

# **TALK: THE PENALTY OF DEATH AND A CONSISTENT ETHIC OF LIFE**

## **Talk to California People of Faith Working Against the Death Penalty**

**March 24, 2011; Queen of Apostles Church, San Jose**

### **Introduction**

Thank you for the invitation to join you tonight, and to speak about yet another controversial issue in which the Church does not hesitate to involve herself. So often on these critical life issues, it seems that the Church is a voice crying in the wilderness. Certainly, we are called to proclaim the truth, as St. Paul tells us, in season and out of season, whether convenient or not.

Whenever the Church speaks out on these issues, she does not do so out of self-interest. The Church, as an institution and as a community, gains nothing materially from actively advocating for a culture of life. Indeed, sometimes doing so causes us hardship: the expenditure of limited resources, political backlash, unpopular positions, calumny in the entertainment and news media, and so forth. Sometimes it seems to me that every position favoring the culture of life is the unpopular one these days. The issue of capital punishment is no exception!

### **The Full Spectrum of Life Issues**

I am very grateful that I was asked to speak about this matter in the context of a consistent ethic of life. The question of capital punishment fits right within that continuum, which embraces a wide range of issues. These issues are all inter-related, even if they have to be distinguished one from the other. I would categorize all of these according to a three-tiered system of grouping.

The first tier consists of those issues which fall directly under the umbrella of the fundamental, non-negotiable principle that it is never morally licit to take an innocent human life. This, then, regards, among others, the issues of abortion, euthanasia and embryonic stem cell research. On these issues there is no room for debate, for they always involve the taking of an innocent human life.

The second tier involves matters which pertain to life and death questions in and of themselves, but do allow for a certain degree of difference of opinion because not all of the principles related to them are absolute. In these matters, the Church advocates for the higher

moral ground, as this more fully affirms human dignity and favors a culture of life. The Church's advocacy for the abolition of death penalty lies in this tier, as does her insistence on strict adherence to the criteria for just war when the decision to go to war is under consideration.

The third tier covers a wide range of critical issues which, although not immediately life-and-death matters, do regard the most basic requirements of human dignity and, if not addressed in a morally sound manner, can bring one to a human condition that is on the brink of a life and death situation. Among the currently more prominent social justice concerns in this category are those of immigration, health care reform and housing.

Again, these issues cannot be equated in the sense that they cannot be painted all with the same brush. Yes, they are all part of the fabric that is the seamless garment of the consistent ethic of life, but one must remember that a garment has a collar, and it has a hem – not all parts are the same, but they are all part of the same fabric. This means that there are consistent underlying principles affirming human dignity which apply to all of them, but which may be played out differently within each issue, especially according to the tier in which it lies. So, for example, the evil of taking an innocent human life is absolute, there are no exceptions; this is a truth firmly established in Church teaching and, moreover, one that is knowable from the natural law, that is, by reason alone. Thus, there can be no dissent from the Church's teaching on the evil of abortion, euthanasia and embryonic stem cell research.

It gets more complicated in the second and third tiers. Here, there is room for differences of opinion, to a certain degree and under certain circumstances. I do not use here the word "dissent." When it comes to a defined doctrine of the Church – whether through a Solemn Judgment by an Ecumenical Council or *ex cathedra* pronouncement by the Roman Pontiff, or through the Ordinary Universal Magisterium – there can be no dissent. Some of the teachings pertaining to these issues lie in this category. Other teachings, though, are more a matter of guidance the Church's pastors give to their people, wherein the Church's authentic teachers strive to help their people inform their conscience in a truly Christian way and according to sound moral teaching on issues that are often complex and sensitive. I am hesitant to use the word "dissent" in this latter case, because "dissent" connotes a position contrary to what is proposed as binding by a legitimate authority. In this area it would be more a matter of divergence, disagreement, or even difference of opinion – which, nonetheless, is not a matter to be taken lightly.

At any rate, if we look at the second tier, we can take the just war theory as an example (I will treat the topic at hand a little later, after establishing these principles). The conditions for a just war are by now firmly established within the Church's teaching tradition, such that no one can legitimately dissent from them: no one can believe in good conscience that a war can be just if it is perpetrated against an innocent people, for example, or if the means used go beyond what is necessary for a nation to defend itself. However, when it comes to a decision about a particular war, one may be of an opinion different from Church authority about the legitimacy of the war if the Church's teaching authority were to pronounce on it, provided, of course, that one exercised due diligence in properly informing one's conscience on the matter. Similarly, it is always morally legitimate to hold the position of pacifism: we are not morally obliged to exercise the right to legitimate self-defense.

To take an example from the third tier: on the one hand, people have the right to immigrate when they have legitimate need; on the other hand, nations have the right to control their borders. These are the parameters, and they are principles well established in the Church's social teaching. They must, though, balance each other out without cancelling each other out. This is where there is some room for divergence: some may favor giving emphasis more to one principle than the other on the basis that it is a better policy, but they cannot deny the other. Likewise here, there is no moral obligation to exercise the right: a nation may legitimately choose to allow open borders provided it does so in a legally valid way, just as people with legitimate need to immigrate may choose to remain in their homeland.

We can see, then, how the life issues span the entire political spectrum. Some people who are active in one of these issues may often not feel comfortable in the political circles of those who are active in some of the others. We must, then, break through this political divide. We are living in a very politicized world, where people view these social issues through a political lens, and so evaluate everything according to the platform of a political party rather than according to what most affirms human dignity and builds a culture of life. We have to teach our people to view the world through the lens of a consistent ethic of life. Looking at these issues as a whole, this will put us all over the political spectrum. And, as I mentioned at the outset, very often it will put us on the unpopular end of the spectrum with each particular issue. Neither side is exempt from this!

## **The Issue of Capital Punishment**

How, then, do we break through this polarization? We Catholics are in the best position to accomplish this, because we have a body of social teaching and of moral teaching, and those Catholics mature in their faith understand the need for both, how they complement each other for the flourishing of society and the flourishing of the individual. We must, then, urge our own people to listen to the Church's Magisterium, objectively, serenely and unemotionally – even where the Church teaches outside of her defined doctrine. Yes, one can, under certain conditions, legitimately disagree on these points, but one can never do so lightly and without a concerted effort to inform oneself of the issue, to understand what the Church teaches and the positions the Church takes and why, and in light of all the factors – the principles involved, what can be known from scientific inquiry, the practical and political realities to be considered, and so forth – inform one's conscience. Anything else is just plain irresponsible and lazy!

I can speak here from personal experience. I myself struggled with the issue of capital punishment in my younger years. I suppose I was something of a fence sitter, not really feeling comfortable or confident coming down on either side. I thought maybe I was okay with its use in rare cases. The more I thought about it, though, the more I saw the reasonableness of the arguments against it. I pondered on the fact that the sentence of life in prison without the possibility of parole can adequately protect the citizenry from violent criminals, a primary obligation of the state and reason for its penal system. I finally concluded that the only reason to resort to the death penalty was to save the state money, eliminating the prisoner rather than paying to keep the prisoner alive behind bars. This is putting a price on human life, which cannot but be immoral, even in the case of a violent criminal. Of course, as you know, what I presumed to be the case with the costs involved is not true – it is much more expensive to execute a prisoner than to apply the sentence of life without parole. So, not even the presumption of that flimsy reason is valid!

It was by listening and pondering, sincerely thinking the issue through as completely as I could, that I, yet again, came to understand the wisdom of the Church. I then understood with greater clarity the soundness of all of arguments against the imposition of the death penalty. Of course, you are all already well familiar with these arguments, I'm sure more so than I am; I'm singing to the choir here. Still, I would like to comment on a few of these that we know well and accept.

There is the argument that capital punishment disproportionately affects the poor and racial minorities. Let's face it: wealthy people do not get executed! Should the decision whether or not to put a convicted criminal to death depend on whether or not the criminal has the economic resources to hire the most expensive, high-powered attorneys? I must admit – and I'm sorry that I have to do so – that, while I have visited inmates in jails and prisons, I have never had a visit with anyone on death row. I'm sure many of you have. You see their faces and hear their stories first hand; I have only heard them second hand. And yet, that is enough for me to recognize the broken family and social background that they come from. I'm not espousing the philosophy of determinism, trying to assert that people are not responsible for their actions. They are. At the same time, though, some people get such a bad start in life that, without the assistance of some mentoring from the outside – from Church, school or some social service agency – they are all but destined to a life of vice and crime. How great of a chance for a happy, successful and virtuous life does one have whose mother did drugs with him since he was eight years old because she had no one to share the experience with, and who saw her turning over boyfriends coming in and out of the house all throughout his growing up years? I'm sure you all have many other stories you can add, perhaps even worse. Now, we must acknowledge that not all of those who favor the use of capital punishment are of the same mindset. Some favor it regrettably. But for those who are death penalty enthusiasts, who get charged up and feel vindicated every time an inmate is put to death, I wish they could meet those whose deaths they would cheer, see their faces, listen to their stories, and get to know them. And then meet their loved ones, and get to know them, too. Hard theory looks a lot different when a human face is put on it.

We know, too, that capital punishment does not serve as a deterrent. All one has to do is consider the state of violence in our society now compared to thirty-five years ago, when the death penalty was reinstated. This is definitely not a “kinder, gentler America.” The causes of violence are much deeper and, therefore, so are the solutions. That is why I find it so disconcerting to hear politicians say they are going to “get tough on crime” by “cracking down” with more severe sentencing and a generous application of the death penalty (okay, “generous” is my word, not theirs). If they really want to crack down, how about getting more intentional in putting incentives in place that keep to keep families together, especially getting fathers to be responsible toward their children and punishing deadbeat dads? How about fixing our

educational system, building in discipline and accountability so that students more consistently pay the consequences of irresponsible behavior and reap the rewards of good conduct and hard work? How about favoring policies that promote restorative justice, so that when prisoners complete the terms of their sentence they will actually stand a good chance of not repeating their crime? On this last point our Catholic tradition has much to offer. I would cite as one example a teaching of Pope John Paul II in his Jubilee Homily to Prisoners in Rome on July 9, 2000:

Punishment cannot be reduced to mere retribution, much less take the form of social retaliation or a sort of institutional vengeance. Punishment and imprisonment have meaning if, while maintaining the demands of justice and discouraging crime, *they serve the rehabilitation of the individual* by offering those who have made a mistake an opportunity to reflect and to change their lives in order to be fully reintegrated into society [emphasis original].

Perhaps most tragic of all is the fact that there is no way to make reparation for a wrongful conviction. This is very troubling indeed, especially considering that since the 1970's there have been more than 120 exonerations of death row inmates (Death Penalty Information Center, 2005). The finality of the death penalty allows no room for error. Which brings us to the bottom line in all of this: this most extreme measure can only be justified if it is the only means for society to protect itself from violent offenders. This is the application of the principle of legitimate self-defense at the societal level. That principle provides that, when non-lethal measures can be used to adequately defend oneself, those are the measures which must be taken. Pope John Paul II's treatment of this principle in number 56 of his Encyclical, *Evangelium Vitae*, has become the oft-cited reference point in this whole debate:

It is clear that ... 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.

Still, the principle remains that the state does have right to resort to capital punishment when it deems that measure necessary to protect its citizens. As the Catechism of the Catholic Church teaches (n. 2267):

The traditional teaching of the Church does not exclude, presupposing full ascertainment of the identity and responsibility of the offender, recourse to the death penalty, when this is the only practicable way to defend the lives of human beings effectively against the aggressor.

If, instead, non-lethal means are sufficient to defend against the aggressor and to protect 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..

And then at this point the Catechism quotes the teaching of John Paul which I just cited.

In the paragraph right before this (n. 2266), the Catechism speaks of the punishment of criminals as belonging to the state's responsibility of safeguarding the common good. This, though, must always be in proportion to the gravity of the offense: the punishment must fit the crime. At this point the Catechism teaches the various purposes of punishment, highlighting, again, that it is not so much retribution as protection of society and rehabilitation of the offender:

Punishment has the primary aim of redressing the disorder introduced by the offense. When it is willingly accepted by the guilty party, it assumes the value of expiation. Punishment then, in addition to defending public order and protecting people's safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.

It is important to note that, when the Church speaks of cases necessitating the penalty of death as "very rare," this phrase is not meant in relation to the gravity of the crime, that is, that this extreme measure is *per se* always justified when applied to the most extreme of heinous crimes. Rather, it is meant in reference to the question of whether or not it is possible for society to adequately defend itself otherwise. Even the most violent criminal should not be put to death if society can adequately protect itself from such an offender without doing so.

The right of the state to apply the penalty of death in these well-defined circumstances remains because capital punishment is not an intrinsic evil, in that it does not involve the taking of innocent human life – at least in theory, anyway. That, of course, is precisely a big part of the problem, indeed, the biggest part. As I referenced a moment ago, we know that mistakes do happen. It is bad enough when such mistakes result in an innocent person's precious years of life being wasted away in prison, although even here at least some attempt at reparation can be made. Obviously, though, there is no way to call someone back from the dead to repair the damage done!

### **Teaching the Consistent Ethic of Life**

How, then, do we get the Church's message across, beginning with our own people? First of all, let's note some positive signs of progress being made.

- Catholic opinion on this issue is shifting: fifteen years ago, 70% of Catholics favored the use of the death penalty; now, that number is under 50%, with "respect for life" cited as a primary reason for opposing it ("A Culture of Life and the Penalty of Death," Statement of the United States Conference of Catholic Bishops, 2005, page 8, footnote 5).
- In the last few years, the U.S. Supreme Court has issued decisions that give encouragement to those of us who oppose the use of capital punishment, namely, that mentally retarded persons (*Atkins v. Virginia*, 536 U.S. 304 [2002]) and offenders who were minors when the crime was committed (*Roper v. Simmons*, 125 S. Ct. 1183 [2005]) are not eligible for the death penalty.
- The governor of Illinois has recently signed a law abolishing capital punishment in that state.
- In doing so, Illinois joined three other states that have made the same move in the last two years: New York, New Jersey and New Mexico.

On other hand, the United States remains as one of the nations which most use the death penalty. For example, in the year 2008, 2,390 people were executed in twenty-five nations; over half were done in China, followed by Saudi Arabia, the United States, Pakistan and Iraq ("Illinois Gov. Quinn signs bill banning death penalty," Reuters, Wed, Mar 9, 2011). That is not very comfortable company to keep when it comes to track records on human rights. In this light,

we can appreciate all the more the oft-repeated maxim that resorting to capital punishment diminishes us all. So, then, while there are signs of progress, we do still have lots of work to do!

I would therefore like to comment at this point on a teaching of the late Cardinal Bernardin which he articulated in a talk he gave at St. Louis University in 1984. As we know, he used the “seamless garment” image to describe the consistent ethic of life, and he explained in this talk the need to distinguish among four distinct dimensions involved in adhering to such a consistent ethic.

The first level he describes as one of “a single [general] principle with diverse applications.” This is the principle that prohibits direct attacks on innocent life. He speaks of how the application of this principle has different constituencies in society, for example, those who are committed to the abortion issue, peace activists who are concerned about war, and those who are dedicated to care of the aging and dying. He urges these constituencies to “see the interrelatedness of their efforts.” As he says, if this “[fundamental] principle is eroded in the public mind, all lose.”

The second level he describes stresses the distinctions among issues rather than their similarities. Given these distinctions, we need various moral principles to apply to different cases, that is, not all the same principles can apply to all the issues, given their differences. As he says, “Not all moral principles have relevance across the whole range of life issues. Moreover, sometimes a systemic vision of the life issues requires a combination of moral insights to provide direction on one issue.” So, while abortion and capital punishment are not the same issue and cannot be addressed in exactly the same way, nonetheless, recent Popes and bishops of our own country and many others have opposed the state’s exercise of its right to execute violent criminals in order to promote a greater respect for life in public opinion.

The third level “involves how we relate a commitment to principles to our public witness of life.” The Church is involved in a wide range of issues, and no one person can do everything. There must be a consistency in how we approach this wide array of issues, so that the Church will speak with credibility. I would add here that this is precisely why the Church’s pastors must not play partisan politics, but rather stand apart in order to critique and pronounce on the moral ramifications of public policy. As pastors, we must also encourage the lay faithful to fulfill their calling to be engaged in the political process to work for the common good, and we must provide them the formation, direction and leadership they need in order to do so.

The fourth level he speaks of has to do with the relationship between moral principles and concrete political choice. While all of these issues present the most serious of moral concerns, their fate is decided in the political process. Since they are so wide-ranging, a dialogue is necessary in order to promote the affirmation of human dignity in all of the political decisions affecting these issues. As he says, “A consistent ethic of life seeks to present a coherent linkage among a diverse set of issues. ... The Church legitimately fulfills a public role by articulating a framework for political choices by relating that framework to specific issues and by calling for systematic moral analysis of all areas of public policy.”

### **Practical Suggestions**

The challenge for us, then, is to move our people to understand this linkage among the various issues: how they fit together; what are the consistent, universal principles which must always be observed; where the higher moral ground lies and why; where it is a matter of prudential judgment; and where, how, and to the extent one may diverge from the what the Church’s authentic teachers propose on these critical questions in areas that are not a matter of defined doctrine. We need strategies to break through the political polarization in which we are immersed and, sadly, affects the viewpoints of so many of our people. This is most easily and readily seen by two of the most hotly debated subjects among the various life issues: abortion and capital punishment.

I think we can move our people to greater linkage by speaking to those who are committed activists on either one or the other of these issues, and – as well as affirming them for their dedication and good work for the common good – challenging them to honesty and objectivity in embracing the totality of the Church’s teachings in all of their complexities concerning these matters.

To those who are pro-life activists on the abortion issue but disagree with what the Church has articulated on the issue of capital punishment, or at least are hesitant to accept it, I would suggest challenging them to the following:

- 1) First, as mentioned above, urge them to study what the Church teaches about capital punishment and why, take it to heart, seriously ponder it, and pray over it. Remind them that responsibility demands that they do this, and that, even though this is Church

teaching that is *not* a matter of doctrinal definitions, nonetheless, no one can legitimately diverge from it without giving it a serious and objective hearing.

- 2) To the extent that they diverge from the teaching, help them to understand – if it is necessary – that they cannot take such a position out of a sense of vengeance, and that they must uphold the principle that this most extreme punishment can only be applied in rare circumstances. This is a part of Church teaching which has universal application, and so does not allow for dissent.
- 3) And even if they do diverge, persuade them to admit the legitimacy of the arguments on the other side, even if they are not convinced that these are the stronger arguments. This will help build up a sense of good will and, hopefully, help them to understand that those of us who are Catholics in good faith and opposed to the use of the death penalty are acting not out of some sort of political ideology, but rather, out of our conviction that this better contributes to building a culture of life.
- 4) Urge them to continue to study, learn, and seek to understand. It is a serious matter to diverge from the direction of the Church's teaching authority, even if it is a matter that allows for some diversity of opinion.
- 5) If they don't already, get them to recognize that the goal on the abortion issue is not to make abortion illegal, but non-existent. While making abortion illegal may well serve as a very helpful means to this end, the ultimate goal is to realize a world in which women are so valued that no woman would feel the need or ever want to resort to abortion.
- 6) Finally, help them to keep focused on the big picture, the overall vision: building a culture of life. And also help them to recognize that those working to end the death penalty share the same vision.

With regard to those who are committed to building a culture of life through ending the death penalty, but are shy when it comes to the abortion issue, this is where I believe they need to be challenged:

- 1) First, just as with those in the other camp, these people, too, need to be urged to study Church teaching in this area and understand the distinctions among the principles involved in the life issues, what is binding in Church teaching and where there is room for divergence.

- 2) Urge them to recognize that Catholics can in good conscience disagree to some extent and under certain conditions on this issue, as hard as that may be to accept, and acknowledge the good will of those who do so responsibly, with a properly informed conscience.
- 3) Encourage them to persevere nonetheless, to continue to seek to convince others of the sanctity of life of those on death row by persuasion rather than dogmatic pronouncements, by appealing to the higher moral ground and to what is noblest in people's natural sense of decency and goodness.
- 4) As I also mentioned above, not everyone opposed to capital punishment is of the same mindset. To the extent necessary, help them to acknowledge this, and not to think of those who disagree with them on this issue as all belonging to one political stereotype. They are on a spectrum, and many are good Catholics of good will. Entering into a respectful dialogue can go a long way to helping both sides understand the consistency of the Church's message on these issues.
- 5) Remind them to always keep their focus fixed on the moral issue, not the political. The big picture is the same, the vision shared by all those who are activists on all of the life issues: building a culture of life.

A final word to priests and deacons, that is, those entrusted with the ministry of preaching: do not be afraid or reluctant to preach about these issues. It's easy to say that "it all has to do with politics, so I'm not going there," but that is the cowardly way out. These are moral issues, and they therefore must enter into the object of our preaching. Yes, it is difficult; yes, we must take great care to be sensitive and not offend, but we must do so in a way that does not water down the challenge that our people need to be presented. In my experience, it is important to give both kinds of homilies: those that affirm our people, and those that challenge them. We all need to be challenged on these sensitive issues, not all on the same issue and not all in the same way, but all do need to be challenged. And yes, it's a challenge to us to preach the Church's teachings in this area. To do so well, with both compassion and conviction, is emotionally draining, it feels like we've given a pound of flesh. But I say, if you've never preached and afterwards felt like you have given a pound of flesh, then you've never really preached.

## **Conclusion**

I began by mentioning how grateful I am to be asked to speak about the question of capital punishment in the context of a consistent ethic of life. I have always sought to focus on this theme as one of the primary principles to be upheld in my own teaching ministry. It certainly places us across the spectrum in our politically-charged society, and we will not find a happy home at any one place on it. But we should be accepting of that: as Christians, our true home is not here, but in God's Kingdom. As Christians, we are merely pilgrims in this life, journeying toward that final destination.

Advancing the cause of life advances us along this road. Thank you for advancing the consistent ethic of life, for affirming human dignity and advocating for the sanctity of human life in every stage and in every condition where it is placed in peril. And let us remember always to keep our eyes fixed on that final destination, for in God's Kingdom no one is expendable, all life is precious, and all enjoy the life of eternal glory with our Risen Lord and Savior, Jesus Christ.