

# The Death Penalty in Catholic Teaching and Medicine: Intersections and Places for Dialogue

Michael A. Norko, MD

Current debate on the death penalty in public and professional spheres is seen as divisive in nature, disallowing the possibility of common agreement. The history of views of the death penalty within the Catholic Church illustrates centuries of tensions and ambiguities as well as a current posture that manages to hold these tensions while advocating a strong position. That history of church views itself contains allusions to and intersections with medicine. There is something tangible to be gained in understanding religious views on the death penalty, in the debates both within medicine and in the public sphere. An argument is made for sufficient overlap of contemporary purpose between the goals of church and medicine to warrant further dialogue in enhanced and deliberative democratic processes.

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The subject of capital punishment has been an important, but contentious, topic of discussion in organized psychiatry and medicine in recent years.<sup>1</sup> While psychiatrists in the United Kingdom were able to achieve consensus on abolition as early as 1992,<sup>2</sup> American organized medicine continues to struggle with differences of opinion among diverse memberships.<sup>3</sup> American medicine has established some ethical parameters about physician participation in capital punishment and support for a moratorium on the use of capital punishment. Meanwhile fundamental flaws continue to exist in the implementation of these parameters and medicine continues to struggle with the larger moral and sociopolitical questions and the underlying ethical values.

The Catholic Church has held tensions in its views of the death penalty for centuries. While there have been recent developments in position statements in the Church, they are also not without their disagreements and differences of interpretation, as well as

underlying values. Thus, it seems worthwhile to explore the history of the Church's position on capital punishment as an exercise in searching for common ground with medicine and the possibility of future beneficial dialogue.

The history of the Catholic Church's teaching on the death penalty is long and complex and composed of many subtle nuances and not so subtle contradictions and conflicts. What has been held throughout, however, is the "virtually unanimous agreement" that "civil authority, as guardian of the public good, has been given by God the right to inflict punishments on evildoers, including the punishment of death" (Ref. 4, pp 153–154).

E. Christian Brugger has summarized five principles that might be considered the cumulative consensus of writers throughout the Church's history:

- A. lawful public authority alone is authorized by God to inflict the death penalty;
- B. this truth is witnessed to in sacred scripture;
- C. the death penalty serves
  1. to redress disorder caused by an offense by imposing on offenders proportionate and due punishment,

Dr. Norko is Associate Professor of Psychiatry, Yale University School of Medicine, New Haven, CT, and Director of Forensic Services for the CT Department of Mental Health and Addiction Services, Hartford, CT. Address correspondence to: Michael A. Norko, MD, Law & Psychiatry Division, CMHC, 34 Park Street, New Haven, CT 06519. E-mail: michael.norko@yale.edu

- 2. to protect society by removing a harmful influence and to deter other members of the community from committing serious crimes;
- D. clerics are forbidden from participating in the sentencing and infliction of capital punishments; and
- E. the death penalty's lawful infliction requires an upright intention (Ref. 4, p 153).

Viewed in light of strong contemporary church advocacy against the infliction of the death penalty from the U.S. Catholic Bishops and Pope John Paul II, for example, this consensus view seems to lack contemporary viability. Yet Avery Cardinal Dulles has supported a conclusion similar to Brugger's: "The Catholic magisterium does not, and never has, advocated unqualified abolition of the death penalty. I know of no official statement from popes or bishops, in the past or in the present, that denies the right of the state to execute offenders at least in certain extreme cases" (Ref. 5, p 137).

The evaluation of these conclusions requires a review of the history of doctrines on the death penalty. Beginning with the Church Fathers of the first several centuries, similar apparent conflicts emerge throughout much of this history.

## Church Teaching

Early Church writings generally accept the legitimacy of civil authority to punish criminals, even with death; the relevant issue is usually the commission of serious crime or sin deserving the punishment. The basic idea of this civil authority is often credited to the authority of the Apostle Paul, and in particular to his Letter to the Romans:

Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. 2 Therefore, whoever resists authority resists what God has appointed, and those who resist will incur judgment. 3 For rulers are not a terror to good conduct, but to bad. Do you wish to have no fear of the authority? Then do what is good, and you will receive its approval; 4 for it is God's servant for your good. But if you do what is wrong, you should be afraid, for the authority does not bear the sword in vain! It is the servant of God to execute wrath on the wrongdoer. 5 Therefore one must be subject, not only because of wrath but also because of conscience. 6 For the same reason you also pay taxes, for the authorities are God's servants, busy with this very thing. 7 Pay to all what is due them—taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honor to whom honor is due [Ref. 6, Romans 13:1–7].

Clement of Alexandria (ca. 150–216) was the first Church Father to take a more philosophical and systematic approach, uniting Greek philosophical traditions with Christian thought. He addressed in particular the purposes of punishment; chief among these were correction of the punished and the general protection of society. The correction was a "blessing" that turned the person from wrongdoing to virtue.<sup>7</sup>

From this early stage of the Church's teaching on capital punishment, it has used medical analogies as part of its explanations of doctrine. Clement compared the role of the law to the physician who amputates a diseased limb to save the life of the body. Since diseases of the soul are even more serious, surgical excision must be applied more fervently to such states. He asserted that the death penalty is a specific benefit to the condemned for it relieves him of his life of greed and vice (Ref. 7, pp 78–79).

In part, the stage for this imagery may have been set by the Roman Stoic philosopher Seneca (ca. 4 BCE–65 CE). He compared dangerous sinners to diseases in the community, such that civil magistrates were like physicians charged with the community welfare. The only difference was that the physician might supply to "patients to whom he has been unable to give the boon of life an easy exit from it," while the magistrate would "forcibly expel the condemned from life" (Ref. 8, p 123).

With Constantine's acceptance of Christianity in the Edict of Milan of 313, there was an enhanced challenge to the Church's thinking about the death penalty. Within an increasingly Christian empire, it was becoming difficult for the Church to avoid the question of civil authority's being implemented by faithful Christians. The Church thus had to cope with these new circumstances, and it would be necessary to advise Christian civil officials in their duties to God, manifested in responsibilities to both the state and to the Church. This produced comments on the tensions that thus arose, which are conveyed in conflicting messages about use of the death penalty (Ref. 7, p 95).

Ambrose, Bishop of Milan (340–397) addressed on several occasions the utilization of the death penalty. In the summer of 390, troops of the Emperor Theodosius massacred the citizens of Thessalonica, causing Ambrose to call for Theodosius' repentance for his irresponsible use of the death penalty; after which Ambrose absolved him.<sup>9</sup> When a Christian judge sought his advice on the death penalty, Am-

brose advised him that he would “hesitate to give an answer” were it not for the authority of Romans 13:4.<sup>10</sup> But his response balances conflicting ideas: “Authority, you see, has its rights; but compassion has its policy. You will be excused if you do it; but you will be admired if you refrain when you might have done it” (Ref. 10, p 83). In his advice to clergy, Ambrose was more emphatic, calling upon the Gospel admonition from Matthew 26:52 that “everyone that taketh the sword shall perish with the sword” (Ref. 9, p 32). James J. Megivern summarizes Ambrose’s stance: “A truly forgiving spirit cannot help but look disapprovingly on the very idea of the death penalty, which is in effect an act of total despair in the potential of the individual to repent, to be rehabilitated, and/or to make meaningful reparations” (Ref. 9, p 32). Thus, the clergy should not be engaged in the death penalty. The laity in civil authority were permitted to do so, but would be better for showing Christian mercy, as in the example of Christ and the adulterous woman (John 8:3–11). The only reason not to deny the legitimacy of the death penalty was that to do so would be to deny Scripture (namely, Paul) (Ref. 7, pp 87–88).

Saint Augustine (354–430) was baptized by Ambrose and followed his line of thinking on the death penalty. Civil authority did have the right to utilize the death penalty, but Christian faith would urge otherwise, hoping for the opportunity of the sinner to repent (Ref. 7, p 89). Yet Augustine’s support of civil coercion of religion would earn him an undeserved reputation as “father of the Inquisition” and allow his work to be used by medieval writers in support of the death penalty (Ref. 9, pp 35–45). There are, indeed, two themes in Augustine’s thought; one is to defend the right of authority to inflict the death penalty, the other is to counsel repeatedly against its actual use.

To support the former, Augustine argues that not only were the Hebrew fathers exercising God-given rights in judgments of death, but that the Christian record had not changed the world on this point. Referring to Romans 13:2–4, he asks, “[S]hall we erase the Apostle?”<sup>11</sup> Augustine also cites the example of Ananias and Sapphira, a husband and wife who withheld some of the profits from sale of land which were to be turned over to the apostles in its entirety. When Peter charged Ananias with lying before God, Ananias fell dead. When Peter confronted Sapphira, he told her that she too would be carried out dead like

her husband for her lying, at which point she fell dead (Acts 5:1–11). Augustine wrote that such punishment had thus not disappeared even after Christ’s teaching about love of neighbor.<sup>12</sup>

In support of restraint, Augustine argued repeatedly for clemency, Christian mercy, and Catholic moderation. He argued vehemently against the use of the death penalty to coerce heretics to belief, saying that the Church must never shed blood in its own defense (Ref. 7, pp 91–93). He urged commutation of death sentences, and even noted that it would be preferable to allow persecutors of Christians to go free than to avenge their martyrdom with bloodshed: “[T]he sufferings of the servants of God. . . should not be sullied with the blood of their enemies” (Ref. 13, p 10).

The conflicting ideas in Augustine’s thought can be seen by juxtaposing his famous quotation from *The City of God*<sup>14</sup> with his letter to the Christian judge Marcellinus.

From the *City of God*:

However, there are some exceptions made by the divine authority to its own law, that men may not be put to death. These exceptions are of two kinds, being justified either by a general law, or by a special commission granted for a time to some individual. . . . And, accordingly, they who. . . in conformity with His laws have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment, “Thou shalt not kill” [Ref. 14, p 27].

From the letter to Marcellinus:

Fulfill, Christian judge, the duty of an affectionate father; let your indignation against their crimes be tempered by considerations of humanity; be not provoked by the atrocity of their sinful deeds to gratify the passion of revenge, but rather be moved by the wounds which these deeds have inflicted on their own souls to exercise a desire to heal them [Ref. 15, pp 470–471].

It is by way of such contrasts that Megivern refers to the “ambivalent legacy of St. Augustine” (Ref. 9, p 35).

Brugger asserts that “the most influential ecclesiastical statement on the morality of capital punishment in the Middle Ages (and arguably in Church history)” (Ref. 7, p 103) was made by Pope Innocent III (papacy of 1198–1216). This statement came in the context of the Church’s dealing with a break-away, nonviolent sect that followed a merchant named Peter Waldès and became known as Waldensians. To be reconciled with the Church again in 1208, they were required to make a stipulated pro-

fession of faith, which was amended in 1210 for other groups of Waldensians seeking reconciliation. In that profession of faith, demanded by Innocent III, the Waldensians were corrected for their apparent teaching that a judgment of blood constitutes a mortal sin. The 1210 document required this famous profession:

Concerning secular power we declare that without mortal sin it is possible to exercise a judgment of blood as long as one proceeds to bring punishment not in hatred but in judgment, not incautiously but advisedly [Ref. 16, p 168].

It is this statement that has come down as the authoritative teaching of Innocent III on the morality of the death penalty. Megivern notes the great irony of this turn of events, in which perhaps for the first time, the Church's teaching about the legitimacy of capital punishment was questioned by a break-away group that advocated more literally for the Christian love of neighbor and for the allowance of the sinner's repentance, leaving the Church to defend the state's right to kill malefactors.

Such a skewing had its unfortunate and dire consequences. The nephew of Innocent III became Pope Gregory IX (papacy of 1227–1241). In his *Excommunicamus* of 1231, he adopted into canon law the constitution of Emperor Frederick II, which explicitly permitted the burning of heretics at the stake. This opened the door to the executions of the Inquisition (Ref. 9, p 110). Pope Innocent IV (papacy of 1243–1254) subsequently issued the bull *Ad Extirpanda* in 1252, calling on the state to see its chief duty as the extirpation of heresy. From this flowed the evolution of officially sanctioned torture as part of inquisitorial procedures (Ref. 9, pp 110–111).

Megivern notes carefully that it is within this context that one must view the thought of St. Thomas Aquinas (1225–1274) on capital punishment (Ref. 9, p 111). Brugger refers to Aquinas' treatment of this subject as the most influential systematic pronouncement of the Middle Ages (Ref. 7, p 108). Aquinas' views on capital punishment derive from Aristotle's notion of the primacy of the whole compared with its parts, combined with Aquinas' views on the two purposes of punishment: retribution and a combination of what we would call rehabilitation and general deterrence. Aquinas thus creates a "medicinal" account of punishment, in that the point of punishment is to make an improvement in the existing "state of affairs" by remedying the "social disorder" caused by the wrongdoer's actions (Ref. 17, p

212). This point is illustrated clearly in his *Summa Contra Gentiles*:

But the life of certain pestiferous men is an impediment to the common good, which is the concord of human society. Therefore, certain men must be removed by death from the society of men. Furthermore, just as a physician looks to health as the end of his work, and health consists in the orderly concord of humors, so too, the ruler of a state intends peace in his work, and peace consists in "the ordered concord of citizens." Now the physician quite properly and beneficially cuts off a diseased organ if the corruption of the body is threatened because of it. Therefore, the ruler of a state executes pestiferous men justly and sinlessly, in order that the peace of the state may not be disturbed [Ref. 18, p 220–221].

Because of his concern for healing the community and for the supremacy of the community over individuals, Aquinas also analogizes the killing of an evildoer with a physician's amputation of a decayed limb. Public authority, then, inflicts capital punishment for the welfare of the community.<sup>19</sup>

Aquinas does, however, continue to maintain that clerics should not themselves administer the death penalty. Their ministry is "concerned with better things than corporal slayings, namely with things pertaining to spiritual welfare, and so it is not fitting for them to meddle with minor matters" (Ref. 19, II-II, Q 64, A 4, Rp 2).

While Aquinas thus spares clerics from direct involvement in capital punishment, he must still respond to the apparent moral dilemma faced by lay Christians tasked with the concerns of civil authority. This is especially true in that Aquinas accepts the Ten Commandments as sound and revealed moral precepts, and thus part of the natural law (Ref. 4, p 159). In answering the objection that it is not lawful "to do that which is evil in itself" (Ref. 19, II-II, Q 64, A 2, Obj 3) even for a good end, Aquinas responds:

By sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood, in so far as he is naturally free, and exists for himself, and he falls into the slavish state of the beasts, by being disposed of according as he is useful to others. . . . Hence, although it be evil in itself to kill a man so long as he preserve his dignity, yet it may be good to kill a man who has sinned, even as it is to kill a beast. For a bad man is worse than a beast, and is more harmful [Ref. 19, II-II, Q 64, A 2, Rp 3].

Megivern argues that while such passages may not reflect Aquinas at his best, they must be understood historically within the context of the firmly entrenched institution of capital punishment and the overwhelming pressures on church and state leader-

ship in the battle against heresy. Unfortunately, these statements of Aquinas on capital punishment were to be regarded with great authority for a further six or seven centuries by Catholic moralists (Ref. 9, p 118), with more absolutist interpretation than the possibility that Aquinas raised that it might be good to kill a sinful man.

Martin Luther (1483–1546) believed firmly in the separation of the temporal realm from the heavenly realm; in the former, capital punishment was a necessity:

[O]ne must let the sword strike transgressors vigorously and boldly, as St. Paul teaches (Rom. 13:4). . . . Let no one imagine that the world can be governed without the shedding of blood. The temporal sword should and must be red and bloodstained, for the world is wicked and is bound to be so. Therefore the sword is God's rod and vengeance for it [Ref. 20, p 1156].

But he also held that the church must not defend the spiritual realm by killing heretics. Interestingly, this is the same view held by 4th century Archbishop John Chrysostom and Augustine (Ref. 7, pp 92, 214). Yet, Luther's belief that it is "against the will of the Spirit" to burn heretics brought condemnation by Pope Leo X in his bull *Exsurge Domine*. This was one of 41 propositions ascribed to Luther that Leo X held to be "respectively heretical, or scandalous, or false, or offensive to pious ears, or seductive of simple minds, and in opposition to Catholic truth" (Ref. 21, p 243).

Pope Pius V (papacy of 1566–1572) issued the *Roman Catechism* in 1566 at the recommendation of the Council of Trent. This catechism explicitly discussed the death penalty, allowing that the execution of criminals was the first exception regarding humans (listed before the exception of state warfare) to the commandment "Thou Shalt Not Kill."<sup>22</sup> The text casually accepts the validity of capital punishment, when utilized by appropriate civil authority, for both retribution and the public welfare (Ref. 9, pp 169–173). Its development included reference to several points of Scripture, including God's words to Noah, "I will require the blood of your lives at the hand of every beast and at the hand of man" (Gen 9:5); and Psalm 101:8, "In the morning I put to death all the wicked of the land, that I might cut off all the workers of iniquity from the city of the Lord" (Ref. 22, pp 420–421). The Roman Catechism proclaims: "The just use of this power [death penalty], far from involving the crime of murder, is an act of paramount

obedience to this Commandment which prohibits murder" (Ref. 22, p 421).

Francisco Suárez (1548–1617), a Jesuit philosopher and theologian, taught that capital punishment was permissible not only to the state, but to the Church as well (in opposition to Martin Luther's view). He argued from the acceptance of the killing of false prophets in the Hebrew Bible and the fact that Christ did not teach opposition to the death penalty. Given that heresy inflicts danger upon the Christian republic, the Church is no less entitled to defense of the common welfare and the spiritual welfare of its people than is civil authority. Therefore, both civil and ecclesiastic authorities may legitimately utilize the death penalty (Ref. 7, pp 120–122). Suárez emphasized both the retributive and "medicinal" functions of punishment, including the death penalty. The condemned experiences the demands of retribution, but this also serves a medicinal (or emendatory) role with respect to the community (Ref. 7, p 121).

The Enlightenment brought both challenges to and support of the death penalty, notably by Voltaire and Kant, respectively. The debate was not, however, engaged within the Catholic Church, which maintained the continued posture of the Roman Catechism (Ref. 9, pp 219–227). The Papacy, in fact, engaged during this time in a voluminous series of its own executions stemming from its role as civil authority. From 1815, when the Pope regained political control of Rome from Napoleon, until 1870, the Popes ordered the executions of hundreds of malefactors.

One man, Giovanni Battista Bugatti, carried out 516 executions as the "Pope's Executioner" between 1796 and 1865.<sup>23</sup> The executioner used one of three methods: guillotine (after 1816), smashing the head with a mallet and cutting the throat of the condemned, or drawing and quartering. In a crude and careless use of medical analogy, when the Pope's executioner delivered this "justice," the condemned were euphemistically known as his "patients."<sup>23</sup> Executions were attended by large crowds and pickpockets, included gambling over various aspects of the execution and traditional "sacred" rituals, and were followed with public festivals. Control of Rome fell to Italian Unification in 1870, ending the era of the papal states and the civil authority of the Pope to order executions.

Vatican I (convened in 1869, suspended in 1870 at the outbreak of the Franco-Prussian war, and closed officially by John XXIII in 1960) did not produce any development of doctrine on the death penalty. *The Catholic Encyclopedia* was published between 1907 and 1912, with an entry on capital punishment appearing in 1910 (Ref. 9, p 312). The article noted:

The infliction of capital punishment is not contrary to the teaching of the Catholic Church, and the power of the State to visit upon culprits the penalty of death derives much authority from revelation and from the writings of theologians. The advisability of exercising that power is, of course, an affair to be determined upon other and various considerations.<sup>24</sup>

In an article in *The Catholic Encyclopedia* on “Heresy,” the infliction of the death penalty on heretics is defended:

The Church’s legislation on heresy and heretics is often reproached with cruelty and intolerance. Intolerant it is; in fact its *raison d’être* is intolerance of doctrines subversive of the Faith. But such intolerance is essential to all that is, or moves, or lives, for tolerance of destructive elements within the organism amounts to suicide [Ref. 25, p 261–262].

The article on capital punishment, however, did note the oppositions to the death penalty expressed by Enlightenment writers and the existence of contemporary debate on the matter. In fact, its author, American lawyer and judge John Willey Willis, quoted Cesare Beccaria in posing the rhetorical question, “Is it not absurd that the laws, which detect and punish homicide, should to prevent murder, publicly commit murder themselves?” (Ref. 24, p 569).

Italian states had begun abandoning the death penalty in 1786 under the influence of Cesare Beccaria’s 1764 tract *On Crimes and Punishment*.<sup>23</sup> Beccaria had argued that the death penalty was neither just nor useful in a well-governed state, and that it was an unnecessary war of a whole nation against one of its citizens. He advocated the use of life sentences and allowed for execution in only one unlikely scenario, when the continued life of the guilty threatened the entire government, which was therefore on the brink of anarchy or destruction.<sup>26</sup> Although Beccaria’s work was placed on the Roman Index of Forbidden Books (for its philosophical and doctrinal errors in general), it had significant influence in the Italian states. By 1900, even the assassination of King Umberto did not generate a death warrant for the convicted anarchist, but rather a life sentence.<sup>23</sup> But with the creation of the Vatican City in 1929, the

death penalty was retained in its statutes, from the legal codes of the former papal states, for anyone attempting to assassinate a pope. It was not until 1969 that Pope Paul VI had that provision quietly repealed.

The use of the death penalty was publicly supported in several speeches by Pope Pius XII (papacy of 1939–1958). In 1943, Pius XII told parish priests in Rome, “Human life is untouchable except for legitimate individual self-defense, a just war carried out with just methods, and the death penalty meted out by public authority for extremely grave and very specific and proven crimes.”<sup>27</sup> Later, in a speech to attendees of the First International Congress of the Histopathology of the Nervous System in 1952, he clarified that the state in these circumstances was not given authority over life itself, even while retaining its right to capital punishment:

Even where there is a 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 has already disposed himself of his right to live [Ref. 28, pp 232–233].

Pius XII concluded that judges must not utilize the death penalty unless they are certain of the convicted person’s guilt (Ref. 7, p 129), but he also cautioned that judges must not deliver pardons unless “it is morally certain that the ends of punishment have been achieved” (Ref. 5, p 141). Society would not be well served by granting clemency routinely and emptying the prisons, because that would not provide for expiation of the crimes. In a speech to attendees of the Sixth Congress of International Penal Law, Pius XII explained that the “final purpose” of punishment was found “on a higher plane” (Ref. 28, p 256).

Pope John XXIII (papacy of 1958–1963) began a new wave of thought with the proclamation of human solidarity in his encyclical *Pacem in Terris* (“Peace on Earth”) in 1963.<sup>29</sup> Ten days before his death on June 3, 1963, John XXIII summarized his reasons and hopes for convoking Vatican II (1962–1965), expressing human solidarity, and distancing the church from any notion of defense from heresy:

Today more than ever, certainly more than in previous centuries, we are called to serve man as such, and not merely Catholics; to defend above all and everywhere the rights of the human person, and not merely those of the Catholic Church. Today’s world, the needs made plain in the last fifty years, and a deeper understanding of doctrine have brought us to a new situation, as I said in my opening speech to the Council. It is not that the Gospel has changed;

it is that we have begun to understand it better [Ref. 30, pp 488–489].

Out of those hopes sprang the Vatican II constitution *Gaudium et Spes* (“Joy and Hope”) promulgated by Pope Paul VI in 1965, which made acceptance of the death penalty seem even more incongruous and incredible (Ref. 9, p 291). Among its many statements professing the fundamental dignity of each person and the Church’s role as defender and servant of humanity, are the following:

At the same time, however, there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. . . . Hence, the social order and its development must invariably work to the benefit of the human person. . . [Ref. 31, Part I, Chapter 2 (26)].

But it is necessary to distinguish between error, which always merits repudiation, and the person in error, who never loses the dignity of being a person. God alone is the judge and searcher of hearts, for that reason He forbids us to make judgments about the internal guilt of anyone [Ref. 31, Part I, Chapter 2 (28)].

Bishop Joseph Durick of Nashville would later recall the statement of Paul VI on the death penalty at the close of Vatican II:

[T]he last thing that Paul VI said to the bishops of the world on the last day of the council was this: Go out into the world and make every effort possible in every way to *restore the dignity of man*, and all that it implies! I stand foursquare with modern theologians who hold that prudentially and historically capital punishment does not fit into the greater contemporary theological awareness of the worth of each individual on earth. . . [Ref. 32, p 395].

At the request of the U.S. Bishops, the Pontifical Commission for Justice and Peace issued an answer to the Bishops’ questions on the death penalty in 1976.<sup>33</sup> The Commission noted Pius XII’s description of the medicinal role of punishment, but denied that capital punishment may serve a medicinal role “because it negates the possibility of the criminal to rehabilitate himself” (Ref. 33, p 391). The document questioned the efficacy of the deterrent purpose of capital punishment, and decried the “vindictive or retributive” purpose on humanitarian grounds. The Commission concluded that “capital punishment is outside the realm of practicable just punishments” (Ref. 33, p 391).

The U.S. Conference of Catholic Bishops offered its statement on capital punishment in 1980, 3 years after the 10-year moratorium on executions in the United States ended with the execution of Gary Gilmore in Utah.<sup>34</sup> The statement lists 10 arguments for abolition of capital punishment. Among these are

that abolition would: “break the cycle of violence”; support “our belief in the unique worth and dignity of each person”; give testimony to the conviction shared with Judaic and Islamic traditions that “God is indeed the Lord of life”; and share in the teachings of Christ, who practiced forgiveness of injustice (Ref. 34, Section II). The Bishops noted that capital punishment excluded the possibility of reform and rehabilitation of the person executed; involved the possibility of mistakes; and created unavoidable delays for the condemned person that generated despair and anguish. Executions “attract enormous publicity, much of it unhealthy, and stir considerable acrimony in public discussion,” and many convicted persons “are sentenced to death in an unfair and discriminatory manner” (Ref. 34, Section III).

The Bishops offered an alternative view of the proper societal response to violent crime, including medical and psychological care:

Our society should not flinch from contemplating the suffering that violent crime brings to so many when it destroys lives, shatters families, and crushes the hopes of the innocent. Recognition of this suffering should not lead to demands for vengeance but to a firm resolution that help be given to the victims of crime and that justice be done fairly and swiftly. The care and the support that we give to the victims of crime should be both compassionate and practical. The public response to crime should include the relief of financial distress caused by crime and the provision of medical and psychological treatment to the extent that these are required and helpful [Ref. 34, Section IV].

Despite these stirrings, the edition of the Catechism of the Catholic Church approved by John Paul II (papacy of 1978–2005) in 1992 continued to express the classical Church position:

[T]he traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty [Ref. 35, Article 2266].

The next article, however, contained a caution:

If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority should 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 [Ref. 35, Article 2267].

Article 2266 also utilized the traditional medicinal account of crime as disorder, which is corrected by punishment:

The primary effect of *punishment* is to redress the disorder caused by the offense. When his punishment is voluntarily

accepted by the offender, it takes on the value of expiation. Moreover, punishment has the effect of preserving public order and the safety of persons. Finally punishment has a medicinal value; as far as possible it should contribute to the correction of the offender [Ref. 35, Article 2266].

Drawing further on the theme of Article 2267 of the Catechism, John Paul II included specific commentary on the death penalty in his encyclical *Evangelium Vitae* (“The Gospel of Life”) in 1995. In Paragraph 27, he noted:

[T]here is evidence of a growing public opposition to the death penalty, even when such a penalty is seen as a kind of “legitimate defense” on the part of society. Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform.<sup>36</sup>

In the most famous section, Paragraph 56, John Paul II observed that adequate punishment inflicted by society serves to redress the disorder caused by the offense and to protect public safety while offering the offender the opportunity to change his or her behavior and be rehabilitated. He stated specifically:

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.<sup>36</sup>

Cardinal Ratzinger (now Pope Benedict XVI), on introducing the encyclical to the press, commented that the Catechism would obviously need to be modified as a result of this statement (Ref. 9, p 445). Indeed, this is what happened. Article 2266 was modified in the 1997 edition of the Catechism to omit the phrase “not excluding. . .the death penalty.”<sup>37</sup> Article 2267 was substantially modified to incorporate the limits to use of the death penalty from *Evangelium Vitae*.<sup>38</sup>

John Paul II continued this theme in further messages. In January 1999, in St. Louis, Missouri, he proclaimed the following:

A sign of hope is the increasing recognition that 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. I renew the appeal. . . for a consensus to end the death penalty, which is both cruel and unnecessary.<sup>39</sup>

*Evangelium Vitae* makes explicit reference to the oldest traditions of medicine, in particular the Hippocratic Oath. It comes as part of an appeal to all

health care workers to serve as “guardians and servants of human life” (Ref. 36, Paragraph 89). Although largely a reference to abortion and euthanasia, it conveys applicability to the issues in capital punishment:

In today’s cultural and social context, in which science and the practice of medicine risk losing sight of their inherent ethical dimension, health care professionals can be strongly tempted at times to become manipulators of life, or even agents of death. In the face of this temptation their responsibility today is greatly increased. Its deepest inspiration and strongest support lie in the intrinsic and undeniable ethical dimension of the health care profession, something already recognized by the ancient and still relevant Hippocratic Oath, which requires every doctor to commit himself to absolute respect for human life and its sacredness [Ref. 36, Paragraph 89].

But here, too, the tension of the Church teachings is evident, when in the same paragraph John Paul II calls for “absolute respect for every *innocent* human life” (emphasis added). How medicine approaches its own heritage in the Hippocratic Oath with regard to the death penalty will be explored in the next section.

The current posture of the Church has roots in Ambrose, Augustine, and Beccaria at least. While John Paul II admits of the tensions that have always been part of doctrine, his call for abolition in his speeches was itself new. By the tenor of the new rights-based language of Vatican documents and its application to this specific problem, the Church does indeed seem to have pursued a development and refinement of traditional teaching.

## Medical Teaching

Before beginning the exploration of contemporary medical teaching, it is worth noting the views of Benjamin Rush, known as the Father of American psychiatry and whose portrait adorns the logo of the American Psychiatric Association. Rush did not appeal to Hippocrates in his views on the death penalty; he was more inclined to appeal to the Bible. He was informed as well by the “humanitarian impulse of the Enlightenment” (Ref. 9, p 302), joining reason and religion. Rush believed that laws permitting capital punishment were unchristian and that the Christian obligation to promote repentance and forgiveness was equally incumbent upon the State. “The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, rise in rebellion against this prerogative, when they transfer it to human hands” (Ref. 40, p 3). Rush did not believe it would be possible to convince his fellow citizens of

the wisdom of this position, but hoped that a wiser generation of the next century might take heed of his advice (Ref. 40, p 13).

Although Rush's vision is still unfulfilled, he might be mildly encouraged by contemporary evolution of medicine's ethics guidelines on the subject, but discouraged by physicians' lack of awareness and conformity to those guidelines. In the United States today, all 38 states that utilize the death penalty employ lethal injection as the means of execution. Thirty-five of those states explicitly allow physician participation in the execution, and 17 states require it.<sup>41</sup> In a survey of 1000 physicians, only 3 percent of physicians queried were aware of professional guidelines regarding participation in executions, and 41 percent said they would perform at least one action that is prohibited by the ethics guidelines of the American Medical Association (AMA).<sup>42</sup>

The American Medical Association has articulated its guidelines about physician participation in capital punishment in its Code of Medical Ethics, maintained by its Council on Ethical and Judicial Affairs, specifically in ethical opinion E-2.06, originally issued in 1980 and most recently updated in June 2000.<sup>43</sup> The guideline begins:

An individual's opinion on capital punishment is the personal moral decision of the individual. A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution. Physician participation in execution is defined generally as actions which would fall into one or more of the following categories: (1) an action which would directly cause the death of the condemned; (2) an action which would assist, supervise, or contribute to the ability of another individual to directly cause the death of the condemned; (3) an action which could automatically cause an execution to be carried out on a condemned prisoner.<sup>43</sup>

Participation includes actions such as prescribing or administering drugs that are part of the execution protocol, monitoring vital signs during the execution, attending an execution as a physician or rendering technical advice regarding execution. Participation does not include such actions as various components of forensic testimony and prescribing medication to relieve the acute suffering of a condemned person who requests it.

While physicians may testify about the mental state of the defendant, physicians "should not determine legal competence to be executed," which must be determined by a judge who may utilize the physician's testimony as only one aspect of the decision.

However, if a defendant is found not competent for execution "physicians should not treat the prisoner for the purpose of restoring competence unless a commutation order is issued before treatment begins." Without an order commuting the sentence to life in prison, only an intervention intended to "mitigate the level of suffering is ethically permissible" (Ref. 43), as when the prisoner is experiencing the extreme suffering of psychosis or other illness. Finally, the guideline offers the following: "No physician should be compelled to participate in the process of establishing a prisoner's competence or be involved with treatment of an incompetent, condemned prisoner if such activity is contrary to the physician's personal beliefs."<sup>43</sup>

The American Academy of Psychiatry and the Law (AAPL) has issued ethics guidelines for the practice of forensic psychiatry; although these do not directly address capital punishment, they do offer the following general guideline: "Psychiatrists in a forensic role are called upon to practice in a manner that balances competing duties to the individual and to society. In doing so, they should be bound by underlying ethical principles of respect for persons, honesty, justice, and social responsibility."<sup>44</sup>

In October 2000, the American Psychiatric Association (APA) issued a position statement calling for a moratorium on capital punishment, until jurisdictions seeking to reform the death penalty implement policies and procedures to assure that capital punishment, if used at all, is administered fairly and impartially in accord with the basic requirements of due process.<sup>45</sup>

After a survey of its membership, and approval by its Executive Council on May 6, 2001, the American Academy of Psychiatry and the Law issued a position statement on the death penalty:

Resolved, that the American Academy of Psychiatry and the Law calls for a moratorium on capital punishment at least until death penalty jurisdictions implement policies and procedures that: A) Ensure that death penalty cases are administered fairly and impartially in accordance with basic due process; and B) Prevent the execution of mentally disabled persons and people who were under the age of 18 at the time of their offenses.<sup>46</sup>

Part B of this statement has been answered in the desired direction since then by U.S. Supreme Court decisions in *Atkins v. Virginia*,<sup>47</sup> in 2002, for individuals with mental retardation and in *Roper v. Sim-*

mons,<sup>48</sup> in 2005, for individuals who were minors at the time of the offense.

## Discussion

While the Church has made explicit appeal to Hippocrates in addressing health care professionals in *Evangelium Vitae*, organized medicine in its guidelines on the ethics of capital punishment does not do so. The AMA policy refers specifically to the physician's duty to preserve life "when there is hope of doing so"<sup>43</sup>, rather than the Hippocratic injunction to "do good or do no harm."<sup>49</sup> The Declaration of Geneva adopted by the General Assembly of the World Medical Association in 1948 (as an update of the Hippocratic Oath) comes closer to the ideals attributed to medicine by John Paul II. In it are the provisions: "I solemnly pledge to consecrate my life to the service of humanity; . . . I will maintain the utmost respect for human life; I will not use my medical knowledge to violate human rights and civil liberties, even under threat. . . ."<sup>50</sup>

Without appeal to spiritual matters (as Rush had employed foundationally in his arguments), does contemporary medicine share any more common ground with Church views on the death penalty than a concern for the preservation of life? Cardinal Dulles offers a list of seven reasons to militate against capital punishment in defense of his position that the application of the death penalty is "undesirable in a society like our own" (Ref. 37, p 28). The first three of these are explicitly part of the moratorium statements of the APA and AAPL. Dulles notes that the death penalty is inequitably applied to minorities, that poor and uneducated defendants are often unable to obtain adequate legal counsel, and that errors in determinations of guilt have been increasingly uncovered by DNA evidence (Ref. 37, p 29). These are the very concerns that motivated medicine's call for measures to ensure fairness and due process before capital punishment may be considered at all. Similarly, several of the arguments against capital punishment outlined in the U.S. Catholic Bishops' 1980 statement overlap with the arguments of medicine's call for moratorium, including the possibility of errors, concern for the mental anguish of the condemned, and the unfair and discriminatory process of many death sentences.

Even without such overlap, there is an argument to be made from contemporary perspectives on "deliberative democracy" that would encourage dialogue among diverse segments of society, including medi-

cine and religion. Guttman and Thompson<sup>51</sup> have described this idea: "when citizens or their representatives disagree morally, they should continue to reason together to reach mutually acceptable decisions" (Ref. 51, p 1). David Hollenbach has amplified this notion:

Deliberative democracy is premised on the hope that coexistence in parallel worlds is not the only alternative to efforts to abolish differences coercively. Engagement with others by listening, speaking, and thinking with them about the quality of the lives we must in fact live together can lead to enhanced prospects for both freedom and peace (Ref. 52, pp 141–142).

Hollenbach argues for an intellectual solidarity among people, that has as one of its strengths their separate beliefs, including religious ideas about the world. To achieve such solidarity it is necessary to create a public forum in which the values of religious belief are not only permitted but welcomed. "Seen from a perspective that regards solidarity as essential to human dignity, religious freedom is the freedom to speak religiously in public. It is freedom to suggest ways that religious understandings of the good have a bearing on the realities of public life" (Ref. 52, p 161).

It is interesting that Benjamin Rush felt the freedom to speak religiously in public, even in the midst of the Enlightenment spirit of reason. Rush's desire for that discourse and influence with people is the same desire that Hollenbach has for intellectual solidarity as a method of achieving the common good. It is the same desire from which some psychiatrists argued for continued debate and discussion in AAPL toward a referendum calling for abolition of the death penalty, not merely a moratorium.<sup>53</sup>

Current Catholic teaching may also offer some utility in a process of deliberative democracy or intellectual solidarity. John Langan analyzes *Evangelium Vitae* as a complex and masterfully crafted document that addresses the perspectives of each of the four approaches to the death penalty encountered in the American debate: proportionate response to the most grievous offenses; necessary punishment in service of defense of society; the rights of the offender; and the failings of this punishment in practice. He thus sees it as an important advance toward synthesis of clear tensions in moral methodology.<sup>54</sup>

Taking a further step, though, the same reasoning positions the document well as an advance to further public discussion and potential intellectual solidarity. The tensions permitted to reside in *Evangelium*

*Vitae* could allow it to better serve public discourse, as it will not automatically distance those whose views are not in line with simple abolition.

John Paul II was greatly concerned with the coarsening of human life and moral sensibilities that accompanied the 20th century's "unprecedented slaughter."<sup>55</sup> The Church's desire to promote genuine human flourishing and medicine's pledge to the service of humanity seem to be thoroughly overlapping perspectives. The notion that religious and medical dialogue might have a place in the public discussion of the death penalty in the 21st century would both recall past traditions and envision emerging democratic processes.

This article is an effort in that direction. Ideally, others who are competent to do so will contribute further discussion and insights from other faith traditions or worldviews. The discussions in our medical organizations would be enriched by an appreciation of these lessons, particularly that conceptual tensions may be held in a position statement, leaving room for traditional views while advancing in the practice of compassion. Religious and moral views, as well as science, should inform medical ethics and organizational resolutions. All of these human endeavors should be included in the public discourse aimed at intellectual solidarity among the people of our society. Our most divisive issues require precisely the work of that discourse.

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