

Is the Death Penalty, Ethical?

Reynaldo A. Reyes, University of Santo Tomas, Philippines

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Abstract

Death Penalty (DP) becomes more controversial after Pope Francis revised the New Roman Catechism declaring that DP is 'inadmissible in all cases.' This disturbs the conscience of Catholic Justices, Senators, and Politicians. The Papal pronouncement is premised on DP's attack against human dignity—which is an Ethical issue. My paper focuses on: *Whether DP is an attack against human dignity?* Arguments FOR or AGAINST DP remain unsettled. For the Abolitionists, DP attacks human dignity by *infringing the inalienable right to life*, but they are uncertain in what way it *violates* such right. The Retentionists maintain that DP *defends* such right, but the explanation remains unclear. The controversy lies on the *inalienability* of the 'right to life' which '*no man can give up, and no one can take it away from him.*' Does DP take away the right to the life of the criminal? If so, how? Or in what manner it does not? My paper argues the key word is 'right to life' which combines two *distinct* orders: 'moral' and 'biological.' Thus, 'right to life' means the person has the moral claim (right) to biological existence (life). By his heinous crime, the criminal departs from the moral order—leaving behind his 'right' which *he lost* by his crime. The state *can now take away not his 'right'*—but *his life* as the penalty for defiling the right to the life of another.

Keywords: Death Penalty, Ethics, Church, Catechism, Right

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Introduction

It started in Europe. There is a worldwide movement to abolish Death Penalty Law. States which terminate DP increase each year. As if to deliver the fatal blow for its total abolition, Pope Francis declared that DP is *inadmissible in all cases because it is an attack against human dignity*.

Why is the new Papal teaching significant to the current debate on the Death Penalty?

It disturbs the International politics. Papal teaching on faith and morals is binding in conscience which commands assent among the faithful. The revised new 2267 Catechism on Death Penalty disturbs the conscience of many Catholic theologians, laity, Justices, Senators, lawmakers who favor the Death Penalty.¹

It disturbs me too. As a Catholic Educator in a Catholic University which supports Pope Francis' new 2267 on Death Penalty — can I dissent?

Is the Death Penalty, ethical? The word 'Ethical' means a *reasonable act* that conforms to certain norms by which we say 'it is right' or 'it is wrong.' Rightness or wrongness implies norms, in case of human acts—law and right conscience. A right conscience is an ethical *conclusion* inferred from Law and facts. The Law regulates reason, and human reason interprets and applies it to a particular situation.

This paper assumes objective morality; it does not debate with relativism or subjective moral theories, and with those who think human *rights* are of social origin, reducing morality to social or cultural norms. If some human acts are deemed per se good and evil, then there is an objective morality which preserves society and transcends culture. Objective morality is enshrined in our rational nature—the source of human dignity.

The term 'Death Penalty' refers to: (1) as a *penalty* and, (2) the *act* of the State to execute criminals to preserve social order (common good). This paper deals with the ethics of DP as 'penalty' which is the basis of the lawfulness of the act of the State to impose it.

Question: Is Death a *just* penalty for a grievous crime? Is there a crime so heinous to deserve Death— when per the Universal Declaration of Human Rights and the Church teaching— the *Right to life* is inalienable, thus inviolable? If it is inviolable, then DP appears unlawful, and its imposition is—inhuman. Does a criminal lose his human dignity by his crime?

This paper addresses **Two ISSUES:**

- 1. Is the revised New 2267 of the New Catechism on the death penalty,— binding in Catholic Conscience?**
- 2. Is the Death Penalty, an attack on the dignity of the human person?**

¹ "New York Gov. Andrew Cuomo vowed to introduce legislation to remove the death penalty from New York state law... On the other hand, late Justice Antonin Scalia said he didn't find the death penalty immoral, and that any judge who did should resign." <http://www.ncregister.com/blog/edward-pentin/pope-francis-changes-catechism-to-declare-death-penalty-inadmissible>

First Issue: Is the new 2267 on Death Penalty binding in Conscience among Catholics?

Premise 1: *if the new 2267 agrees with the traditional teaching of the Church, then it is binding in Conscience.* The Papal teaching is binding in conscience when it derives its authority from the traditional teachings of the Church. *Implicit in it is, if the Pope teaches a contrary doctrine—his pronouncement cannot claim to teaching authority much less infallibility— hence it does not bind.* This is so because there is a distinction between the man and his Office, the Pope and his Papal seat. The doctrine of Authoritative teaching belongs to the Office (Seat of Peter), not to the man in it. The Magisterium cannot err because of the promised Divine Assistance to the Papal Office—this is a Dogma.

Premise 2: The Catechism “is the compilation of official Catholic Teaching” on Faith and Morals. The Church is the ‘*Mater et Magistra*’ (Mother and Teacher); her teaching authority (Magisterium) is the source of Doctrinal unity which preserves the teachings of Christ handed to His Apostles down to the Fathers of the Church, and down to the Doctors of the Church, and the Popes to the Church—which must persist to the present.² There is no historical record of any papal pronouncement, decree or encyclicals— contrary to any traditional teaching even during the reign of some bad Popes. The Catholic Catechism summarizes such doctrinal unity.

Is the revised new 2267 in harmony with the traditional teaching?

Does the new 2267 conform to the *Divine and Ecclesiastical laws* on the Death Penalty?

Traditionally, the Church holds the lawfulness of DP by recognizing the state’s duty and power to execute criminals found guilty with heinous crimes (this is explicit in the Church’s longstanding **Catechisms**:

The Catechism of the Council of Trent:

Another kind of slaying is also permitted, which applies to those civil magistrates, to whom is given the power of life and death, by the legal and judicial use of which they punish the guilty, and protect the innocent. Far from involving the crime of murder, the just exercise of this power is an act of paramount obedience to this divine law (thou shalt not kill), which prohibits murder. For since the end of this commandment is the preservation and security of human life, to the attainment of this end the punishments inflicted by the civil magistrates, who are the legitimate avengers of crime, naturally tend, giving security to human life by repressing audacity and outrage with punishments.³

² “The witness of the tradition is important not only for the sagacity of its arguments. For the interpretation of *Evangelium vitae* must take account of a basic principle: as a magisterial document, its meaning is constituted with tradition. The claims for doctrinal development have, so far, seemed to ignore this fact.” Steven Long. “*Evangelium Vitae*, St. Thomas Aquinas, and the Death Penalty. *The Thomist* 63 (1999): 511-52

³ The Catechism of the Council of Trent For Parish Priests. Translated by O.P. John A. McHugh, S.T.M., Litt. and Charles J. Callan, O.P., S.T.M., Litt. North Carolina: TAN Books, Question IV on the 5th Commandment.

The Revised Catechism (Pope John Paul II) 1992/1997 n. 2267 on Death Penalty) reads:

Assuming that the guilty party's identify and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty[...].⁴

On the contrary, **Pope Francis' Revised new 2267 (2018)** reads:

Recourse to the death penalty by legitimate authority, following a fair trial, was long considered an appropriate response to the gravity of certain crimes and an acceptable, albeit extreme, means of safeguarding the common good.

Today, however, there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, do not deprive the guilty of the possibility of redemption.

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,' and she works with the determination for its abolition worldwide.⁵

Whereas the traditional teaching recognizes its lawfulness, the revised new 2267—deems DP unlawful. Thus: the new 2267 of Pope Francis is not in accord with the Traditional Teaching on DP

Regarding this, **Catholic Theologians are divided.**

A. Some theologians who support Pope Francis' new 2267 on DP argue that it is in harmony with the traditional teaching⁶ because *it is an 'authentic development of doctrine,' building on the teaching of Pope St. John Paul II and Benedict XVI,⁷ which rests heavily on Pope St. John Paul II's Evangelium Vitae statement that 'Not even a murderer loses his personal dignity and God himself pledges to guarantee this.'⁸*

⁴ “When St. John Paul II published the catechism in 1992 it still admitted the use of the death penalty (No. 2266). But strong reaction from bishops and the faithful in many countries led him to revise the text in 1997, with the help of then-Cardinal Joseph Ratzinger. The revised text (No. 2267), however, still did not exclude the death penalty on moral grounds as Pope Francis did today; it said that given the possibilities the modern state has of rendering the criminal incapable of doing harm again, then “the cases in which the execution of the offender is an absolute necessity ‘are very rare, if not practically non-existent.”<https://www.americamagazine.org/faith/2017/10/11/pope-francis-death-penalty-contrary-gospel>.

⁵ The new revision of number 2267 of the Catechism of the Catholic Church on the death penalty.

⁶ Capital Punishment: Francis & the Tradition Before Him Are both Right.”

<http://www.patheos.com/blogs/throughcatholiclenses/2018/08/capital-punishment-francis-the-tradition-are-both-right/>. Also see <http://www.ncregister.com/blog/edward-pentin/pope-francis-changes-catechism-to-declare-death-penalty-inadmissible>

⁷ Pope Francis Changes Catechism to Say Death Penalty ‘Inadmissible’

<http://www.ncregister.com/blog/edward-pentin/pope-francis-changes-catechism-to-declare-death-penalty-inadmissible>

⁸ The Letter of Cardinal Ladaria, SJ prefect of the Congregation of the Faith

B. Some dissenters argue that the traditional teaching admits the lawfulness of DP which the new 2267 one does not. The former speaks of its 'admissibility' while the latter speaks of its 'inadmissibility.' Betraying a substantial doctrinal Change, the new 2267 is not a development of Catholic doctrine but a disengagement from it—they claim. They likewise argue *Ad absurdum*: If the revised new 2267 is RIGHT, then the scriptures, previous Popes, the Fathers of the Church, the Doctors of the Church like St. Augustine and St. Thomas Aquinas, St. Thomas More, a Papal decree, an Apostolic Constitution, and St. Paul are in ERROR.⁹ But it is absurd that the scriptures, in particular, St. Paul, the unanimous teachings of the Fathers of the Church, the Doctors of the Church, the Council of Trent—to be in ERROR.¹⁰

More importantly, there is no scriptural basis against DP; on the other hand, there are lots of Scriptural texts which support it. For instance, from the Old Testament: “*Wizards thou shalt not suffer to live*” (Ex. 22:18); and: “*In the morning I put to death all the wicked of the land*” (Ps. 100:8). From the New Testament:

St. Paul: “*If then I am a wrongdoer, and have committed anything for which I deserve to die, I do not seek to escape death.*” (Acts 25:11) ” Again, “*Let every soul be subject to higher powers. For there is no power but from God: and those that 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.*” (Romans 13:1-4).

One argues: ‘But Pope Francis as Pope has Infallible authority?’ We reply, So did his predecessors who were unanimous recognizing the right of the state to execute criminals in accord with the Fathers and Doctors of the Church. To mention:

The Popes:

Pope Innocent I: “*It must be remembered that power was granted by God [to the magistrates], and to avenge crime by the sword was permitted. He who carries out this vengeance is God’s minister (Rm 13:1-4). Why should we condemn a practice that all hold to be permitted by God? We uphold, therefore, what has been observed until now, in order not to alter the discipline and so that we may not appear to act*

⁹ Steve Skojec <https://onepeterfive.com/category/1p5-blog/>. "It is the nearly unanimous opinion of the Fathers and Doctors of the Church(1) that the death penalty is morally licit, and the teaching of past popes (and numerous catechisms) that this penalty is essentially just (and even that its validity is not subject to cultural variation). Saint Augustine says, in The City of God:

‘The same divine law which forbids the killing of a human being allows certain exceptions, as when God authorizes killing by a general law or when he gives an explicit commission to an individual for a limited time. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment, Thou shalt not kill, to wage war at God’s bidding, or for the representatives of the State’s authority to put criminals to death, according to law or the rule of rational justice.’” Steven A. Long. “*Evangelium Vitae*, St. Thomas Aquinas and the Death Penalty.” The Thomist, 63 (1999):511-52

¹⁰ “It is the nearly unanimous opinion of the Fathers and Doctors of the Church(1) that the death penalty is morally licit, and the teaching of past popes (and numerous catechisms) that this penalty is essentially just (and even that its validity is not subject to cultural variation)”. Steven Long, The Thomist. *Evangelium Vitae*, St, Thomas Aquinas...p.511

contrary to God's authority."¹¹

Pope Leo *Condemned* as an error "That heretics be burned is against the will of the Spirit."¹²

Pope Pius XII: "Even in the case of the death penalty the State does not dispose of the individual's right to life. Rather public authority limits itself to depriving the offender of the good of life in expiation for his guilt, after he, through his crime, deprived himself of his own right to life."¹³

The Doctors of the Church:

St. Augustine:

*"The same divine authority that forbids the killing of a human being establishes certain exceptions, as when God authorizes killing by a general law or when He gives an explicit commission to an individual for a limited time. The agent who executes the killing does not commit homicide; he is an instrument as is the sword with which he cuts. Therefore, it is in no way contrary to the commandment, 'Thou shalt not kill' to wage war at God's bidding, or for the representatives of public authority to put criminals to death, according to the law, that is, the will of the most just reason."*¹⁴

St. Thomas Aquinas:

Every part is directed to the whole, as the imperfect to perfect, wherefore every part exists naturally for the sake of the whole. For this reason we see that if the health of the whole human body demands the excision of a member because it became putrid or infectious to the other members, it would be both praiseworthy and healthful to have it cut away. Now every individual person is related to the entire society as a part to the whole. Therefore, if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and healthful that he be killed in order to safeguard the common good, since 'a little leaven corrupts the whole lump'(1 Cor. 5:6)"¹⁵

Thus, Pope Francis's new 2267 departs from the Apostolic Tradition; thus, it does not carry infallible teaching authority granted to the Papal Office—hence it is not binding in conscience.

How about the Second Issue: Is the Death Penalty an attack against Human Dignity?

Pope Francis may be right; he may be right that DP is an attack against human dignity which the Apostolic Tradition might have ignored. The traditional teaching ever since recognized the dignity of the innocent, however, it might have ignored the new insight

¹¹ (Pope Innocent 1, Epist. 6, C. 3. 8, ad Exsuperium, Episcopum Tolosanum, 20 February 405, PL 20,495)

¹² Pope Leo X, Exsurge Domine (1520)

¹³ (Pope Pius XII, Address to the First International Congress of Histopathology of the Nervous System, 14 September 1952, XIV, 328)

¹⁴ St. Augustine, The City of God, Book 1, chapter 21

¹⁵ St. Thomas, Summa Theologiae, II, II, q. 64, art. 2.

regarding it which Pope John Paul II in his *Evangelium Vitae* emphasized that *HUMAN DIGNITY is never lost despite how serious the crime a person commits*.¹⁶ With it as his premise, Pope Francis concludes that DP is unlawful because DP attacks human dignity.

But, is DP an attack against human dignity?

For the abolitionists, it does because DP violates the right to the life of the person. Pope Francis confirmed the abolitionists' position by declaring with Pope John Paul II that the criminal does not lose his personal dignity even after committing grave crimes.¹⁷ *Moreover*, it is not necessary to execute criminals because there are more effective systems of detention to prevent them from harming others, and *besides*, we must give criminals the chance to reform.

The reasoning goes this way:

If a man does not lose his personal dignity by his crime, then he does not deserve the death penalty (Conditional Premise).

But, the criminal by his crime does not lose his personal dignity (Pope John Paul II E.V.).

Ergo, the criminal does not deserve the death penalty (Pope Francis, n.2267).

The keyword is "personal dignity," or "human dignity."

We take 'human dignity' in two senses: 1) the *metaphysical* dignity which refers to human nature which is never lost, and 2) *moral* dignity which refers to moral innocence.

With this distinction, we agree with the *Conditional Premise* if it means the criminal does not lose his 'moral dignity' or innocence. Conversely, the same *Conditional* implies if the Criminal loses his moral dignity by his crime, then he deserves death. However, we distinguish the **Minor premise**: "*the criminal by his crime does not lose his personal dignity.*" (Pope John Paul II, EV):

If by *personal dignity* it means the '*metaphysical dignity*' of man—we agree. It is man's absolute nature which transcends any condition which he cannot lose even by his worst crime. But, if it means the criminal does not lose his moral dignity by his offense, we disagree because a man loses his moral innocence by his crime.

Pope John Paul II refers to the *metaphysical dignity* of man which is never lost¹⁸ and not to the moral dignity which someone can lose by his crime. That a man loses his

¹⁶ John Paul II, Encyclical Letter *Evangelium vitae* (25 March 1995), n. 9: AAS 87 (1995), 411.

¹⁷ Pope Francis echoes PJP's *Evangelium Vitae*, however, he has another interpretation. For PJP Human dignity which is not lost is the Human nature itself (metaphysical) which could be the basis of one's guilt and deserving punishment which could also be the reason for mercy. Pope John Paul II does not contradict the traditional teaching but mellowed its imposition in his revised 2267 (1992/1997) stating that DP is appropriate in rare cases. For him, it 'can be imposed' but 'should' not be imposed in most cases.

¹⁸ John J. Coughlin, "Pope John Paul II and the Dignity of the Human Being." Notre Dame Law School NDLS Scholarship.
https://scholarship.law.nd.edu/law_faculty_scholarship/?utm_source=scholarship.law.nd.edu%2Flaw_f

moral dignity by his offense is consistent with the Scriptural texts, with the magisterium, with the teachings of the Doctors of the Church—and Civil laws. Theologically, the crime deforms the image of God in the criminal by desecrating the image of God in the Innocent. If moral dignity is not lost by any offense, then any form of human punishment is unreasonable.

Question: *How can the criminal lose his moral dignity when the right to life is inalienable? An inalienable right is that which 'the individual cannot give up, and no one can take it away from him.' Now, it seems DP takes away such right to life. Ergo, DP violates the inviolable right to life. It seems.*

Answer: 'Right to life' is a compound of two distinct concepts 'right' and 'life.' Now, 'right' is of the moral order, while 'life' is of the biological order. Thus 'right to life' means a *moral claim to biological existence*. Animals have a natural claim to life but not a moral claim because they are not persons. Only persons have moral claims as rights—this is fundamental.

Now, when a man commits a grievous crime, he *strays* from the moral order where all his rights reside—including his 'right' to life. In the words of Aquinas, the criminal reduces himself to the level of the 'beast' losing his innocence. Losing his innocence, the criminal loses his moral dignity.¹⁹

It is at this instance that the state can take away his LIFE not his 'right' which he lost by his crime. Therefore, DP does not violate the RIGHT of the criminal but defends and preserves it including his right. In other words, the lawfulness of DP is derived from the RIGHT to Life itself. The more we affirm the sacredness and inviolability of human dignity, the more we must affirm the severe penalty violating it by taking away the criminal's life. Hence, ironic it may sound but DP is PRO-RIGHT to LIFE, and its abolition is not.

Should it be imposed?

DP is not an attack against human dignity and even defends it but *should* it be imposed? ²⁰ DP *can* be imposed (lawful), but *should* it be imposed on this or that criminal? Is there a necessity, a grave reason to impose it? ²¹ Here lies the distinction between the law and its implementation. A law may be just but may be unjustly implemented, or the state may not find it necessary.

For *Pope John Paul II*' DP is lawful but should be imposed only in *extreme* cases, and it belongs to the State to implement it justly.

It belongs to the State which is in charge of the Social Order to impose DP. It considers and determines whether or not it should be imposed on this or that criminal. Is it necessary to impose at all? Once we identify the lawfulness of DP, the question of its imposition follows by considering the following purposes of punishment:

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¹⁹ Catechism of the Council of Trent, Q. !V.

²⁰ The question of 'should' follows the question of 'can.'

²¹ The Principle of double-effect applies to the question of 'should it be done?'. Assuming that DP is good per se or at least indifferent, one condition to justify it is if there is a grave reason to impose it.

Retributive that the crime is so heinous that retribution is necessary as the penalty for the crime required by justice. Dissenters argue that retribution is vengeance. But Retribution is not vengeance, i.e., to quench the anger against the criminal instead it is a punishment for the wrong done to restore the order of justice disturbed by the crime. The order is restored when the criminal is stripped of something good because of his offense. The punishment ought to be proportional to the gravity of the crime which is the condition of the punishment. DP's medicinal purpose is situated within its retributive aspect.

Reformative if it is the only way to reform the criminal from his evil ways. This is the medicinal aspect of DP, i.e., concerning the criminal. He deserves severe punishment, even death, for grave crimes. That it reforms or rehabilitates the criminal accepting the penalty is incidental. However, Capital punishment can help criminals reform by allowing them to prepare for death. As Samuel Johnson famously noted, "Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully."²²

Deterrent if its imposition shall deter potential crimes; if it does not deter then with the greater reason they should impose it. Steven Long regarding this says: *Even the punishment that is inflicted according to human laws is not always intended as a medicine for the one who is punished, but sometimes only for others: thus when a thief is hanged, this is not for his own amendment, but for the sake of others, that at least they may be deterred from crime through fear of the punishment, according to Prov. 19:25: "The wicked man being scourged, the fool shall be wiser." Accordingly, the eternal punishments inflicted by God on the reprobate, are medicinal punishments for those who refrain from sin through the thought of those punishments, according to Ps. 59:6: "Thou hast given a warning to them that fear Thee, that they may flee from before the bow, that Thy beloved may be delivered."*

Defense of the State if it is the only way to defend the common good. "Previously, the catechism said the church didn't exclude recourse to capital punishment if this is the only possible way of effectively defending human lives against the unjust aggressor."²³

Assuming, that it should be imposed, Pope John Paul II pleads "Mercy to those on the death row." The criminal may deserve death for his crime but mercy may commute it to life imprisonment.

Conclusions:

This paper has shown that:

1. The New Revised n. 2267 of the New Catholic Catechism regarding DP is not in accord with the Traditional Teaching of the Catholic Church, hence it is not binding in Catholic Conscience.

²² Christopher Kaczor. "Did the Church Change its Teaching on the Death Penalty" The Rock, vol. 21, no. 4

²³ Nicole Winfield, Associated Press. <https://ph.yahoo.com/news/pope-shifts-church-death-penalty-103647335.html>

2. Death Penalty does not attack human dignity since it does not violate the right to life of the criminal. On the contrary, it is lawful and at times necessary because it defends and protects the right to life of the innocent, and prevents serious harm to the state.

3. However, though the criminal deserves death for serious crime, the State, to which belongs the power and duty to execute, may grant pardon to reform his ways using the principle of double effect in light of the four reasons of punishment: retributive, reformative, deterrence, and defense of the common good.

4. This paper admits the possibility of judicial error in DP, thus recommends to the state to provide competent legal defense counsel to the convicted, and observe strictly fair litigation using technology available to prevent judicial errors. More importantly, to seek a more humane way of execution.

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Contact email: reybleess@yahoo.com