POPE FRANCIS AND THE DEATH PENALTY: RECENT REVISIONS TO THE CCC



Writing Samples

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**Introduction**

 On August 2nd 2018, the Vatican published a revision to the *Catechism of the Catholic Church* (*CCC*) regarding the lawfulness of the death penalty. This revision, supervised by Francis I, was described in news outlets as “Pope Declares Death Penalty Unacceptable in all Cases[[1]](#footnote-1)” and “The Pope has a Message for Death Penalty Hypocrites[[2]](#footnote-2).” The sensationalism implied in the major news headlines is warranted, since the Catholic Church has traditionally—which, for an institution of its endurance means for more than two thousand years—upheld the intrinsic morality of the death penalty. This paper will chronicle the history of the Catholic Church’s view of the death penalty. Our considerations will begin with the early Church fathers who supported it, segue to the Middle Age scholastics who also supported it but who disagreed with the Fathers regarding certain applications of it, and conclude with a review of recent controversies over the doctrine and a brief analysis of Francis’s revision to it, along with a preview of the ramifications of that revision.

**Early Church**

 In the early Church, the death penalty was not controversial. It was believed to have a very firm foundation in both scripture and Tradition. St. Paul’s thirteenth epistle to the Romans began by stating

Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. And they that resist, purchase to themselves damnation. For princes are not a terror to the good work, but to the evil. Wilt thou then not be afraid of the power? Do that which is good: and thou shalt have praise from the same. For he is God's minister to thee, for good. But if thou do that which is evil, fear: for he beareth not the sword in vain. For he is God's minister: an avenger to execute wrath upon him that doth evil. Wherefore be subject of necessity, not only for wrath, but also for conscience' sake. (Douay-Rheims)

This passage more or less reads for itself, with St. Paul advising the Romans to regard a lawful state as arbiter of God’s justice, and as such, does not act viciously by executing criminals.

 This is also how the Patristics understood the death penalty. Representing the East, Church Father Saint John Chrysostom, observed of the very passage in Romans that “it is not then the ruler that makes the fear, but our own wickedness” and that the sword-bearer is God’s Minister “in avenging virtue’s cause [and] driving vice away, as God wills.[[3]](#footnote-3)” In the West, Church Father Saint Augustine wrote in *The City of God* that either by way of a general law (of the state) or by way of a special commission, wrongdoers may be executed, and only under these instances is the willful killing of another not classifiable as murder.[[4]](#footnote-4) The early Greek Theologian Saint Clement of Alexandria wrote, regarding the principles of law, that

When [the law] sees any one in such a condition as to appear incurable, posting to the last stage of wickedness, then in its solicitude for the rest, that [the public] may not be destroyed by [the wickedness], it condemns such a one to death, as the course most conducive to health.[[5]](#footnote-5)

Further examples could be multiplied indefinitely, but these three examples suffice to illustrate that the Fathers of the early Church, from east to west, ceded at least in principle the morality of the death penalty.

 This is of course not to say that they were blood-lusting. On the contrary, as many instances as one can find approving of the death penalty in principle could be mirrored by exhortations to avoid it unless necessary. Augustine’s teacher, St. Ambrose of Milan, in replying to the judge Studius who inquired as to the morality of having sentenced a man to death, receives a reply where St. Ambrose affirms that the death penalty is moral on account of Romans 13, but recommends responding mercifully wherever and whenever it is possible to do so.[[6]](#footnote-6) So too did Augustine somewhat consistently argue *against* the death penalty in certain instances, especially as it pertained to the disruptions cause in Christian communities by heretics. In writing to the judge Marcellinus who was supervising the trials of certain Donatist heretics who had executed Christian defectors, Augustine advised the judge to fulfill the “duty of an affectionate father”, letting his indignation be tempered by “considerations of humanity,” being not “provoked by the atrocity of their sinful deeds to gratify the passion of revenge,” concluding in this case that “the necessity for harshness is greater in the investigation than in the infliction of punishment.”[[7]](#footnote-7)

 The Patristic view of the death penalty was that it was moral in principle, but that it should be avoided when clemency would not infringe on public welfare. The Patristic Fathers do not provide much instruction on what conditions *do* warrant the death penalty, but there is something of a strong undercurrent that heretics *do not*, at least not merely by virtue *of* their heresy, deserve the death penalty. This can be seen not only in Ambrose’s assurances to Studius, but also in St. Augustine’s preference of clemency toward the Donatists, as well as in Pope St. Siricius’s and St. Martin of Tours’s condemnations and excommunications of Maximus, Felix, and Ithacius, who all contributed to and participated in the unsanctioned executions of Priscillianist heretics.[[8]](#footnote-8) Even Chrysostom, who clearly favors the death penalty in principle, argued that “God forbids us to put [heretics] to death… just as he forbade the servants to gather up the cockle” due to the possibility of their conversion[[9]](#footnote-9). The baptismal bond shared between Catholics and Christian heretics, in most cases, led to early Churchmen preferring to see heretics spared and hopefully reincorporated into the Church rather than executed.

**The Middle Ages**

 The Church of the Middle Ages taught more of the same. The Church of the Middle Ages was the most doctrinally influential in Church History, inasmuch as this period saw the rise of scholasticism and the incorporation of theological systemism through the incorporation of Aristotle and the development of the Scholastic-Thomist method with figures like Peter Lombard, St. Albert the Great, and St. Thomas Aquinas. Just as not all Patristic figures taught (one way or the other) about the morality of the death penalty, not all scholastics touched the issue either; but as with the Patristics, all who *did* teach on the matter affirmed its morality.

 Aquinas is of course the most notable of these. He directly addressed the morality of the death penalty in his *Summa Theologiae*:

Now every individual person is compared to the whole community, as part to whole. Therefore if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good, since "a little leaven corrupteth the whole lump" (1 Corinthians 5:6)[[10]](#footnote-10).

Although he argued that the morality of the death penalty depends on it being carried out by a lawful authority:

Thus it belongs to a physician to cut off a decayed limb, when he has been entrusted with the care of the health of the whole body. Now the care of the common good is entrusted to persons of rank having public authority: wherefore they alone, and not private individuals, can lawfully put evildoers to death[[11]](#footnote-11).

While the Patristic arguments in favor of the death penalty were primarily informed by Scripture, Aquinas’s arguments in favor of it were informed both by Scripture and by the general metaphysical tradition he developed based on Aristotle. So, he argued both on the grounds of scripture approving of the death penalty and on the grounds of the nature of the state, viz. the provision of the common good. One sees glimpses of such an argument in some of the Patristic works such as *Stromata* of St. Clement, but this view becomes further explicated in the Middle Ages.

 As such, it is in the Middle Ages that we witness a fairly serious tension between the Church and state over the execution of heretics. As previously noted, many of the Church Fathers argued against the execution of heretics, some even on principle, although with others it is not clear whether they argued from doctrine or policy. And until the Middle Ages, heretics often existed peacefully under the state alongside Catholics—not in religious communion, of course, but also not in violent conflict with, either. During the Middle Ages certain heretics proved to be very difficult for the state to manage.

This was especially true of the Cathars, who unconditionally condemned marriage as an institution, who practiced ritual suicide, and who denied that the state had any rights to rule. The Cathars posed, in the view of many Christian rulers, a serious threat to the common good, viewing their doctrines against procreation and in favor of self-harm to be injurious to the proliferation of their societies. Resultantly, one finds many instances in the Middle Ages where secular rulers and even angry mobs execute heretics, usually Cathars, against the express wishes of local ordinaries, and sometimes even in the midst of attempts to proselytize them.[[12]](#footnote-12) The various inquisitions were the Church’s attempt to step in and quell the ire of the state and the people. Secular rulers and lay mobs were not generally capable of even determining *if* someone had truly violated the rule of faith, even setting aside the issue of whether or not they should be executed if they had.

A variety of canonical legislation arose in the Middle Ages to penalize heretics. Excommunication was the approved penalty of the Council of Reims, with the Council of Toulouse and Latern the Council of Lateran also handing over heretics to the state for banishment, privation of property, or monastic imprisonment, although none of these explicitly approved of the execution of heretics, although the Church did not in practice absolutely forbid the state from executing heretics.[[13]](#footnote-13) Aquinas argued in favor of the intrinsic lawfulness of such executions[[14]](#footnote-14). And when Pope Leo X’s Bull *Exsurge Domine* excommunicated Martin Luther in the sixteenth century, among the condemned propositions was included the belief that burning heretics was against the will of the Spirit, a condemnation which arguably settled any debate over whether or not executing heretics was, in principle, moral.[[15]](#footnote-15)

So while there was certainly some level of debate among Church Fathers, Doctors, and even Popes regarding whether or not heretics should be put to death, there was never an argument regarding whether or not the death penalty *itself* was immoral. It was, at most, a doctrinal debate over whether or not heretics *specifically* should be shown clemency or justice. And at that, as heretics began to be deemed more and more disruptive in society, it eventually became clear that while mercy may indeed be preferential to heretics as well, there was certainly nothing *intrinsically* incompatible with revelation for even a heretic to be executed, especially when their heresy was deemed to be a threat to the public welfare.

**Post-Vatican II, the *CCC*, and the Recent Revision**

The manualists of the late nineteenth and early-mid twentieth century persisted in maintaining the intrinsic morality of the death penalty, with no real ceremony or controversy[[16]](#footnote-16). Which is of course understandable, given that by this time there was a clear fifteen hundred-plus year tradition of affirming its morality. A general shift does occur after Vatican II, and especially with John Paul II’s encyclical *Evanglium Vitae*. Theologians typically disagree about the value and meaning of this encyclical, where it was taught that

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.[[17]](#footnote-17)

The “practically non-existent” necessity of the death penalty led many theologians to argue that the Church’s doctrinal position on the death penalty had changed, while others argued that John Paul II—and later Benedict XVI—was simply re-affirming the traditional doctrine while stating that as a matter of practice, the confinement of criminals in the twenty-first century was often sufficient for justice’s sake.[[18]](#footnote-18) The “practically-non existent” applicability of the death penalty was appended to John Paul II’s Catechism (the *CCC*) and has become a popular appeal for interlocutors on both side of the argument to explain “what the Church really teaches.”

 Of course the significance of a change in *teaching* (rather than merely an observation about the *applicability* of some moral principle in a particular social atmosphere) is that the Church isn’t allowed to actually *change* principles. The infallibility of the Church, as it’s called, precludes the possibility of error being contained in universal teaching, which can either occur at an ordinary and universal level, or at a solemn level (i.e., either something taught everywhere by everyone, or something solemnly defined by the pope under special conditions).[[19]](#footnote-19) While a great deal of controversy between pro and anti-death penalty Catholics has existed over John Paul II’s comments, Francis’s revision to the Catechism fans that fire.

The revision of the Catechism reads, in part, this way:
Consequently, the Church teaches, in the light of the Gospel, that “the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person”,[1] and she works with determination for its abolition worldwide[[20]](#footnote-20).

At face value, it certainly seems difficult to view this revision as maintaining the traditional doctrine of the death penalty’s intrinsic morality. It is one thing to say that the death penalty just “usually doesn’t apply,” or to emphasize the virtues of mercy over those of justice, but another thing altogether to state that the death penalty is plainly “inadmissible,” no less *on the grounds of the Gospel*, and even further less, committing the Church’s practice to abolishing it universally. This certainly does not appear to be a very nuanced view of the death penalty, but an absolutist one—one which absolutely concludes *against* its lawfulness.

 As a recent event, there isn’t much fallout from theologians and commentators yet. Attempts to reconcile the revision with the traditional doctrine will likely be incoming, although it’s difficult to imagine how that case will be made. The new revision certainly does not appear to make any attempts to reconcile *itself* with those previous teachings, even acknowledging that the death penalty was “long considered an appropriate response” to grave times on the way to stating that the death penalty is inadmissible—which certainly *sounds* as though the revision is attempting to indicate that something has *changed*.

 In the larger picture, this revision is one teaching in a long line of teachings which have contributed to what closely resembles a schism in the Catholic Church between traditionalists, conservatives, and the more progressively minded. Various traditional factions, such as the Society of Pope Pius X or the various sedevacantist communities, have long argued that the teachings of the post-Vatican II popes, including and especially Francis, deviate from the infallible teachings of the Catholic Church, some even arguing that these deviations are proof that these men *aren’t* popes, but anti-popes. And while such groups and arguments, while well-known, have often remained on the “fringe” of the Catholic world, the continued teachings of Francis have caused considerable consternation among conservatives who are unsure how to respond, and who find themselves closer and closer to “the fringe.” Time will bear out the full ramifications of this revision and its impact on the Catholic world. It is welcome news to those who view the Church as something that can and should change its doctrines, but it is a great source of anxiety and confusion for those who regard the Church’s moral teachings as immutable.

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2. Jay Parini, ‘The Pope has a Message for Death Penalty Hypocrites,’ *CNN*, 2 August 2018 [↑](#footnote-ref-2)
3. St. John Chrysostom, ‘Homily 23 on Romans,’ §§4-5 [↑](#footnote-ref-3)
4. St. Augustine, *City of God*, Bk. I, Ch. 21 [↑](#footnote-ref-4)
5. St. Clement of Alexandria, *Stromata*, Bk. I, Ch. 27 [↑](#footnote-ref-5)
6. St. Ambrose, ‘Letter 25: Ambrose to Studius.’ §1 [↑](#footnote-ref-6)
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8. Johann Peter Kirsch, ‘Pope St. Siricius,’ from *The Catholic Encyclopedia*, 1912, §§1-4 [↑](#footnote-ref-8)
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11. *ST* II-II, Q 64, A 3 [↑](#footnote-ref-11)
12. Vacanard, pp. 30-49 [↑](#footnote-ref-12)
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16. Edward Feser and Joseph Bessette, *By Man Shall his Blood be Shed*, 2017, Ignatius Press: San Francisco, pp. 170-72. [↑](#footnote-ref-16)
17. John Paul II, *Evangelium Vitae*, 1995, §56 [↑](#footnote-ref-17)
18. Feser and Bessette, pp. 144-196 [↑](#footnote-ref-18)
19. Denzinger, §1792 [↑](#footnote-ref-19)
20. *CCC* Revised, 2018 [↑](#footnote-ref-20)