intense in our society that it is understandable and appropriate for people to support capital punishment. What alternative is there, some ask, in a violent society other than to meet violence with violence?

As a citizen in a democracy whose founding dream is of human dignity and as a disciple of Jesus, I must reject this alternative. In fact, as a citizen of this city which has recently been alarmed, saddened and polarized by the senseless killing of a talented high school basketball star and a ten-year-old standing in front of his home, I assert that violence is not the answer -- it is not the way to break the cycle of violence.

Pope John Paul II, speaking to Peruvians who were living in the midst of a rebel stronghold, told them: "The pitiless logic of violence leads to nothing. No good is obtained by helping to increase violence."

Capital punishment, to my mind, is an example of meeting violence with violence. What does it say about the quality of our life when people celebrate the death of another human being? What does it say about the human spirit when some suggest a return to public executions which only twenty years ago we would have considered barbaric?

We desperately need an attitude or atmosphere in society which will sustain a consistent defense and promotion of life. Where human life is considered "cheap" and easily "wasted," eventually nothing is held as sacred and all lives are in jeopardy. The purpose of proposing a consistent ethic of life is to argue that success on any one of the issues threatening life requires a concern for the broader attitude in society about respect for life. Attitude is the place to root an ethic of life.

Change of attitude, in turn, can lead to change of policies and practices in our society. We must find ways to break the cycle of violence which threatens to strangle our land. We must find effective means of protecting and enhancing human life.