

Spring 2010

From Augustine to Scalia: Catholic Thought and Capital Jurisprudence in the United States

William Gohl
Regis University

Follow this and additional works at: <https://epublications.regis.edu/theses>



Part of the [Arts and Humanities Commons](#)

Recommended Citation

Gohl, William, "From Augustine to Scalia: Catholic Thought and Capital Jurisprudence in the United States" (2010). *All Regis University Theses*. 493.
<https://epublications.regis.edu/theses/493>

This Thesis - Open Access is brought to you for free and open access by ePublications at Regis University. It has been accepted for inclusion in All Regis University Theses by an authorized administrator of ePublications at Regis University. For more information, please contact epublications@regis.edu.

Regis University
Regis College
Honors Theses

Disclaimer

Use of the materials available in the Regis University Thesis Collection ("Collection") is limited and restricted to those users who agree to comply with the following terms of use. Regis University reserves the right to deny access to the Collection to any person who violates these terms of use or who seeks to or does alter, avoid or supersede the functional conditions, restrictions and limitations of the Collection.

The site may be used only for lawful purposes. The user is solely responsible for knowing and adhering to any and all applicable laws, rules, and regulations relating or pertaining to use of the Collection.

All content in this Collection is owned by and subject to the exclusive control of Regis University and the authors of the materials. It is available only for research purposes and may not be used in violation of copyright laws or for unlawful purposes. The materials may not be downloaded in whole or in part without permission of the copyright holder or as otherwise authorized in the "fair use" standards of the U.S. copyright laws and regulations.

**FROM AUGUSTINE TO SCALIA:
CATHOLIC THOUGHT AND CAPITAL JURISPRUDENCE IN THE UNITED
STATES**

**A thesis submitted to
Regis College
The Honors Program
in partial fulfillment of the requirements
for Graduation with Honors**

**by
William Gohl
May 2010**

Thesis written by
William Gohl

Approved by

Dr. Byron Plumley, Thesis Advisor

Dr. Ronald DiSanto, Thesis Reader

Accepted by

Dr. Thomas Bowie, Director, University Honors Program

TABLE OF CONTENTS

Introduction	1
I. <i>Quid Pro Quo</i> and Casting the First Stone: Augustine and Aquinas on the Death Penalty	5
II. Moses, <i>Machaira</i> , and Bloodless Means: Scriptural and Catechismal Approaches to Capital Punishment	18
III. Tragic Cases and the Consistent Ethic of Life: Contemporary Catholic Thought and Teaching on Capital Punishment	32
Intermezzo	45
IV. Antonin Scalia and the Machinery of Death: Weighing Oaths as Catholic and Jurist	49
V. John Suthers and the Prosecution of Capital Offenders: Seeking the Best Answer for Society's Greatest Evils	65
VI. Living on the Ground with Helen Prejean: Facing the Realities of American Capital Punishment	76
Conclusion	101
Afterword	104
Bibliography	110

ACKNOWLEDGEMENTS

Many thanks first, of course, to Dr. Byron Plumley, advisor of this project, who has encouraged me throughout to not only explore the depths of issues raised in discerning the morality of capital punishment in an academic sense, but to consider what the exploration will mean for my practiced life. Thanks as well to Dr. Ron DiSanto, who has consistently encouraged me to understand what the law is, what it should be, and what my part is in making it such. Finally, an insufficient but sincerely given thank you to Dr. Thomas Bowie, a true mentor and friend in scholarship who has both shown and taught me how to live as a man for all seasons throughout this project, during the entirety of my time at Regis University, and beyond.

I submit this project with gratitude to Colorado Attorney General John Suthers and Sr. Helen Prejean, both of whom were kind enough to grant personal interviews that were extremely helpful in my deliberation and writing, with sincere thanks to Judy Lucero, to whom I wish the strength of our Lord in her continual effort to save lost souls, and with heartfelt prayers for Larry Matthew Puckett, that he may live each day with meaning and purpose.

Finally, I thank my family, and particularly my father, for their support in April 2009 when I entered the Roman Catholic Church. The decision was a difficult one for our family, but I hope this project serves as a celebration of our eternal unity in the love of Christ.

INTRODUCTION

In April 2009, after baptism, confirmation, and twenty years as a Missouri Synod Lutheran, I entered the Roman Catholic Church. My reasons for doing so were manifold, but included an attraction to a sense of community in the Mass and the various mysteries of sacramentality, among other things. The fact is, in part, that Regis University and its Catholics sold me on Catholicism; they asked me how I might live and think better, and when they showed me how, their example was often Catholic. I also met Catholics outside of Regis, like my grandparents, various individuals at St. Mary's High School in Colorado Springs, CO, my alma mater, and Colorado Attorney General John Suthers, whom I discuss at length in this project, who opened my eyes to Catholic theology and the raw power of Church teaching, starting me on a road of direction and prayer that ended in a second confirmation of my Christian identity.

During my time at Regis, I have also spent a significant amount of time researching legal questions and interning in legal settings. My career interests include public service of the legal variety, potentially as a criminal prosecutor. An interest in the law has led me, on various occasions, to the questions and controversy which surround the United States' practice of the death penalty. Though I have attended various talks and lectures on the subject, worked with attorneys who prosecute or defend capital cases, and visited Colorado's highest prison facility, my personal experiences with capital punishment have been very limited. These limited experiences did, however, spark an

interest in further exploring the topic of capital punishment and contemplating some of the most difficult moral questions it raises that American society faces today.

As a new Catholic, I thought that my exploration and contemplation might be focused best through the lens of Church teaching, both for the purpose of limiting the scope of the project and ensuring relevance personally. What follows here, therefore, is a novice Catholic and aspiring attorney's study of the Church's teaching on capital punishment and the manner in which the teaching is applied today in the United States. The first half (Chapters 1-3) surveys some of the most important contributions to the Church's teaching on the death penalty through time, including select writings of St. Augustine of Hippo and Thomas Aquinas, Scriptural and Traditional resources on the subject, the Consistent Ethic of Life movement's statement against the death penalty, and Pope John Paul II's contribution to the discussion in *Evangelium Vitae*. The survey engages various areas of inquiry, but is in no way comprehensive, and leaves ample room for future research and expansion. It asks, what, exactly, is the Church's position on capital punishment, and how has it evolved through time? Has the evolution been *consistent* through time? How and from where can Catholics understand the teaching? How *should* they understand it? Is it possible to interpret the teaching in various ways?

The second half (Chapters 4-6) analyzes the contemporary approaches of Supreme Court Justice Antonin Scalia, Suthers, and death penalty abolitionist Sr. Helen Prejean as Catholics to issues and situations of capital significance in the United States, raising various additional questions. How are Catholics involved in America's use of the death penalty, and how do they inform their moral approach to capital punishment?

Again, how *should* Catholics reconcile various and competing ideologies and responsibilities surrounding the practice of the death penalty, whether faith-based, duty-bound, or otherwise? In light of Catholic teaching, should the United States use the death penalty, does it need capital punishment, and how should Catholics act given the system as it is? These questions are complicated and difficult, and I do my best to answer them, if only in part, while leaving much to be explored.

In Suthers' *No Higher Calling, No Greater Responsibility: A Prosecutor Makes His Case*, a tremendous work which I discuss thoroughly in Chapter 5, he mentions a paper he wrote in college entitled "The Death Penalty: Cruel and Unusual or Just Unusual" in which he offered his overall support for the death penalty.¹ "I had no real-world experience with capital punishment at the time and no strong feelings about it," Suthers explains regarding the paper, suggesting that his eventual real-world experiences with the death penalty as a prosecutor truly shaped his conscience regarding capital punishment, and that he had no personal conviction on the subject until living with it.² While my conscience may be slightly better informed about the death penalty as a college undergraduate and my convictions on the subject a bit stronger than Suthers's were during his time as an undergraduate at Notre Dame, I echo his sentiment before beginning. Again, I am little more than a novice Catholic and aspiring attorney, and I have much to live and see before I can make any statement of finality on what I know and believe about capital punishment. I am in no way an expert in the discussion to come. I

¹ John Suthers, *No Higher Calling, No Greater Responsibility: A Prosecutor Makes His Case* (Golden, CO: Fulcrum Publishing, 2008), 56.

² *Ibid.*

am, however, brave and curious, qualities necessary in asking the difficult questions this project raises, and qualities readers may find helpful in moving forward. This project was not easy, nor is the subject of capital punishment. Human life and the pursuit of the best means of defending and preserving human life, however, are well worth the effort.

I

Quid Pro Quo and Casting the First Stone: Augustine and Aquinas on the Death Penalty

In the Gospel of John, Chapter 8, scribes and Pharisees bring to Jesus a woman caught in the act of adultery. Disrupting his teaching in the temple at the Mount of Olives, they set the woman in the center of their court, asking Jesus to put aside his ministry and assume the role of judge. John's account of the incident suggests that those who brought the woman forth did so to test Jesus, to see how he might respond to a heinous wrong in Hebrew society. "Now in the law, Moses commanded us to stone such women," they told Jesus. "So what do you say?"³ Without hesitation, Jesus stooped down to write on the ground with his finger, crouching down beside the alleged adulteress at her position in the center of the court, seemingly disinterested in their challenge. "Let the one among you who is without sin be the first to throw a stone at her," he said finally to the Church leaders anxiously awaiting his statement of judgment.⁴ As the leaders slowly left the Church, one by one, no stones thrown, the court's silence and vacancy aptly indicated no one would meet Jesus's standard for authoring judgment. "Woman, where are they? Did no one condemn you?" Jesus then asked the woman, now alone with her in the court. "I do not condemn you either," he

³ United States Conference of Catholic Bishops, *New American Bible*, John 8:5, <http://www.usccb.org/nab/bible/john/john8.htm>.

⁴ *Ibid.*, John 8:7.

resolved. “Go. From now on, sin no more.”⁵ The woman rose, left, and Jesus remained, continuing to pray and write indistinguishably with his finger in the ground. Readers can easily distinguish, however, his answer of forgiveness over condemnation as a definitive statement of the Gospels on true justice. Faced with death, life endured for the adulteress, because no one could justify taking it away – not even Christ himself.

The story of this incident, and Jesus’ statements in it, have endured as well, a consistent point for reflection by many contemplating the morality of capital punishment. St. Augustine of Hippo, in his 5th century commentary on the Gospel of John, engages this story directly in the context of judicial authority. “This is Justice speaking: the sinful woman should be punished, but not by sinners,” Augustine differentiates, Justice being Christ himself. “This Law should be fulfilled, but not by those who violate the Law. This is certainly Justice speaking: and others were hit by justice as if it were a wooden club.”⁶ Justice’s wooden club came in the form of a finger scrawling something in the ground, but its unconventional form carried the same effect, calling to mind the ignored sin of those so intent on identifying it in the woman at the center of the court. Augustine advances this premise – that those without sin can judge the wrongdoing of others, and not otherwise – through much of his writing. “First, for your own sake, act as judge on yourself,” Augustine writes in his Sermon on Psalm 2:10.⁷ “Judge yourself first, then you’ll be able to leave the inner cell of your conscience in security and go out to someone else.”⁸ Stipulated in the requirement to assume a position of judgment is clarity of

⁵ Ibid., John 8:10-11.

⁶ St. Augustine of Hippo, *Political Writings* (New York, Cambridge University Press, 2001), 105.

⁷ “And now, kings, give heed; take warning, rulers on earth.” – NAB, Psalm 2:10

⁸ Augustine, *Political Writings*, 124.

conscience, a quality the scribes and Pharisees lacked and Jesus possessed, but did not want to lose by ending the adulteress's life. For the purposes of judgment, however, self-reflection can facilitate this clarity. According to Augustine, this reflection allows the act of judgment to separate *sin* from *sinner*, an examination of conscience which prevents sin from becoming a definitional element of identity. Only when this reflection is applied transitively, then, can judgment be carried out in a way that respects the humanity of a sinner over the evil of a particular sin. And at this juncture, judgment ceases to condemn, if it is even judgment at all, but instead moves toward acceptance and reconciliation: go forth, and sin no more.

Given Augustine's understanding of judgment, then, capital punishment, an extreme form of condemnation, is morally untenable. A penalty of death removes the humanity which true reflection upon judgment separates from the sins of humanity, thus making it impossible for punishment to advance beyond sin itself. Augustine, therefore, concludes the following about the death penalty:

Do not, therefore, when you are attacking the sin, put the human being to death. Avoid the death penalty, so that there's someone left to repent.

Don't allow the human being to be killed; then someone will be left to learn the lesson.⁹

After punishment, someone, *some human person*, Augustine emphasizes, must be left to repent for his/her sin, rather than end in it. Furthermore, if one passes the judgment of death on another for a particular sin, the judgment ends in sin as well, as justice is a mere

⁹ Ibid.

response *in* sin, rather than redemption *of* it. In this sense, judgment is not a righteous activity entirely separate from the sin upon which it deliberates, but a practice intricately tied to humanity. “If you take action against the crime in order to liberate the human being,” Augustine writes in his 153rd letter to Macedonius, “you bind yourself to him in a fellowship of humanity rather than injustice.”¹⁰ Judges are linked to those they judge, not only in the factual matter of judgment, but in the humanity that fundamentally joins them. If consideration of the crime itself outweighs the understanding of humanity present in the mind of a judge, then injustice ensues. Judgment, according to Augustine, should become an act of humanity-focused reformation, rather than a determination of sin in one sinner by another. Judgment that does justice, therefore, should exclude the recourse of capital punishment, which degrades and destroys humanity.

Given Augustine’s recognition of the prevalence of sin in the human condition, however, and his hesitancy to endorse the judgment of sinners by sinners, a seemingly impossible societal need emerges: for some human person or body to assume the duty of judging humanity. For this entity to be possible on Augustine’s terms, it would not only have to be aware of its own faults and humanity, but committed in judgment to the humanity of wrongdoers as demonstrated through the ability to separate an individual’s wrongdoing from their person. Despite this seeming impossibility, however, Augustine believes the divine authority of the State answers this societal need. In establishing this authority in his consideration of Psalm 2:10, he turns to Paul’s words in Romans 13:

¹⁰ Ibid., 73.

Let every person be subordinate to the higher authorities, for there is no authority except from God, and those that exist have been established by God. Therefore, whoever resists authority opposes what God has appointed, and those who oppose it will bring judgment upon themselves.¹¹

In essence, God remains the ultimate authority. Transitivity, however, he invests his authority in the governing bodies of society, establishing a structure by which humanity can judge itself, though only with the understanding that the structure comes through and from divine authority. Although Augustine acknowledges the human flaws of those who assume this divinely-given authority through judgment, he nonetheless implores those subject to bodies of authority to comply with their governance. “For either you act justly, and a just authority will praise you,” he proposes, “or else, when you act justly, even if an unjust authority condemns you, God, who is just, will crown you.”¹² The failsafe to the potentially unjust actions of governing authorities is God himself, the true author of redemptive justice. Citizens submitting to governing bodies, therefore, should have no trial of conscience in accepting their authority. Thus, governing entities within society, though admittedly imperfect, are given authority and the capacity to pass judgment, along with the expectation that authority is exercised in a way that promotes the general life and well-being of humanity.

In order to promote life, governing authorities, particularly those in Augustine’s 5th century society, have taken (and still take) certain measures to protect life and ensure

¹¹ *NAB*, Romans 13:1-2. Augustine, *Political Writings*, 123.

¹² *Ibid.*

safety given the sinful and violent nature of humanity. For this reason, Augustine authorizes the legality of capital punishment as a means of legitimate defense (a concept discussed at length in Chapter 2), given the need for a punishment in his time that removed lethal offenders from society in order to protect the lives of the general citizen population. In the first book of *City of God*, he specifically addresses authority's capacity to defend:

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.¹³

Augustine believed state executions were a direct translation of God's will in certain instances, despite his wish that executions not occur. Given the societal conditions of his time and the divinely-given authority of the state, executions were a necessary evil – evil because homicide, as he indicates, is a forbidden wrong, despite its apparent necessity. With this understanding, Augustine stipulates an exception for those who kill on behalf of the state, separating executors from the inherent sin of their action:

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

¹³ St. Augustine of Hippo, *The City of God against the Pagans* (New York: Cambridge University Press, 1998), 33.

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

Referencing Romans 13:4, Augustine extends his reflection on Paul's earlier words in the epistle. Because agents of execution are truly agents of the state, which, fundamentally, is an agent of divine authority, state executioners, and those who authorize their actions, do not truly commit homicide when ending the lives of aggressive criminals. In fact, the law that provides for their action – the law of the state which sanctions the penalty of death – is an expression of “the will of the most just reason,” a will that, as Augustine indicates, can come from God alone. The state and its agents, therefore, are instruments of God's will, and their actions of execution are justified accordingly.

Augustine does not, however, suggest that the divinely-given authority of the state removes its autonomy, and that capital punishment, though a necessary societal defense, is the *right* way of justice, though he acknowledges its legality and justification. As indicated above, he emphasizes the need for punishment to separate sin from sinner in order to preserve and redeem the lives of wrongdoers – to leave someone to learn the lesson, rather than end their along with the lesson. When his statements on capital punishment are understood holistically (as they are often not), it is the justice found in writing with a finger in the ground that carries the weight of a wooden club, not the necessary evil of state execution carried out by instruments of the sword. Augustine's justice, though it accepts the need to legitimately defend society, is not a virtue of condemnation. Instead, given the sins of humanity, justice is corrective and redemptive,

¹⁴ Ibid.

rather than an expression of retributive judgment. In many ways, Augustine’s conception of justice mirrors that of Thomas Aquinas, partners in foundational Church teaching on the subject. In the 13th century, eight centuries following Augustine’s primacy, Aquinas wrote the *Summa Theologiae*, in which he asks many of Augustine’s questions and forms his own definition of justice, particularly as applied to capital punishment. Like Augustine, he acknowledges the need to defend society from wrongdoers, but not without a true understanding of the purpose of punishment: correction, and not retribution.

Justice, according to Aquinas, is in part commutative, and yet largely distributive. “Justice,” he defines, “is a stable and lasting willingness to do the just thing for everyone.”¹⁵ Actions, therefore, are not only relevant in the effect they have on the individuals who perform them, but in the resulting effect for communities and societies as a whole. Commutative justice, which determines individuals’ statuses from an arithmetic derivation of interactions between each other, differs in scope from distributive justice’s focus on the balance and equality individuals’ actions bring to their community. The idea of *quid pro quo* – “something for something” – which calls for an equal and opposite reaction for every action from one individual to another, derives first from an understanding commutative justice. Restated, *quid pro quo* often becomes “an eye for an eye,” a standard of commutative justice that those who support capital punishment often hold (more to come on “an eye for an eye” in Chapter 2). *Quid pro quo*, however, cannot be understood correctly without incorporating certain elements of distributive justice. “In all cases commutative justice demands equality of recompense,” Aquinas establishes,

¹⁵ St. Thomas Aquinas, *Summa Theologiae*, Trans. Timothy McDermott (Notre Dame, IN: Christian Classics (Ave Maria Press), 1989), 383.

“but not necessarily *an eye for an eye*, i.e. returning the identical action: status differences enter in, and simple restitution of property stolen would not inflict a loss on the thief nor compensate for the damage done to public safety.”¹⁶ Said differently, commutative justice, which Aquinas first promulgates, cannot exist without a necessary element of distributive justice: a thorough understanding of the human individuals (commutative) who engage in larger relationships and action together (distributive).

Aquinas sees capital punishment, therefore, as a necessary remedy, in some instances, to restore both commutative and distributive standards of justice. “When one can’t restore the equal of what has been taken,” he explains, “recompense must be made as far as possible” in order fulfill the writ of *quid pro quo*.¹⁷ “As far as possible,” as Aquinas and both his society and contemporary communities conventionally understand it, is the intent of imposing the penalty of death, or taking, in commutative terms, a life for a life. Capital punishment, according to Aquinas, can be a necessary measure of societal justice, and he proposes the following:

If a man is a danger to the community[,] threatening it with disintegration by some wrongdoing (murder) of his, then his execution for the healing and preservation of the general good is commendable. In doing wrong[,] men depart from the order laid down by reason, falling away from their human dignity in which they are by nature free and exist for their own sake.¹⁸

¹⁶ Ibid., 388.

¹⁷ Ibid.

¹⁸ Ibid., 389.

The death penalty, in his view, can both heal and preserve; it can both mend the societal pain murder brings, and protect a society from additional murder as well. When an individual makes the choice to murder another, Aquinas also asserts that that individual sacrifices the freedom of autonomy of human dignity, the virtue Augustine stresses as the core of every individual. Aquinas, does not suggest, however, that individuals' human dignity disappears irretrievably. Rather, he entrusts the dignity of malefactors to the public authority, much like Augustine looks to agents of divinely-given authority to step in and protect society as needed.

Both Augustine and Aquinas, therefore, consent to the basic principles of legitimate defense as applicable to capital punishment. Aquinas bases his argument for legitimate defense on the concept of "double effect," a relationship that remains today the Church's expressed reasoning in allowing capital punishment in very limited circumstances.¹⁹ "An act of self-defence may have two effects: it may save one's own life and cost the attacker his," Aquinas delineates.²⁰ Conceptually, the public authority, duty-bound to defend society, may have to take the life of an offender in order to protect the lives of society, the latter motivation intended, the former a necessary act of protection.²¹ State executions, according to Aquinas, are never a preferred action, but given the double effect of self-defense, can sometimes become necessary in order to truly protect and promote societal life. "The only people who may deliberately kill in self-defence are those with public authority to do so for the general good," Aquinas specifies, arriving at

¹⁹ See the *Catechism of the Catholic Church*, par. 2263.

²⁰ Aquinas, *Summa Theologiae*, 390.

²¹ *Ibid.*

the same conclusion Augustine reaches regarding the transference of divine, judicial authority.²² Similarly, at this juncture, the duty of the agent of public authority who carries out a state execution is not a commutative action of murder which weighs on the conscience of bearer of the sword. Rather, state executions are a distributive measure of justice, and for Aquinas, a necessary, albeit regrettable, action of legitimate self-defense by society aimed at restoring *quid pro quo* as far as possible.

Many stop reading, or stop remembering, Aquinas at this point, subscribing to *quid pro quo* alone and finding the supposed backing for the death penalty they seek in his writing. In the same way, many start reading Augustine in *City of God*, establish the divinely-given authority of the sword to carry out state executions, and pay no attention to his reflections upon Jesus and the adulteress in John 8, content with his statements on Romans 13 alone. These individuals start and stop reading Paul in Romans 13, but should understand Paul more thoroughly (as I discuss in Chapter 2), and read him more widely, much like they should both Augustine and Aquinas. After establishing the groundwork for double effect and self-defense, Aquinas concludes his discussion of capital punishment and justice with the following sentiment:

Penalties imposed in this life are corrective rather than retributive, for retribution is reserved to God's judgment. So men should not be sentenced to death in this life for fatal sins [...]²³

These sentences, though rarely quoted or referenced, best outline Aquinas' position regarding capital punishment, more than *quid pro quo*, more than double effect.

²² Ibid.

²³ Ibid., 391.

Retribution, he states, or true authority of judgment, as Augustine establishes, belongs to God, and God alone. Restorative measures of human judgment and punishment, rather, must be *corrective* in nature and instituted only under the transitive property of divine authority which Augustine and Aquinas place in the state when necessary. Aquinas, like Augustine, understands the hideous and atrocious nature of murder – which, in reality, will never have an equal answer in murder, *quid pro quo* – and, therefore, permit the rare instance of death as punishment, which, in their societies, was necessary to promote life.

Augustine and Aquinas, however, should not be construed as the full-fledged advocates for the death penalty that many often see. Their guiding question is truly not “Is capital punishment permissible?” but instead “What can be done to best promote life and justice in society?” and for both, corrective punishment recurs thematically as much or more than the infrequent necessity of the death penalty. For Augustine, discussions of punishment and justice, at their core, must hold true to love for humanity:

Why are you destroying the person you judge by failing to *love* him? For you’re destroying justice by failing to love the person you’re judging.

Punishments should be imposed; I don’t deny it; I don’t forbid it. But this must be done in the spirit of love, in the spirit of concern, in the spirit of reform.²⁴

Do today’s agents of the sword, divinely authorized to carry out state executions as needed, see their actions as outcomes of *love*? These agents back their actions with Augustine’s words, and in some instances, rightfully so. In other instances, however,

²⁴ Augustine, *Political Writings*, 125 (emphasis supplied).

agents neglect the spirits of love and reform, mistakenly assuming the role of grand retributor. It remains true that Augustine and Aquinas acknowledged the permissibility of capital punishment in their societies. Their statements, however, statements that outline the earliest Church teaching regarding capital punishment, should be taken in the larger context in which they view punishment as primarily corrective, urging the patience of love and reform in those so eager to cast the first stone.

II

Moses, *Machaira*, and Bloodless Means:

Scriptural and Catechismal Approaches to Capital Punishment

Official teaching of the Catholic Church on a variety of subjects, including capital punishment, frequently stands upon two pillars: Sacred Tradition and Sacred Scripture. Augustine and Aquinas, for example, are two of the Church's most frequent Traditional contributors, and as indicated, Scripture plays a dominant role in their consideration of the death penalty. As Catholics look to the Church for teaching, they recurrently research Traditional and Scriptural foundations. These pillars, as described together in the *Catechism of the Catholic Church*, reflect the transmitted will and teaching of Christ:

Sacred Tradition and Sacred Scripture, then, are bound closely together and communicate with the other. For both of them, flowing out of the divine well-spring, come together in some fashion to form one thing and move towards the same goal. Each of them makes present and useful in the Church the mystery of Christ.²⁵

Thus, Tradition and Scripture, united sources of divine knowledge, collaborate to instruct and inform Catholics as to the nature and intention of Christ's mystery and the Church's teaching which stems from it, teaching that addresses everything from sacramental graces and the Eucharist to social issues such as the death penalty. It is vitally necessary,

²⁵ *Catechism of the Catholic Church*, Libreria Editrice Vaticana (New York: First Image Books (Doubleday), 1997), par. 80.

therefore, that a consideration of Church teaching regarding capital punishment involves both Traditional and Scriptural voices, helpful resources as Catholics discern matters of capital significance within their consciences.

Scriptural foundations for capital punishment are a matter of interpretive contention. Proponents of capital punishment frequently cite Scriptural evidence as backing for their arguments in favor of state executions. Those who oppose capital punishment, however, argue that Biblical passages that seemingly support capital punishment often retain an alternative meaning when read in the proper context and original language (rather than as an isolated English translation). Biblical authorities discuss capital punishment in various instances – Old Testament and New, Gospel and Epistle, Minor and Major Prophet – and in various applications, cultures, and time periods. Among the many Scriptural passages that are relevant in some capacity to consideration of the death penalty,²⁶ two passages, Leviticus 24:17-21 and Romans 13:3-4, are most frequently debated among those for and against capital punishment. These passages, given their contentious language and interpretation, have highlighted the Church’s engagement with Scripture in developing its position toward capital punishment.

Supporters of capital punishment often rely upon an understood Biblical sanction of “an eye for an eye, a life for a life” as justification for the death penalty. This phrase references Leviticus 24:17-21, which reads in full as follows:

²⁶ Although not discussed here, Exodus 21:23-25, Deuteronomy 16:18, and Romans 12:19 are other passages that have raised significant discussion among those deliberating the Biblical merits of capital punishment.

Whoever takes the life of any human being shall be put to death; whoever takes the life of an animal shall make restitution of another animal. A life for a life! Anyone who inflicts an injury on his neighbor shall receive the same in return. Limb for limb, eye for eye, tooth for tooth! The same injury that a man gives another shall be inflicted on him in return.

Whoever slays an animal shall make restitution, but whoever slays a man shall be put to death.²⁷

If the passage is read and applied literally, the contrived meaning is relatively straightforward: if a man kills, he should be killed (an analogous relationship to Aquinas' *quid pro quo*). Biblically, however, Moses introduces this law in Leviticus as one of *limitation* for the people of Israel, rather than a specific mandate. Moses intended the law not as a specific order (as in a murder *must* be answered with death), but as a limitation on the public response to murder (so that only one death, rather than multiple executions, could be justified as punishment for murder). If understood in the original Hebrew, the passage would then read, "If a man takes the life of any human being, he *alone* must be put to death ... *not more than* an eye for an eye, *not more than* a tooth for a tooth..."²⁸

Dale Recinella, in *The Biblical Truth about America's Death Penalty*, discusses interpretations of Leviticus that account for historical context. "When the 'eye for an eye, life for a life' of the Mosaic law is properly understood in its biblical-historical context," Recinella explains, "we see that capital punishment may not have been God's ideal.

²⁷ NAB, Lev. 24:17-21

²⁸ Dale Recinella, *The Biblical Truth about America's Death Penalty* (Boston: Northeastern University Press, 2004), 49 (original emphasis).

Rather, the death penalty may have been allowed in limited form in the Mosaic law because of the people's hardness of heart."²⁹ By hardness of heart, Recinella references the Biblically-founded condition of brokenness and violence in Hebrew society. In limiting the punishment for murder to the retributive death of the initial transgressor alone, Mosaic law ushered in a momentous change as described in Leviticus – change that moved to *decrease* violence, rather than promulgate it.

Not only is the law of capital punishment in Leviticus one of cultural limitation, but given its context in the wider realm of Mosaic law, it belongs in the larger group of ancient laws which have fallen out of practice as society has evolved. Mosaic law not only sanctioned taking a life for a life, but held a multitude of other crimes (adultery, sorcery, idolatry, etc.) punishable by death and endorsed various methods of capital punishment (hanging, stoning, and public burning, to name a few). Most, if not all of these practices – take, for example, the stoning of rebellious children by their parents and fellow townspeople, a Biblically founded practice³⁰ – no longer meet any standard of common human decency (particularly in the American context) and no longer have any legal or statutory foundation. Within Mosaic law, capital punishment provided by the Leviticus limitation (the execution of a convicted *murderer*, not a rapist, kidnapper, fornicator, sorcerer, idolater, perjurer, false prophet, or Sabbath-day worker, executions for whom Mosaic Law also provides in Scripture)³¹ belongs within this group, though

²⁹ Ibid., 51.

³⁰ “If any man has a stubborn and unruly son who will not listen his father and mother, and will not obey them even when they chastise him [...] Then all his fellow citizens shall stone him to death.” – *NAB*, Deuteronomy 21:18, 21

³¹ Deut. 22:22-24, Deut. 22:25, Exodus 21:26, Deut. 22:13-21, Lev. 20:27, Deut. 17:2-5, Deut. 19:18-21, Deut. 18:20, and Exod. 31:15, respectively.

proponents of capital punishment still cling to Moses's words in Leviticus as a legal mandate for the death penalty. "Who picked murder as the only item off the list that God really mandates for execution [today]?" Recinella questions. "If we used the whole list from the Mosaic law, who in America would not have coworkers, friends from church, or members of their home community executed? Who in America would be left to pull the switch?"³² Mosaic law approved public executions for a variety of wrongs, wrongs that, if still punishable by death today, would obstruct the American legal system beyond function. Murder was one of these wrongs, and though the larger group of wrongs has been rejected quite clearly in today's system of law, murder remains punishable by death today, approved by many under the Scriptural pretense of "a life for a life."

Although it speaks to a starkly different cultural demographic than Moses does in Leviticus, many read Paul's New Testament letter to the Romans as an explicit Biblical command for governments to exercise their authority to take a life for a life. Paul wrote to the Romans between 55-60 A.D., a time in which he and other Roman citizens understood capital punishment via decapitation by the sword as the only means of execution allowed to the state. Addressing a Roman church of both Jews and Gentiles, Paul asserts the following in Romans 13:3-4:

For rulers are not a cause of fear to good conduct, but to evil. Do you wish to have no fear of authority? Then do what is good and you will receive approval from it, for it is a servant of God for your good. But if you do

³² Recinella, *The Biblical Truth about America's Death Penalty*, 69-70.

evil, be afraid, for it does not bear the sword without purpose; it is the servant of God to inflict wrath on the evildoer.³³

If the ruling authority (in Paul's case, Rome, but in many popular readings of the passage, current government) can bring wrath upon evildoers by the sword, Paul's words seemingly provide some support for a state-authored death penalty. Furthermore, Paul's prescription of authority, as Recinella indicates, is *extra-biblical*, meaning it exists in a manner that transcends the Biblical harbor of Mosaic law. Though many accept the Mosaic tenet of a "life for a life," Paul's authority of the sword, if understood literally, goes beyond its Scriptural context: an established maxim that can be governmentally owned *even today*.

But Paul's words, much like Moses's in Leviticus, must be understood at a level beyond their literal, English-based interpretation. Analyses of the passage typically focus on two words: first, "sword," the weapon by which the state can bring executions; and second, "inflict," more commonly "execute" in other translations of the Greek.³⁴ Turning first to Paul's reference to the sword, two Greek words are typically translated into Biblical "swords." The first is *rhomphaia*, the Greek word for the saber-like, long, and broad cutlass typically used in Pauline society to perform capital executions. The other is *machaira*, a dagger or short sword typically sheathed on a belt and used as a symbol for the authority of courts to inflict punishment (but not the sword used to behead, and certainly not a symbol of beheading). Paul uses *machaira* in his original letter to the

³³ NAB, Romans 13:3-4.

³⁴ "[...] For he is the minister of God, a revenger to *execute* wrath upon him that doeth evil." – Romans 13:4, King James Version (KJV), <http://www.biblegateway.com/versions/King-James-Version-KJV-Bible/> (emphasis supplied).

Romans, rather than the *rhomphaia* Greeks used to decapitate. Those who read “sword” in English translations can, therefore, mistakenly take Paul’s translated word as the signifier to a weapon of death, whereas it actually signifies the state’s ability to carry out more general punishment on a societal level, the true referent. And Paul’s sword does not “execute,” as some translations suggest, nor does it “inflict wrath” in the final sense of execution that some interpret. Rather, in this instance, the original Greek does not even include the verb that English translators have placed in the passage. “Execute” has been used in some passages, and “inflict” in others, but both with the same intentional meaning: “to carry out, to perform,” or “to apply.”³⁵ Paul’s original Greek verb does not exist in English, and English translators’ inserted verb does not connote execution; instead, the passage identifies the state’s fundamental responsibilities of protection and justice. Given this context, Recinella offers a more accurate understanding of Paul’s instruction to the Romans:

When we properly understand Romans 13:4 [...] it is clear that the verse contains no mandate for capital punishment. It does not support the power of judicial authority to impose punishment upon malefactors. Our prisons are full of felons who are experiencing judicially imposed punishment without being subject to the death penalty. There is no need to impose capital punishment in order to be faithful to the proper understanding of Romans 13:4.³⁶

³⁵ Recinella, *The Biblical Truth about America’s Death Penalty*, 97.

³⁶ *Ibid.*, 98.

Paul's Scriptural statements – like Moses's – do not explicitly authorize capital punishment as it is currently practiced, despite frequent readings and interpretations otherwise.

In sum, Church teaching reflecting Scripture does not find explicit basis for a position in favor of capital punishment. And for Catholics looking to Biblical sources for guidance in reconciling their personal consciences regarding the death penalty, Moses and Paul are not the staunch advocates for state executions many literal readers of their words make them out to be. But what about Tradition, the Church's other pillar of teaching; how does it address the state's authority to execute and the morality of capital executions in themselves? Do Traditional voices fall in unison with Scripture, contrary to it, or complicate it somehow? As can be read in the preceding chapter, Augustine and Aquinas offer positions toward capital punishment that generally align with those of Moses and Paul. They outwardly support capital punishment in specific circumstances. In some instances, they authorize the taking of a life for another life, and they view the state as the proper vehicle of authority to do so. The official teaching of the Catholic Church toward capital punishment holds true to many of Augustine and Aquinas' arguments, as it has since they were initially written. The *Catechism of the Catholic Church (CCC)*, the complete document of dogmatic *instruction* for Catholics worldwide, places Augustine and Aquinas's words on the death penalty in conversation with those spoken by Moses and Paul, and on a larger scale, weighs together contributing elements of both Tradition and Scripture pertaining to capital punishment. For this reason, the *CCC*, along with Augustine, Aquinas, and the voices present in the chapters that follow this one, can be

read as Traditional expressions of the Church regarding capital punishment, sources that combine with Scripture to author the Church's position toward the death penalty.

Just as Scriptural translations have evolved over time, so also has the *CCC* changed as Church teaching has been modified and Traditional sources reevaluated. The Council of Trent's *Roman Catechism* of 1566, for example, published under Pope Pius V, gives civil authorities the "power of life and death" in order to protect society from malefactors through a "kind of lawful slaying."³⁷ The catechisms following, published recurrently over the next 450 years, echoed much of the original position toward capital punishment articulated at the Council of Trent in the 16th century. Until 1992, the *CCC* explicitly stated, "The traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate 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."³⁸ This nominal reference to the death penalty, and the meaning of retribution that accompanies it, remained in the *CCC* until the 1997 revisions that produced the version currently read and held by Catholics worldwide today. These revisions, written in light of Pope John Paul II's 1995 encyclical *Evangelium Vitae* (see Chapter 3), re-center the Church's teaching regarding capital punishment on Aquinas's principle of double-effect and the subject of legitimate defense. In the present *CCC*, the Church moves away from Traditional considerations of the death penalty as punishment,

³⁷ Pope Pius V, *Catechism of the Council of Trent for Parish Priests*, Trans. John A. McHugh, O.P. and Charles J. Callan, O.P. (New York: Joseph F. Wagner, Inc., 1934), 421.

³⁸ E. Christian Brugger, "Rejecting the Death Penalty: Continuity and Change in the Tradition," *Heythrop Journal* 49, no. 3 (2008): 391, *Academic Search Premier*, EBSCOhost (accessed September 15, 2009).

instead shifting toward a view of capital punishment as a rarely plausible means of defending and protecting society from imminent criminal danger.

The present *CCC*, when read with its 1997 revisions, expresses a position toward the death penalty that significantly departs from past versions, while simultaneously maintaining a continuous line of voice with Aquinas, Scriptural influence, and other Traditional sources. In this sense, as E. Christian Brugger states in “Rejecting the Death Penalty: Continuity and Change in the Tradition,” the 1997-revised *CCC* presents definite changes in Church teaching, changes that can be easily identified, while presenting the changes in a manner that does not stray away from the traditional teaching that formed the initial position. Brugger’s essay outlines many of these changes. First, the *CCC* section pertaining to capital punishment (within Article 5, “The Fifth Commandment,” of Chapter 2, “You Shall Love Your Neighbor As Yourself,” of Section 2, “The Ten Commandments,” of Part 3, “Life in Christ,” starting at number 2263), is titled “legitimate defense,” rather than “punishment,” as it was traditionally named.³⁹ The change in title takes the initial *CCC* discussion of capital punishment out of its section dedicated to punishment and incorporates it in its doctrine of defense. In doing so, it specifies that the death penalty does not escape the Catechismal prohibition of intentional killing or murder of the innocent.⁴⁰ The *CCC* then very deliberately presents its discussion of capital punishment in the context of legitimate defense:

The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. For this reason, those who legitimately

³⁹ *Ibid.*, 390.

⁴⁰ *CCC*, par. 2263.

hold authority also have the right to use arms to repel aggressors against the civil community entrusted to their responsibility.⁴¹

In emphasizing the legitimacy of civil authority to defend society, the *CCC* bases the action required to abate the unjust aggression of offenders in the words of Paul, Augustine, and many traditional Church voices. This emphasis, by indicating that the state must punish offenders to defend society, reserves any authority to exercise capital punishment to the state, but does so without establishing any expectation upon the state to carry out the death penalty regardless of societal circumstance.

At this juncture, therefore, the *CCC* adds in the redemptive quality of punishment required by legitimate defense:

Punishment, then, in addition to defending the 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.⁴²

The redemptive, corrective, and medicinal purposes of punishment significantly nuance the state's duty to defend. Punishment must have, as Aquinas explains in *Summa Theologiae*, a double effect, but in a new sense: it must protect society while supplementing efforts to rehabilitate an aggressor.⁴³ Punishment cannot be a retributive end in itself (as prior Catechismal teaching indicated), but must serve dually as a means of reconciliation for offenders. The principle of double-effect and its implication of

⁴¹ Ibid., par. 2265.

⁴² Ibid., par. 2266.

⁴³ Aquinas, *Summa Theologiae*, 390.

redemption, then, guide a key rewrite in the 1997 *CCC*'s final section on capital punishment:

Assuming the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.⁴⁴

By prefacing its "last option" consideration of the death penalty with the standard of determination of an aggressor's person and act (an effort to establish clear and convincing guilt as a necessary prerequisite to any consideration of a capital execution), and by following the specific mentioning of the death penalty with a final possibility for avoidance (one last push for a bloodless societal defense), the *CCC* starkly diverges from the 1992 section discussed earlier in which it contextualized capital punishment as a potential recompense fitting if "commensurate with the gravity of the crime." Instead, the 1997 *CCC*'s change brings a consideration of "non-lethal means" to the forefront, casting the death penalty as a final and reserved measure that finds application only when non-lethal means are neither sufficient nor possible as defense.⁴⁵

Finally, taking directly from *Evangelium Vitae*, the *CCC* makes its most definitive statement concerning the legitimacy of capital punishment. It concludes with the following:

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an

⁴⁴ *CCC*, par. 2267.

⁴⁵ *Ibid.*

offense incapable of doing harm – without definitively taking away from him the possibility of redeeming himself – the cases in which the execution of the offender is an absolute necessity “are very rare, if not practically non-existent.”⁴⁶

The *CCC* uses Pope John Paul II’s exact words in making its final statement, and uses his commitment to the dignity and redemption of the human person present throughout *Evangelium Vitae* to reason the remainder of the passage. In doing so, the *CCC* allows for rare and hardly possible cases in which state executions of offenders might be necessary. Clear emphasis, however, rests in the state’s contemporary ability to combat crime through the incapacitation of offenders and their rehabilitation, rather than in the option for execution that the *CCC* presents. The 1997 *CCC* changes in its section addressing capital punishment ends in this statement of near finality, an argument that marks a trend toward a view that sees no need for capital punishment given the corrective abilities of the state in the modern world.

In both deviating in a concrete manner from past versions and maintaining certain continuity with them, the present, 1997-modified version of the *CCC* holds capital executions as means of legitimate societal defense that have increasingly limited (if at all existent) application in contemporary systems of corrective justice. The *CCC*’s statement of increasing limitation, interestingly enough, much resembles that of Moses’s in Leviticus, as both suggest capital executions as reserved and better avoided ends in the hope that society can settle on means that avoid ending life. Despite past versions,

⁴⁶ Ibid.

translations, or other arguments that speak to the contrary, Traditional and Scriptural voices do not outwardly advocate for the death penalty, but more so for the authority and responsibility (Paul's *machaira*) of the state to defend society through redemptive, rather than retributive, justice. Attention therefore turns to bloodless means – incarceration, rehabilitation, and reconciliation for offenders and unjust aggressors. Catholics find a recurring central message in both Traditional and Scriptural voices, particularly as stated in the *CCC*: if life can be safely preserved, executions should be avoided in response to capital crimes. This message has become the central teaching of the Church regarding the death penalty. It reflects not only the legitimate authority and responsibility of defense as discussed in the Scriptural and Traditional foundations outlined in this chapter, but a larger movement toward respecting and protecting the sanctity of all human life that underlies Pope John Paul II's statements in *Evangelium Vitae* and the words of those who advocate for a consistent ethic of life.

III

Tragic Cases and the Consistent Ethic of Life:

Contemporary Catholic Thought and Teaching on Capital Punishment

The Consistent Ethic of Life, though rooted in and directly connected with Scripture and Tradition, is a relatively recent movement in Catholic social teaching.⁴⁷ Marvin Mich, in *Catholic Social Teaching and Movements*, describes the emergence of the Consistent Ethic of Life in Catholic circles as “articulated almost simultaneously in different places by very different people,” discussing the work of various activists, clergymen and women, interest groups, and miscellaneous members of the laity in promoting a new understanding of social issues involving the well-being of human lives.⁴⁸ Numerous efforts throughout the United States in the 1970s and 1980s – including, as Mich lists, creation of a Feminists for Life (FFL) group in Ohio, media advocacy from the North Carolina-based Seamless Garment Network (SGN),⁴⁹ and various donative and funding-oriented initiatives dedicated to the movement’s cause through the Diocese of Rochester, New York – seem to corroborate his description.⁵⁰ The

⁴⁷ Catholic social teaching, though not defined or discussed at length in this exercise, is generally known as a mass of Church doctrine on socially relevant subjects (including economics, class systems, poverty, and here, the death penalty). Developed at the end of the nineteenth century and widely thought to have begun with Pope Leo XIII’s encyclical *Rerum Novarum* (1891), Catholic social teaching focuses on human dignity, solidarity, subsidiarity, charity, distributism, and justice in matters of social interest.

⁴⁸ Marvin Mich, *Catholic Social Teaching and Movements*, (Mystic, CT: Twenty-Third Publications, 1998), 211.

⁴⁹ In 1971, Roman Catholic pacifist Eileen Egan used the phrase “seamless garment of life” (an allusion to John’s Gospel description of Christ’s seamless robe) to refer to a general reverence for life in all forms. The phrase caught on quickly, becoming somewhat of a catchphrase for the Consistent Ethic of Life movement.

⁵⁰ Mich, *Catholic Social Teaching and Movements*, 213-217.

true figurehead of the movement, however, was Joseph Cardinal Bernardin, Archbishop of Chicago during the creation of the movement and the height of its popularization. In 1988, Bernardin published *Consistent Ethic of Life*, a compilation of his various writings and speeches on matters of social import to the movement. In it, he states, “A consistent ethic of life is based on the need to ensure that the sacredness of human life, which is the ultimate source of human dignity, will be defended and fostered from womb to tomb, from the genetic laboratory to the cancer ward, from the ghetto to the prison.”⁵¹

Bernardin’s powerful use of the movement’s rhetoric combines with a genuine sincerity to demonstrably indicate why he became the chief spokesperson for the consistent ethic of life and the mind behind the movement. His work, in a sense, reflects an evolved version of his original vocational ambition – a career in medicine – in that it seeks to preserve and protect all life, no matter the situation and condition.

In *Consistent Ethic of Life*, Bernardin included “The Death Penalty in Our Time,” an adaptation of an address given to the Criminal Law Committee of the Criminal Court of Cook County. In it, he considers the ethic’s implication for capital punishment in contemporary society. Bernardin’s statements preface Pope John Paul II’s *Evangelium Vitae* in 1995 and the subsequent Catechismal revisions of 1997, establishing much of the language and thinking present in the teaching of the Church as it has evolved toward the death penalty at the close of the twentieth century and into the present context.

Identifying his remarks as those of a concerned citizen and pastor, Bernardin first distinguishes his “longstanding conviction that civil law and social policy must always be

⁵¹ Joseph Cardinal Bernardin, “The Death Penalty in Our Time,” In *Consistent Ethic of Life*, 61 (Kansas City, MO: Sheed and Ward, 1985).

subject to ongoing moral analysis.”⁵² This conviction, in essence, represents the Church’s larger motivation for promulgating a consistent ethic for life in secular affairs, asserting the need for a moral voice in evaluating policies and processes that affect the sanctity and well-being of human life. Bernardin takes care to note, however, that he is not a lawyer, and the Church is not a legislative body. But for capital punishment to be holistically evaluated, as he suggests, it cannot be seen as an exclusively political issue or a measure of correctional justice alone. The death penalty is a *human* construct, and moral questions underlay its societal foundation.

Bernardin’s analysis, therefore, is morally grounded. The principal issue, in his case, is not one of politics. He does not dispute the *right* of the state to execute criminals – he knows that Catholic Tradition, and the U.S. Constitution (at least by some interpretations), have established it does – but opposes the state’s choice to *exercise* its accepted right.⁵³ The authority of the state to perform executions is much less important than what is done by way of authority, and the human life that the authority governs. Instead, his discourse centers on another guiding question: “In present circumstances, are there sufficient reasons to justify the infliction of the evil of death on another human person?”⁵⁴ He frames his discussion by asking, in other words, if killing can ever be morally justified, regardless of the guilt, innocence, or identity of a potential victim. Can a human being ever, regardless of the circumstances involved, kill another human being? Bernardin recognizes four chief arguments by which the state traditionally answers his

⁵² Ibid., 59.

⁵³ Ibid., 62.

⁵⁴ Ibid.

question affirmatively, defending its exercise of its privileged right to execute: retribution, deterrence, reform, and societal protection. He finds, however, that these arguments, when applied in present society, are no longer morally justifiable. Bloodless means, such as life imprisonment, adequately protect society from criminals while allowing for potential reconciliation, a possibility society has evolved to accommodate. The violence of a state execution, Bernardin reasons, is not retributive as a response to violence. And similarly, a violent penalty of death does not deter violence, but encourages it, a counterintuitive contribution to the cyclical violence the state aims to dissuade through capital punishment.⁵⁵

In Bernardin's view, the general causes the state has found throughout history for capital punishment are no longer morally justifiable. "It seems to me and others that, in our culture today, there are not sufficient reasons to justify the State continuing to exercise its right in this manner," he firmly concludes. "There are other, better ways of protecting the interests of society."⁵⁶ What is needed, from Bernardin's perspective, is movement away from the state's allowed right of execution to a search for improved means of addressing capital crimes in society. These "better ways" step outside the cycle of violence and give offenders an opportunity to change through life, rather than end in death. But are these better ways ample punishment given the heinous nature of killing a, or multiple, fellow human being(s)? Bernardin responds:

I am not suggesting that society should be a prisoner of violence or violent crime. On the contrary, the consistent ethic of life requires that society

⁵⁵ Ibid., 62-63.

⁵⁶ Ibid., 64.

struggle to eradicate poverty, racism, and other systematic forces which nurture and encourage violence. Similarly, the perpetrators of violence should be punished and given the opportunity to experience a change of heart and mind.⁵⁷

A line can be drawn, Bernardin believes, between responding with force to violence in society, and responding with so much force that the response becomes paradoxically violent in itself. A consistent ethic for life requires acceptance of the recurring nature of violence in human existence; the ethic does not, however, require the necessity of modeling this violence through responsive action, particularly by the state. A greater end of societal justice, therefore, can be reached through a moral commitment to punishment focused on protecting life, rather than the state-sanctioned punishment of violent death.

This moral commitment to life comes not only from reevaluating the violent nature and supposed merits of capital punishment, but through reinterpreting the power and authority of those who determine life and death. Bernardin quickly accepts the present authority and legal right of the state to execute criminals. He takes issue, as indicated, with the state's decisions to exercise its right to execute – decisions for which he strongly calls for reform. Despite his acceptance of the state's right to execute, therefore, he outlines a redistribution of the power of execution that shifts it away from the state to a “higher court,” that of the true author of life and death.⁵⁸ He writes:

It is when we stand in this perspective of a “higher court” – that of God's judgment seat – and a more noble view of the human person, that we

⁵⁷ Ibid.

⁵⁸ Ibid., 63.

seriously question the appropriateness of capital punishment. We ask ourselves: Is the human family made more complete – is human personhood made more loving – in a society which demands life for life, eye for eye, tooth for tooth?⁵⁹

Life is not the state's to decide to preserve or end; such adjudication is reserved to God, the highest judge. In this sense, Bernardin suggests the state is actually *not* authorized to carry out capital executions. Keeping with the teaching of Augustine, however, he accepts that the freely endowed, contemporary state inherits the responsibility of the higher court – even if it should not, based on some perspectives – and that decisions of life and death become its own. But the state is no longer subject to the violence of Mosaic society, or an unrelenting absolute of *quid pro quo*, as Bernardin proposes. Given the progression of contemporary society, lives can no longer be taken for lives in a morally justifiable manner. Instead, to promote life, protect it, and as he dictates, to make it more *complete*, life cannot be taken away through a punishment that ends it, even in response to crimes that might seem to warrant such action. Consistently, Bernardin calls for an end to the death penalty in support of the moral interest of life, as capital punishment deprives society of life more than it defends the lives within it.

In March of 1995, eight years after Bernardin released *Consistent Ethic of Life* and “The Death Penalty in Our Time,” Pope John Paul II issued *Evangelium Vitae* (“The Gospel of Life”), a papal encyclical addressing various social issues affecting human life in contemporary society. In the 1990s, the movement for a consistent ethic of life moved

⁵⁹ Ibid.

out of its foundational stage of the 1970s and past its uprising phase of the 1980s to become a mainstay philosophy in Catholics' consideration of social issues, an influential status that remains today. In *Evangelium Vitae*, John Paul II, in the true spirit of Bernardin's consistent ethic, engages a multitude of social issues – focusing primarily on abortion, euthanasia, and capital punishment – and, like Bernardin, emphasizes the inviolability of *all* human life, regardless of condition, situation, or circumstance. In Chapter III of the encyclical, entitled “You Shall Not Kill,” John Paul II turns directly to the matter of capital punishment, framing his discussion around the Fifth Commandment as referenced (dictated originally, ironically enough, to Moses in the book of Exodus). In Section 53 of the chapter, he prefaces his direct discussion of the death penalty in the context of contemporary application of the traditional commandment:

This should not come as a surprise: to kill a human being, in whom the image of God is present, is a particularly serious sin. Only God is the master of life! Yet from the beginning, faced with the many and often *tragic cases* which occur in the life of individuals and society, Christian reflection has sought a fuller and deeper understanding of what God's commandment prohibits and prescribes.⁶⁰

John Paul II begins his analysis with a difficult question: what “tragic cases” in contemporary society might warrant deviation from the traditionally held norm that killing is wrong? Given certain tragedies, might killing be morally justified? Like

⁶⁰ Pope John Paul II, *Evangelium Vitae*, Section 53 (papal encyclical, issued March 25 1995, retrieved from the Librería Editrice Vaticana at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html (emphasis supplied).

Bernardin, John Paul II establishes an important principle before delving into discussion – that God, not humans or the State, is the true master of life – but also accepts

Bernardin’s translation of the principle in contemporary society: that the circumstances of a free, created society foster an assumption of the duty to promote life on behalf of those with the authority to exercise the duty.

John Paul II, however, takes Bernardin’s understanding of master and judge one step further. Prior to discussing tragic cases in Section 53, he states, in Section 52, that “With regard to things, but even with regard to life, man is not the absolute master and final judge, but rather – and this is where his incomparable greatness lies – he is the ‘minister of God’s plan,’” quoting Paul VI’s *Humanae Vitae* (1968).⁶¹ “Life is entrusted to man as a measure which must not be squandered, as a talent that must be used well. Man must render an account of it to his Master.”⁶² John Paul II poses the authority to regulate human life not as a mere societal inheritance, but as an entrustment by God with the expectation that authority will be exercised in a manner that follows God’s expressed intent. Through action in line with this expectation, mankind can live up to its quality of “incomparable greatness.” Like Bernardin, John Paul II acknowledges that man is not the ultimate authority, but that God is the highest minister of justice, calling for increased accountability in evaluating actions taken by authoritative figures under the transitive responsibility of regulating life and death in created society. With this view of societal authority and the maxim that killing is fundamentally wrong in mind, he moves to confront what he terms the “genuine paradox”: tragic cases of “legitimate defense, in

⁶¹ Ibid., Section 52.

⁶² Ibid., see Matthew 25:14-30, Luke 9:12-27.

which the right to protect one's own life and the duty not to harm someone else's life" become contrasting motives very difficult to reconcile.⁶³ In this context, he presents capital punishment as one of the most complicated of the genuine paradoxes. The death penalty, generally thought to be applied in situations in which the legitimate motive for societal (self) defense outweighs that of an expectation never to take the life of another, is always a tragic case. Among the many tragic cases present in *Evangelium Vitae*, John Paul II, with the consistent ethic of life at the forefront of his mind, sets out to resolve some part of the genuine paradox manifest in the practice of capital punishment in contemporary society.

He wastes no time in offering partial resolution. "On this matter," he begins, referring to the death penalty, "there is a growing tendency, both in the Church and in civil society, to demand that it be applied in a very limited way or even that it be abolished completely."⁶⁴ This tendency, in his view, comes from the growing technological and redemptive abilities of penal systems (specifically, the American system), systems that fall "ever more in line with human dignity."⁶⁵ Because societal authority can safely incapacitate wrongdoers, removing them from society without cause for fear, and because doing so provides offenders the opportunity for redemption and rehabilitation, the death penalty becomes an increasingly unnecessary punishment. Thus, as John Paul II states, societal authority "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be

⁶³ Ibid., Section 55.

⁶⁴ Ibid., Section 56.

⁶⁵ Ibid.

possible otherwise to defend society.”⁶⁶ This statement, in essence, sets the framework for the Church’s current position toward capital punishment. Societal defense, when understood with Aquinas’ standard of *legitimacy*, has previously been the Church’s first concern, one that the State should and does share. Because this concern is increasingly addressed without the need for state executions, Bernardin, John Paul II, and the Consistent Ethic of Life movement as a whole advocate a new answer to societal crime, one that no longer ends a sacred and inviolable life in order to defend others. This answer completes John Paul II’s discussion of the death penalty:

If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority must 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.⁶⁷

Authoring the revisions to the *CCC* discussed prior (Chapter 2) released two years *after* his comments in *Evangelium Vitae*, John Paul II identifies the evolving expectation of societal corrections: that authorities opt for “bloodless means” over capital executions if at all possible. And, in all actuality, the question of *if* the means are sufficient is not John Paul II’s chief contribution, but rather this answer, that the means *are* sufficient, and increasingly necessary. In keeping with the consistent ethic of life, bloodless means of punishment aimed at redemption and rehabilitation of life constitute true justice for

⁶⁶ Ibid.

⁶⁷ Ibid., see *CCC*, par. 2267

humanity, and when permissible in keeping with the principle of legitimate defense, they should be implemented.

Many, however, still read *Evangelium Vitae* as an acknowledgement of the remaining need for capital punishment in certain societal circumstances, emphasizing the role of the death penalty in “cases of absolute necessity” despite the growing sufficiency of bloodless means. This reading, though it departs from the trend John Paul II highlights at the beginning of his discussion of the death penalty, is nonetheless accurate. The Church (aside from statements by the U.S. Conference of Catholic Bishops (USCCB) and other groups) has yet to call formally for the total abolishment of capital punishment in contemporary society. In fact, then-Cardinal Joseph Ratzinger, now Pope Benedict XVI, wrote the following in 2004:

Not all moral issues have the same moral weight as abortion and euthanasia. For example, if a Catholic were to be at odds with the Holy Father on the application of capital punishment [...] he would not for that reason be considered unworthy to present himself to receive Holy Communion. While the Church exhorts civil authorities to [...] exercise discretion and mercy in imposing punishment on criminals, it may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment.⁶⁸

Nine years following *Evangelium Vitae*, Ratzinger, like John Paul II, contextualizes the morality of capital punishment with that of abortion and euthanasia, concluding as John

⁶⁸ Cardinal Joseph Ratzinger, “Worthiness to Receive Holy Communion” (2004, retrieved from <http://www.priestsforlife.org/magisterium/bishops/04-07ratzingerommunion.htm>).

Paul II does that the death penalty may still be warranted in some tragic cases of contemporary society (though Ratzinger, in this document, does not take the time and care to stress the preferential quality of bloodless means that John Paul II does). Thus, Catholics of today, though encouraged by John Paul II in *Evangelium Vitae* to understand the death penalty as a punishment of increasingly limited necessity, retain the freedom to support it in whatever limited capacity remains. Similarly, authorities retain the freedom to exercise the death penalty in extreme cases as needed. Some view this freedom liberally, supporting capital punishment in a variety of apparent necessities; others view it as a mere precursor to an imminent Church statement calling for abolishment. This statement, however, remains unseen as of yet, and the death penalty remains an option of legitimate defense when bloodless means are unavailable.

Evangelium Vitae, and encyclicals like it, are not considered *ex cathedra*, meaning that Catholics are not doctrinally bound to accept them, as opposed to doctrines given with the intention of papal infallibility. Instead, *Evangelium Vitae*'s standard requires Catholics to give thoughtful and respectful consideration to whatever teaching the Pope dictates. The *ex cathedra* standard does not, however, require Catholics to integrate teachings and positions into their practice of faith. The Church's position regarding the death penalty as presented in *Evangelium Vitae*, therefore – that instances in which capital punishment is necessary are very rare, if not practically non-existent in present society – is not a “binding” position, and if Catholics decide, after thoughtful consideration, to reject the teaching, they are not obliged to refrain from Holy Communion, as Cardinal Ratzinger specified in 2004, nor are they unable to practice

their Catholic faith in other capacities. Some Catholic parties, like the USCCB (see my discussion of the USCCB statement “A Culture of Life and the Penalty of Death” in Chapter 6), have called for the Church to make a more definitive statement that binds Catholics to a position in opposition of the death penalty and promotes the abolishment of capital punishment in modern, industrialized societies, particularly the United States. Others, like Supreme Court Justice Antonin Scalia and Colorado Attorney General John Suthers, whom I discuss at length in chapters to come, continue to support the death penalty in contemporary society as Catholics regularly involved in capital legal matters. John Paul II’s statements in *Evangelium Vitae*, however, coupled with the recurrence of the Catholic message as to the corrective nature of punishment throughout time, help to clarify the Church’s developing teaching regarding the death penalty, even given the stark contrast in opinions among Catholics. For Catholics, particularly American Catholics, who elect to support capital punishment in contemporary society, they remain free to do so, though *Evangelium Vitae* and the Consistent Ethic of Life movement seem to suggest their time to do so, from a doctrinal standpoint, is running out. A more informed understanding of the Church’s statements on the death penalty through time shows that along with St. Paul, Augustine, and Aquinas, individuals like John Paul II and Joseph Cardinal Bernardin do not reverse established Church teaching in favor of the death penalty, but instead renew the spirit of corrective punishment in modern circumstances, opting for bloodless means given the increasing ability of society to defend itself.

INTERMEZZO

Although given to various Catholics at various times throughout history, the underlying message of St. Paul, Augustine, Aquinas, Joseph Cardinal Bernardin, Pope John Paul II, and the Church regarding punishment is consistent: it should be corrective, defensive as needed, and not retributive in nature. The state's administration of the death penalty should follow course. The delivery and interpretation of this teaching, as indicated, is a matter in itself; and its praxis, the transition from teaching to practice and the relationship therein, is a correlated, yet distinct, activity.

I recently met with Judy Lucero, a Denver-based defense attorney who lives and works out of her home in the Berkeley neighborhood surrounding Regis University. She reminded me instantly of Millard Farmer, a defense attorney with whom Sr. Helen Prejean partners to fight for Patrick Sonnier's life in *Dead Man Walking*. (I reference Millard in Chapter 6.) Judy, like Millard, has a particular interest in capital cases, and her vocation, as she told me in our meeting, is "redeeming lost souls."⁶⁹ After a wide breadth of career experiences in the law, Judy now elects to work selectively on cases in which the prosecution seeks the death penalty, a special calling, and for Judy and the other individuals I discuss in the chapters to come, a fascinating intersection of law, Catholic faith, and vocation.

⁶⁹ Judy Lucero, Interview by author, Denver, CO, February 24, 2010.

With artwork commemorating Our Lady of Guadalupe on her walls and legal transcripts and documents in her hands, Judy calmly told me that she thought no one should die as punishment for killing, and that both her Catholic faith and understanding of the law demand a higher standard of justice. We spoke at length about a doctrine known as “death is different” that suggests that the criminal justice system’s treatment of capital cases and administration of the death penalty, given the processes, actors, and fundamental questions involved, is strikingly different than all other activities of the criminal justice system, especially in the United States, and for this reason, capital cases and questions should be considered with the most extreme care and attention possible.⁷⁰ “We have to understand that capital proceedings are fundamentally different than trials on rape, burglary, or anything else, and for me, the difference stems from the fact that the life of the accused is resting in the balance.”⁷¹ Judy argues as she does and for those she does in capital cases because death is *too* different, and her belief in the sanctity of life that stems from her Catholic faith demands that she advocates for death’s limitation.

Near the end of our meeting, Judy, with her copy of the Catholic catechism and a motion filed in a capital trial, showed me what it really is that she does. She paged through the motion, and instructed me to read the following passage:

“Justice” is not a formula, but the name of the reality it expresses – an end engaging the highest ideal of free persons – irreducible to a strict rule of law. Justice is its own origin, motive, object, and end. [...] The inherent

⁷⁰ See James R. Acker, “Actual Innocence: Is Death Different?” *Behavioral Sciences and the Law* 27 (April 2009): 297-311, *Wiley Interscience* (received from Judy Lucero).

⁷¹ Lucero, Interview by author.

power of the court to act in the interest of justice does not exist for the benefit of the court – such power exists to ensure that the highest ideal of free persons does not lie dormant and inactive but is engaged to overcome disparity, dispose to equity, guarantee rights and freedom, and, ultimately, engender peace.⁷²

She then directed me to the following sections of the *CCC*. The first comes from the catechism’s discussion of cardinal virtues, the second from its statements on authority and the common good.

Justice is the moral virtue that consists in the constant and firm will to give their due to God and neighbor.⁷³

Authority does not derive its moral legitimacy from itself. It must not behave in a despotic manner, but must act for the common good as a “moral force based on freedom and a sense of responsibility.”⁷⁴

“Do the two passages look at all similar?” Judy asked me. “Because they should – I modeled the former after the latter.”⁷⁵

Judy told me that she frequently uses the *CCC* to found arguments in defense on behalf of those accused of capital crimes, and quite literally, write faith into work. “I don’t even really like the law,” Judy told me. “But it’s the only avenue by which I can pursue my true work.” Needless to say, I was thoroughly impressed, even astounded. I

⁷² *State of Colorado v. Montour*, 02CR782, Defendant’s Motion to Declare C.R.S. Section 20-1-107, The District Attorney Disqualification Statute, Unconstitutional, submitted by Judy Lucero on behalf of the defendant, 9-11, (copy on file with author).

⁷³ *CCC*, par. 1807.

⁷⁴ *Ibid.*, 1902.

⁷⁵ Lucero, Interview by author.

felt for a moment like I was standing not with Judy, but with Thomas Aquinas, and we were reading and discussing what the natural law should be. Judy is an example of why death truly is different. In few other instances would attorneys be predisposed to write the Catholic catechism into their arguments, and in few other instances would some attorneys, like Judy, feel they *have to do so*.

What follows here is a discussion of three individuals – Supreme Court Justice Antonin Scalia, Colorado Attorney General John Suthers, and death penalty abolitionist Sr. Helen Prejean, all of whom, like Judy, integrate Catholic teaching and their work in matters of capital significance on a daily basis. Their examples are, like Judy's, powerful, unique, and controversial. Their lives answer the question, "As Catholics in the United States, in consideration of the teaching of the Church on capital punishment, how should we approach the questions involved in administration of the death penalty?" Their answers, like death, are markedly different.

IV

Antonin Scalia and the Machinery of Death:

Weighing Oaths as Catholic and Jurist

On May 21, 1997, almost seventeen years after shooting and killing Allen Huckleberry, Bruce Edwin Callins died by lethal injection in a Texas execution chamber as punishment for capital homicide. Seventeen years earlier, on June 27, 1980, Callins entered Norma's Lounge, a bar in Tarrant County, Texas, and demanded at gunpoint that those present surrender all monies and valuables in their possession to him. When Huckleberry, a patron of the bar, failed to turn over his wallet in a timely manner, Callins shot him in the neck, took his wallet, and left him to die.⁷⁶ Callins' execution came after a lengthy appeal of his capital sentence in which he petitioned the State of Texas, then Gary Johnson, Director of the Texas Department of Criminal Justice, and ultimately, James Collins, the director who followed Johnson, for habeas corpus relief given alleged violation(s) of constitutional due process, and specifically, for bifurcating sentencing at his state trial,⁷⁷ among other alleged acts of undue mistrial.⁷⁸ Callins first entered his appeal in the U.S. District Court of Northern Texas, which affirmed the capital sentence,

⁷⁶ *Callins v. State of Texas*, 780 S.W.2d 176 (Tex. 1986).

⁷⁷ A Texas court convicted Callins of capital murder and two counts of aggravated robbery, and a jury sentenced him in two stages, first for robbery, and second for murder, which resulted in assignment of the death penalty. Callins believed this bifurcated sentencing violated Fifth Amendment due process and double jeopardy. *Callins v. Collins*, 998 F.2d 269 (5th Cir. 1993).

⁷⁸ In various stages of petition, Callins also appealed on the bases of insufficient evidence to support a murder verdict, ineffective trial counsel, improper jury selection process, and denial of his right to confront and impeach a prosecution witness he believed had given faulty testimony. *Callins v. Collins*, 998 F.2d 269 (5th Cir. 1993).

and then with the Fifth Circuit Court of Appeals, which affirmed the ruling of the district court. After the Fifth's Circuit affirmation, Callins petitioned the Supreme Court of the United States for writ of certiorari in the now-infamous *Callins v. Collins* (1994), but was denied a hearing.

Dissenting from the majority that refused to hear *Callins*, Justice Harry Blackmun, who voted eighteen years prior to reinstate the death penalty in the landmark *Gregg v. Georgia* (1976), said the following:

From this day forward, I shall no longer tinker with the machinery of death. For more than 20 years I have endeavored – indeed, I have struggled – along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.⁷⁹

Blackmun issued his dissent, now widely quoted both as support for capital punishment abolitionists and as fuel for the fire against judicial activists and living constitutionalists, without a written opinion of the Court, an unusual step given the standard course of Supreme Court proceedings. His basis for switching his position regarding the constitutionality of the death penalty – the reason he voted to reinstate the death penalty in 1976, and unabashedly to reject it in 1994 – was, as he indicates, moral and

⁷⁹ *Callins v. Collins*, 510 U.S. 1141, 114 S. Ct. 1127 (1994).

intellectual, and, as he suggests, arrived at with no undue turmoil of conscience. His reasoning, and the dissent that proceeded from it, have sparked turmoils of conscience within readers similar to the moral and intellectual struggle with which Blackmun issued his dissent. Some have agreed with Blackmun wholeheartedly. Others have lost themselves in the complicated morass of constitutional text and its moral implications, or agreed with Blackmun's conclusion, but not his method at arriving at it. And others, like fellow Justice Antonin Scalia, have harshly berated Blackmun and his philosophy of constitutional jurisprudence. *Callins* typifies the rift that exists between Blackmun and Scalia, and those who think like them, in discerning the general "right and wrong" of capital punishment in the American context, the punishment's constitutional and moral foundations, and the machinery of the state that carries out the death penalty in contemporary society.

Unlike Blackmun, Scalia participates fully, and without reservation, in the machinery of death. "My vote, when joined with four others, is, in most cases, the last step that permits an execution to proceed," he acknowledges in "God's Justice and Ours," his preeminent defense of the death penalty as a Catholic.⁸⁰ Paradoxically, however, Scalia, like Blackmun, does not tinker with the machinery, though in a different sense. Instead of attempting to clean his hands of the process, Scalia votes as a justice in a manner that leaves the machinery to function just as it does. Scalia voted with the majority in denying a review of *Callins*. Responding to Blackmun's dissent in *Callins*, Scalia issued a concurring opinion which states, "Convictions in opposition to the death

⁸⁰ Antonin Scalia, "God's Justice and Ours," *First Things: A Monthly Journal of Religion & Public Life* (May 2002): 18, *Academic Search Premier*, EBSCOhost (accessed March 30, 2009).

penalty are often passionate and deeply held,” like Blackmun’s and the convictions of many others. “That would be no excuse for reading them into a Constitution that does not contain them, even if they represented the convictions of a majority of Americans. Much less is there any excuse for using that course to thrust a minority’s views upon the people.”⁸¹ Blackmun’s conviction that “the death penalty experiment has failed” was, according to Scalia, an entirely insufficient reason for voting as he did in *Callins*, given Scalia’s Eighth Amendment interpretation of the constitutionality of the death penalty. Scalia accuses Blackmun of imposing his belief regarding capital punishment on his interpretation of a fixed, constitutional text. This, for Scalia, is perhaps the most capital of arbitral sins a Supreme Court Justice can commit. In cases like *Callins*, Scalia, unlike Blackmun, votes to uphold capital sentences when they are properly assigned based on the constitutional merit of the death penalty. He expects other justices do the same, leaving personal convictions out of their voting calculation. But Scalia also believes in the moral underpinnings of capital punishment – his own passionate, deeply held conviction – yet denies that he votes as he does because of it. Scalia votes to uphold death sentences in cases like *Callins* because of their constitutionality. But within his vote, and within his role as a justice, rests Scalia’s belief in the morality of capital punishment; without it, he might have voted differently in *Callins*, or as he claims, not voted at all.

Scalia, simply put, is a Roman Catholic traditionalist. Not only does he have nine children, but he attends one of the few parish churches in Washington D.C. that still offers a Latin Mass, two minor examples of the traditional way in which Scalia lives his

⁸¹ *Callins v. Collins*, 510 U.S. 1141, *Ibid*.

Catholic faith.⁸² It only follows logically, therefore, that Scalia adheres to what he terms the “traditional” view on capital punishment as authored by the Church, a view which, in his opinion, justifies his personal conviction regarding the death penalty, his career as a justice in capital matters, and the way he votes in capital cases. Though Scalia votes based on his interpretation of an “enduring” Constitution, he believes in the morality of capital punishment, and without this belief, he claims he would leave the bench.⁸³ “In my view the choice for the judge who believes the death penalty to be immoral is resignation, rather than simply ignoring duly enacted, constitutional laws and sabotaging death penalty cases,” he explains, alluding to Blackmun and other like-minded jurists.⁸⁴ For this reason, Scalia stresses that his convictions, particularly those pertaining to the death penalty, do not influence his vote, but do, regardless of influence, *allow* him to vote. And given his understanding of Christian thought and traditional teaching of the Church through time, Scalia maintains that he can support a conviction that does not find the death penalty immoral (as he cautions from saying he “favors” capital punishment).⁸⁵ Therefore, although Scalia denies any relationship of influence, the teaching of the Church grounds the causality of his action and voting as a justice. Church teaching, in his view, authorizes the death penalty; this teaching, because he is a Catholic, helps shape his personal conviction regarding capital punishment; without this conviction, Scalia could not sit on the Supreme Court; and without a seat on the Supreme Court, Scalia would not hear cases like *Callins*, and could not vote on them as he does. But the first peg in

⁸² Helen Prejean, *The Death of Innocents: An Eyewitness Account of Wrongful Executions* (New York: Random House, 2005), 167-168.

⁸³ Scalia, “God’s Justice and Ours,” 17.

⁸⁴ *Ibid.*, 19.

⁸⁵ *Ibid.*, 21.

Scalia's structure - his understanding of Church teaching regarding capital punishment – is somewhat flawed. St. Paul, Augustine, Aquinas, and other traditional Church voices do not lend him the support he thinks they do, calling into question the stability of the causal foundation of the vocational bench on which he sits and the position he so adamantly maintains.

In his consideration of Church teaching regarding capital punishment in “God’s Justice and Ours,” Scalia first references Paul’s words in Romans 13 as representative of the establishment of God-given authority in government, and specifically, the moral backing by which the state can carry out the death penalty. I’ve thoroughly discussed in Chapter 2 the passage that Scalia references, the sharpest point of the selection being, “If you do what is evil, be afraid; for [government] does not bear the sword without purpose; it is the servant of God to inflict wrath on the evildoer,”⁸⁶ or, in the King James Version, the translation Scalia chooses, the state is “a minister of God, a *revenger* to *execute* wrath” upon wrongdoers.⁸⁷ Regrettably, Scalia interprets the execution, revenge, and wrath by the sword as “unmistakably a reference to the death penalty,”⁸⁸ a common mistake of literal translation against which Biblical scholar Dale Recinella fervently warns, as previously discussed in Chapter 2. To review, the “sword” that Paul references, in the original Greek, is *machaira*, a symbol of the power and authority of courts, but not the *rhomphaia* used to behead offenders. Also, the “bring wrath” some translations use and the “execute” Scalia prefers are words English translators artificially inserted into the

⁸⁶ NAB, Romans 13:4.

⁸⁷ KJV, Romans 13:4, emphasis supplied.

⁸⁸ Scalia, “God’s Justice and Ours,” 19.

passage, words that do not exist in the original Greek. Translators did not intend the insertions to connote execution, but rather, the general responsibility of the state to defend and protect society.⁸⁹ To Scalia's credit, he selects this particular passage to demonstrate how Paul separates individual morality from that of the larger state,⁹⁰ which is an accurate distinction, though much more complicated than Paul, Scalia, and for that matter, Augustine understand (see my discussion of Donald Cabana, a former executioner, in Chapter 6). The passage does not, however, support the governmental morality of state executions that Scalia suggests, nor is it as representative of Church teaching as he portrays. Paul does not provide the "consensus of Western thought" on capital punishment that Scalia assumes, and Scalia mistakenly relies on his voice, among others, as traditional Catholic consent for the machinery of death to operate.

Inherent in Scalia's interpretation of Romans 13 is the understanding that governmental authority has a responsibility to match crimes with an equivalent level of punishment – *quid pro quo*, or an eye for an eye, as previously discussed via Aquinas in Chapter 1. Scalia's interpretation of Paul, therefore, and the understood assumption therein, fits nicely within his larger theory behind capital punishment: that, at a fundamental level, the death penalty, according to the tradition of the Church, is a *retributive* measure. This theory, however, like Scalia's interpretation of Paul, is inaccurate. Scalia often says he prefers "the traditional view of Augustine and Aquinas" pertaining to the death penalty, which, given the principle of *quid pro quo*, seems to

⁸⁹ Recinella, *The Biblical Truth about the Death Penalty*.

⁹⁰ Scalia, "God's Justice and Ours," 18.

bolster his personal conviction.⁹¹ Like many, however, Scalia only reads Aquinas to say “an eye for an eye,” an incomplete and fundamentally flawed reading. “Penalties imposed in this life are corrective rather than retributive, for retribution is reserved to God’s judgment,” Aquinas writes, as previously quoted, following his explanation of *quid quo pro*.⁹² Though Aquinas acknowledged the need for the death penalty in the society in which he lived – for crimes of irreparable harm, particularly perverted offenders, and those wrongdoers from whom defense was impossible – he, like Augustine, emphasized the corrective quality toward which punishment must aspire, rather than any retributive character it should assume, as retribution belongs to God, and God alone, and not to governmental authority. This is a message, however, that Scalia misses, whether consciously or otherwise. Scalia seemingly skips over Augustine’s command to “avoid the death penalty, so that there’s someone left to repent,” instead grabbing eagerly for the sword of which he is an instrument.⁹³ When Scalia reads Augustine and Aquinas, he isolates instances in which they advocate for the death penalty in their particular societies and interprets this advocacy as a call for retribution. In doing so, he misses the larger context of correction in which they discuss punishment and justice.

Because Scalia misconstrues St. Paul, Augustine, Aquinas, and the tradition of the Western Church as a case for retribution by way of the death penalty, it is no surprise he strongly opposes John Paul II’s plea for correction over execution in *Evangelium Vitae* and similarly themed (and sometimes identical) statements in the 1997 version of the

⁹¹ Prejean, *The Death of Innocents*, 170.

⁹² Aquinas, *Summa Theologiae*, 321.

⁹³ Augustine, *Political Writings*, 124.

Catholic catechism. Scalia takes particular issue with John Paul II's mentioning of defense in the following passage from the encyclical:

The nature and extent of punishment [...] ought not to 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.⁹⁴

By way of brief contextualization, John Paul II precedes this passage by noting that society must impose “an *adequate* punishment for the crime” on capital offenders, and concludes that given the evolved and improved nature of Western penal systems, cases in which capital punishment is necessary are “very rare, if practically non-existent.”⁹⁵ By “adequate,” Scalia believes John Paul II means *equal*, or, in the case of the death penalty, a death for a death – *quid pro quo*, or retributive, commutative justice. When John Paul II then relies on the standard of defense, therefore, as the chief determinant of the societal necessity of the death penalty, Scalia strongly objects, because, as he states, defense “has no bearing whatever upon the adequacy of retribution. In fact, one might say that it has an inverse bearing.”⁹⁶ Given this interpretation, Scalia is absolutely correct. If retribution is the primary purpose of the death penalty, than societal defense cannot be the standard by which to evaluate the necessity of capital punishment. Scalia cites Timothy McVeigh, who killed 168 people in the Oklahoma City bombing of 1995, as an example, one of the more poignant examples in death penalty debates. Scalia acknowledges that society could have locked McVeigh away forever, preventing another mass murder (though his

⁹⁴ Pope John Paul II, *Evangelium Vitae*, Section 56.

⁹⁵ *Ibid*, emphasis supplied.

⁹⁶ Scalia, “God’s Justice and Ours,” 20, emphasis removed.

perception of modern prisons is a bit skewed);⁹⁷ but can life imprisonment ever justify the 168 people that died by McVeigh's action? Examples like McVeigh's certainly seem to call for a punishment that matches the crime, retribution that Scalia eagerly assigns on behalf of society. But retribution, as Augustine and Aquinas actually write, ultimately belongs to God, and is not the primary purpose of capital punishment, nor a Church theme lost in *Evangelium Vitae*, nor an accurate foundation on which Scalia can base his capital jurisprudence *as a Catholic*.

If Scalia were to interpret John Paul II's "adequate" as *sufficient to protect society*, rather than *equal*, he might better take and understand John Paul II's encyclical and the corrective punishment he promotes. If the penal system can adequately protect society from an offender to "preserv[e] the general good," as Aquinas suggests, than someone can be left to repent, as Augustine encourages, and the death penalty becomes a very rare, if not practically nonexistent, means of punishment in society. This interpretation lends to an enhanced understanding of "adequate" and a logical inclusion of defense as a standard of evaluation. Because Scalia sees *Evangelium Vitae* as a departure from the doctrine of retribution, however, rather than a continuation of the case for correction, he mistakenly frames John Paul II's argument in itself and the way in

⁹⁷ Scalia describes the American prison environment as one with "nice clean cells with television sets, exercise rooms, meals designed by nutritionists, and conjugal visits" ("God's Justice and Ours," 20). In the U.S. Penitentiary Administrative Maximum Facility in Florence, CO (known affectionately as "Supermax"), the prison in which McVeigh resided during his time on death row, inmates are hardly coddled in the way Scalia connotes. Instead, inmates spend 22-23 hours per day in a 12 ft. by 7 ft. concrete cell which, though clean, is a far cry from homely. Inmates can spend only one hour per day in an exercise cage with no equipment besides a pull-up bar. The television is an 8", black-and-white set that shows very limited programming and is frequently taken away as a punishment. Though inmates do not eat badly, many do not eat willingly and some try to starve themselves. And conjugal visits are nonexistent, unless speaking on a monitored telephone through impenetrable glass suffices as a "visit." Life imprisonment, at least at its highest level of security, is not the paradise Scalia portrays.

which it is framed in the larger context of Catholic social teaching on capital punishment. “If just retribution is a legitimate purpose (indeed, the principal legitimate purpose) of capital punishment,” Scalia poses at the conclusion of his discussion of *Evangelium Vitae*, “can one possibly say with a straight face that nowadays death would ‘rarely if ever be appropriate?’”⁹⁸ Hoping to lure his readers into the seemingly obvious “no,” Scalia finishes his argument with the misdirection with which he began. The educated Catholic reader, however, knows that correction, rather than retribution, is the principal legitimate purpose of punishment, and has been since the time of Augustine and Aquinas. And all readers, as sinful, imperfect humans, should be hesitant to accept the task of judgment that Scalia offers, because if killing a murderer is the best recompense for murder, God can issue judgment accordingly, and God alone.

Ultimately, Scalia decides that because *Evangelium Vitae* and the latest version are not *ex cathedra* as discussed in Chapter 3, and because he has given them his thoughtful consideration, his disagreement and preference for his understanding of the Western consensus of the Church on capital punishment permit him to keep his job and participate fully and willingly in the machinery of death. “It would be remarkable to think,” he summarizes, “that a couple of paragraphs in an encyclical almost entirely devoted not to crime and punishment but to abortion and euthanasia were intended authoritatively to sweep aside (if one could) two thousand years of Christian teaching.”⁹⁹ Scalia is correct once again on two fronts – first, John Paul II primarily addresses abortion and euthanasia in *Evangelium Vitae*, issues that belong on a different moral

⁹⁸ Scalia, “God’s Justice and Ours,” 20.

⁹⁹ *Ibid.*, 21.

plane in some respects than capital punishment, and second, it would be impossible to sweep aside two thousand years of Church teaching in mere paragraphs – but misses two corresponding points as well – first, like abortion and euthanasia, the death penalty regulates the God-given (and God-alone-taketh) quality of human life, and second, *Evangelium Vitae*'s paragraphs on capital punishment do not sweep away past teaching, but confirm and integrate it in the present societal context. “Is it prudent,” Scalia later asks, “to imperil acceptance of the Church’s hard teachings on birth control and abortion and euthanasia [...] by packaging them – under the wrapper ‘respect for life’ – with another uncongenial doctrine *that everyone knows does not represent the traditional Christian view?*”¹⁰⁰ With respect for Justice Scalia, it might not be prudent to do as he suggests, but the doctrine is actually quite congenial, and it does represent the traditional Christian view, a view that fundamentally respects life with the other subjects of “binding” teaching Scalia references, albeit *Evangelium Vitae* is not binding, at least to him.

In *The Death of Innocents*, death penalty abolitionist Sr. Helen Prejean (whom I discuss at length in Chapter 6) speaks out against Scalia’s vote in *Callins* and other aspects of his jurisprudence in capital matters. “Justice Scalia and I couldn’t be further apart,” she states plainly. “He provides the ‘legal groundwork’ to send people to their deaths, and I resist his orders every way I can.”¹⁰¹ After witnessing Patrick Sonnier (and four others) die in execution chambers after failing in appeals processes much like that of Bruce Callins, Prejean discovered firsthand the tremendous power of decision contained

¹⁰⁰ Ibid., 21, original emphasis.

¹⁰¹ Prejean, *Death of Innocents*, 171.

within the American legal system. She also discovered Scalia, a fellow Catholic, her brother Louie's duck-hunting partner, and a participant in the machinery that sent her incarcerated spiritual mentees to their deaths in execution chambers. Her critique of Scalia covers some of the same points discussed previously, most notably Scalia's misinterpretation of Romans 13. She also admonishes Scalia's indifference to the humanity of individuals that ends in capital punishment, an indifference that Prejean deems characteristic of machine-like behavior:

Not only does Justice Scalia judge behavior out of all context, he reads the Constitution without acknowledging the influence of his own moral values, and he quotes scripture without taking into account the historical situations its authors were addressing. Such compartmentalized thinking is the way machines work, not human beings.¹⁰²

To Scalia's credit, he is not a machine, but a human being, just like Prejean, and just like all involved in capital matters. He is also a brilliant jurist and a steward of the U.S. Constitution in a nation which needs true stewards. His fidelity to a literal and historically-supported understanding of the Eighth Amendment is commendable, and in many instances, preferable to broader readings that impose personal convictions on the Constitution that do not match that of the people to which the document and its laws ultimately belong. Scalia correctly identifies the proper medium of change in society's use of the death penalty as legislative, and not judicial. But his thinking, as Prejean describes, is somewhat compartmentalized, and to extend the characterization, the

¹⁰² Ibid., 178.

compartments of Scalia's mind are so separated that they are weakened by a lack of integration, not to mention the compartments are erroneously constructed to some extent in themselves. Though Scalia should not compromise his fidelity to the Constitution and, as Prejean suggests, suddenly declare the death penalty unconstitutional and vote accordingly, his belief in the morality of capital punishment as a Catholic deserves review beyond the consideration and rejection of teaching he has given at present.

In "God's Justice and Ours," Scalia twice references Thomas More, patron saint of lawyers, as an example of a Catholic who models his belief in the morality of capital punishment through work as a jurist. First, Scalia quotes More's final words to Cranmer, More's executioner in Robert Bolt's *A Man for All Seasons*, a fictional account of More's death. Scalia believes More's final words in Bolt's play, his sentiment that "[God] will not refuse one who is so blithe to go to Him," effectively capture the traditional Western conception of the death penalty as an outcome of free will.¹⁰³ Later, Scalia notes that "one of the charges leveled by [More's] detractors was that, as Lord Chancellor, he was too quick to impose the death penalty."¹⁰⁴ More lived in a 16th century English society in which capital punishment was necessary to remove harmful criminals from society. The death penalty was also available for a much wider range of crimes – robbery, witchcraft, even cutting down the wrong tree – for which the penalty can no longer be assessed today. In refusing to swear to the Act of Succession, More died by the penalty, and his life and martyrdom serve more as a powerful statement against capital punishment, perhaps, than as evidence Scalia uses to promote it.

¹⁰³ Scalia, "God's Justice and Ours," 19.

¹⁰⁴ *Ibid.*, 20.

Given Scalia's argument for the death penalty, another section from Bolt's play seems particularly applicable to his discussion. When More's family visits him for the final time in prison, More's daughter, Meg, attempts to persuade him to take Henry's oath, urging him to "say the words of the oath and in your heart think otherwise."¹⁰⁵ More responds to his daughter and says, "When a man takes an oath, Meg, he's holding his own self in his own hands. Like water. And if he opens his hands then – he needn't hope to find himself again."¹⁰⁶ It seems that, somewhat like More, Justice Scalia holds an oath, and himself, in each hand. One is to his country, to its Constitution, and the law and people it serves. The other is to his Catholic faith, his Church, and ultimately, to his God. Scalia endeavors to keep these oaths separate, though he acknowledges that the latter, his oath to his faith, enables the former, his oath as a justice. As a father, husband, friend, Catholic, and statesman, More had many oaths as well, but in the end, according to Bolt's play, he acknowledged an underlying commonality – love, and specifically, love for truth – that prevails over all.

If Scalia's oaths have a common denominator in his consideration of the death penalty, which seems fleeting, if existent, it is most readily retribution, and not More's love for truth. In his mind, the Church teaches retribution, which becomes his personal conviction in supporting the death penalty. He therefore sits on the Supreme Court, which he views as the final step in the machine of capital retribution, and votes as he does in capital matters in order to enact constitutionally acceptable retribution on wrongdoers who deserve punishment. The Constitution, then, becomes Scalia's secondary oath,

¹⁰⁵ Robert Bolt, *A Man for All Seasons* (New York, NY: Random House, 1962), 140.

¹⁰⁶ *Ibid*, emphasis omitted.

though in the way Scalia arranges his argument in support of the death penalty, the Constitution often appears as his first. What would happen, then, if Scalia were to find his oaths in conflict with one another, or find that one of his oaths, most likely retribution, is fallaciously informed? What might Scalia do if he woke up one morning and realized that the message of the Church is not one of retribution, and that he can no longer support the death penalty by personal conviction? What if, upon further reading of Augustine and Aquinas, Scalia simply decided he was *unsure* as to whether or not capital punishment is morally tenable? Any of these occurrences, according to Scalia, would result in his resignation from the bench, the only way to keep his oath to the Constitution from dripping out of his hands. Scalia could not sit on the bench and vote to uphold a constitutionally mandated punishment when his conscience calls for its impracticability, and would have no option but to step aside. And what a remarkable and unprecedented act that would be (though not necessarily a suggestion of this exercise) if Scalia resigned his seat, standing fast to his oaths to his Catholic faith *and* the Constitution and stepping down from the highest court of human judgment, even at the risk of being a hero.¹⁰⁷

¹⁰⁷ Ibid., 141.

V

John Suthers and the Prosecution of Capital Offenders: Seeking the Best Answer for Society's Greatest Evils

After returning from tours of service in Vietnam, a group of GIs stationed at Fort Carson, CO in the summer of 1975 formed a gang that burglarized various restaurants and other merchants in the Colorado Springs area. Among other crimes, their primary misdeed was robbery, but after agreeing together to murder anyone who stood in their way or came to know of their actions, homicide became frequent as well. Over the gang's two-month crime campaign in the summer of 1975, the group killed at least five people. Nineteen-year-old GIs Michael Corbett and Freddy Lee Glenn, two of the gang's members, were each responsible for awful, willful murders. Corbett stabbed a fellow soldier with a bayonet when the soldier refused to give him a marijuana cigarette. At a party following the killing, Corbett exhibited the bloody blade used to murder the soldier and described to those present the satisfaction of plunging the knife into the soldier and listening to his bones crack.¹⁰⁸ One of Glenn's victims was Karen Grammer, an eighteen-year-old waitress at a Red Lobster in Colorado Springs. When the gang of GIs arrived at Grammer's Red Lobster on July 1, 1975, and found it closed, the gang altered their original plan of robbing the restaurant and abducted Grammer, taking her to a nearby apartment where members of the gang alternated raping her. Afraid of what might happen

¹⁰⁸ Suthers, *No Higher Calling*, 13.

if they released her, the gang decided to kill her, and Glenn stabbed her multiple times, slit her throat, and left her for dead in an alley. Still alive, Grammer crawled fifty yards to a nearby trailer park where she died attempting to reach one of the trailer's doorbells. At trial, juries convicted both Corbett and Glenn of first-degree murder and sentenced them to death, but their sentences were changed to life imprisonment in 1978 when Colorado overturned its death penalty statute.

As a law student intern at the 4th Judicial District Attorney's Office in Colorado Springs, CO in the summer of 1975, John Suthers researched various legal issues that arose in Corbett and Glenn's cases and attended much of their trial proceedings. "I had never been exposed to such evil," Suthers remembers in *No Higher Calling*, the book I reference in this project's introduction. "As a small part of the prosecution team, I felt the immense satisfaction that prosecutors feel when they are successful in holding a defendant responsible for a reprehensible crime."¹⁰⁹ This experience, among others, led to Suthers's career as a prosecutor. After completing law school, Suthers returned to the Colorado Springs DA's Office, where he spent the early part of his career and was later elected as CO's 4th Judicial District Attorney. From there, Suthers served four years as the presidentially appointed U.S. Attorney for the State of Colorado, and currently represents Colorado as the state's Attorney General. Throughout his career, Suthers has prosecuted many capital cases, and in numerous instances, has sought the death penalty. He has encountered criminals whose evil actions have rivaled and even surpassed those of Corbett and Glenn in the summer of 1975, and has found a life's worth of meaning in

¹⁰⁹ Ibid., 14

demanding accountability for awful crimes on behalf of society as a prosecutor. Suthers has dedicated his life to the prosecution of societal evil, and in some instances, the evil has been of so great a magnitude that in his view, only the death penalty would suffice as the desired prosecutorial outcome.

Though Suthers has become an accomplished prosecutor and public servant, he was and is first a Roman Catholic. Raised and educated for sixteen years in Catholic schools, the foundation of Suthers's character resides in his Christian faith. One of his guiding principles in life, "*sic transit gloria mundi*," or "so passes the glory of the world," a phrase inscribed on a needlepoint that has hung in every office Suthers has ever occupied, is an adage that his high school Latin teacher, a nun, first introduced to him. This same nun encouraged him to pursue a career in public service to others, a significant influence in Suthers's eventual choice of vocation. Suthers's Catholic upbringing is evident also in the way in which he views the world and the law that regulates it. Fundamentally, Suthers understands humans as inevitably sinful and self-interested members of a society that tends toward chaos and anarchy if not regulated by a communal social contract – the essential relationship Augustine posits in his *City of God* and *City of Man*. This contract sets rules and regulations for a society in order to protect it, and when these rules and regulations are violated, the community steps in to enforce the contract, often by way of punishment. This, in Suthers's opinion, is the principle role of a prosecutor: to enforce a community's social contract.¹¹⁰ During his time as a prosecutor in Colorado Springs, Suthers assisted in founding the St. Thomas More

¹¹⁰ Ibid., 10.

Society, a group for Catholic lawyers in Colorado Springs who meet to discuss subjects of faith and law. One set of group discussions explored the seven deadly sins – greed, pride, lust, anger, envy, gluttony, and sloth – sins that Suthers has encountered repeatedly in enforcing the societal contract of American communities. The death penalty, a punishment that accompanies capital crimes often resulting from these cardinal sins, surely arose as a controversial topic in the discussions of the More Society, and Suthers undoubtedly defended his position in support of capital punishment, a position “in opposition to the current view, although not the historical view, of the church hierarchy.”¹¹¹

Like Antonin Scalia, Suthers’s understanding of the historical view of the Church hierarchy could use additional research, particularly in depth and breadth of reading and understanding Thomas Aquinas, as he believes Aquinas provides historical precedent for Catholic support of the death penalty. Suthers relies primarily upon Aquinas’s principle of double effect, and the self-defense therein, as indicative of historical Church teaching regarding the death penalty. While Suthers correctly identifies Aquinas’s double effect as one of the most important, if not the most important, contributions to Catholic social teaching on the death penalty throughout history, and even today, he mistakenly isolates it as Aquinas’s chief statement on the subject and fails to contextualize double effect in the larger scope of Church voices and statements on capital punishment. In the previous chapter, I pointed out Scalia’s misinterpretation of Aquinas’s central message regarding punishment as one of retribution, rather than correction, that Aquinas, like Augustine,

¹¹¹ Ibid., 57.

actually intends. This clarification applies to Suthers as well. Suthers, however, though he explicitly states that “the punishment must fit the crime” prior to his discussion of double effect, does not see Church doctrine as retributive to the extent Scalia does, though he defends retribution as an acceptable intent of punishment.¹¹² He believes retribution seeks necessary accountability for societal crime, and can exist without vengeance as motivation. Suthers combines what he understands as the Church’s response to capital crimes – self-defense and retribution – with what he believes to be the only adequate response from society to murders like that of Karen Grammer – the death penalty. Suthers supports capital punishment in society because, as a prosecutor, he has seen the power of the death penalty and the tightening effect it has on public safety. He has looked individuals like Michael Corbett and Freddy Lee Glenn in the eye, has seen firsthand the evil of their actions, and has worked as a prosecutor to restore the societal contract and preserve and protect life to the best of his ability, needing and using the death penalty in order to do so. And though he could gain a wider understanding of Aquinas in the context of the Church’s message of mercy and correction, his experience testifies to the horrendous crime and evil in society that require an appropriate punishment and answer for society.

Although Suthers respects the rationale behind life imprisonment, he continues to support capital punishment in society in a very limited capacity for crimes that require the highest retributive societal response and for individuals who present an uncontainable risk of harm to society. When defending his position in support of the death penalty,

¹¹² Ibid., 58.

Suthers frequently cites numerous instances he has encountered as a prosecutor where prison inmates have murdered fellow inmates and correctional officials while serving life sentences.¹¹³ These examples, in his opinion, along with those of individuals like Michael Corbett and Freddy Lee Glenn, belong in the category of rare, practically non-existent cases that Pope John Paul II identifies in *Evangelium Vitae* for which the death penalty is still morally viable. Not only does the increased security of death row deny the possibility of additional murder in the future, but the death penalty alone can satisfy the societal need for a response to an inmate's action of homicide while in prison. Without recourse to capital punishment, adding years to an inmate sentenced to life imprisonment hardly punishes an inmate's wrongdoing or holds the inmate responsible for ending a life. "Life imprisonment is simply inadequate in these types of circumstances," Suthers urged to me in a personal interview. "Something must be done to enforce accountability on behalf of society, and capital punishment alone carries enough weight to enforce the [societal] contract."¹¹⁴ The evil present in the case of an inmate killing another inmate or a prison guard is undeniable, and raises one of the most difficult scenarios in discerning the practical morality of capital punishment in contemporary society. What is to be done to punish an inmate who ends the life of another while serving a life sentence in prison? Is moving the inmate to a higher security prison enough of a response, or is the retributive

¹¹³ On January 5, 2010, Walter Walker, an inmate of Limon Correctional Facility in Limon, CO, allegedly stabbed and murdered a fellow inmate. Walker, currently serving a life sentence for another murder, is the most recent of numerous examples of murders that inmates commit while incarcerated, a regrettably common occurrence in modern prison facilities. (Alicia Gossman-Steves, "Inmate murdered at Limon correctional facility," *La Junta Tribune-Democrat*, January 6, 2010, http://www.lajuntatribunedemocrat.com/news/police_and_fire/x1767504297/Inmate-murdered-at-Limon-Correctional-Facility (accessed January 6, 2010)).

¹¹⁴ John Suthers, Interview by author, Telephone, January 6, 2010.

measure of capital punishment a viable, or even necessary, option? Suthers argues fervently for the latter, as the death penalty is, in his opinion, the only answer for this type of wrongdoing.

When I asked in our conversation what role rehabilitation and redemption play in the fate of capital offenders, particularly for those who kill and then kill again in prison, Suthers responded that those who face the death penalty have every opportunity to repent. “Those facing capital execution for a terrible affront to society have the opportunity to repent for their actions and make amends to God. Death row is not devoid of redemptive ingredients,” he said, calling attention to spiritual advisors like Sr. Helen Prejean and the time and services available to those sentenced to death.¹¹⁵ In Suthers’s view, an inmate’s time on death row combines a necessary retributive measure on behalf of society with an opportunity for an offender’s correction and renewal. For this reason, Suthers does not find that his support for the death penalty as a prosecutor compromises the beliefs he holds as a Catholic, though he acknowledges his position places him in some contrast to that of the Church. Tragic cases of inmates murdering each other or guards, gangs of soldiers gathering together and planning group homicides, and other heinous evils present in society require the death penalty, Suthers maintains, the only measure by which society can match crimes with the proper punishment, and the primary way, given his understanding of Thomistic self-defense, by which Suthers integrates his convictions regarding societal justice with those he holds as a Catholic. These tragic cases do not prevent the good that can come from an offender’s rehabilitation process, but in some

¹¹⁵ Ibid.

ways, according to Suthers, promote what can come from reconciliation. In Suthers's view, capital punishment satisfies the highest standard of justice society can afford, a standard that he accepts as a Catholic and pursues as a prosecutor.

Though Suthers makes a compelling case for capital punishment as a viable and necessary standard of justice in society, the question remains as to whether a better standard exists, one that more readily meshes with his Catholic faith. In our discussion of rehabilitation, Suthers brought up the concept of restorative justice, the idea that by some action, offenders and the legal and penal systems can work together to repair or redeem crimes committed against society. "I don't really believe in much of what restorative justice promises," Suthers explained, pointing to the example of a victim of rape sitting down with the rapist in an attempt at mutual reconciliation, or the family of a murder victim sitting down with the murderer with a similar intended goal of restoration. "I just don't think anyone is going to really want to talk in that type of situation, and I don't think much can come from it," he remarked.¹¹⁶ This conclusion fits logically with Suthers's belief in the merit of retribution, as a taken life can never be fully restored, while one can be taken in return to match the life lost. Suthers is correct that forgiveness is an incredibly high standard of justice, particularly when forced through the arranged examples he gives. But forgiveness is not impossible, and the stories of Helen Prejean, Patrick Sonnier, Donald Cabana, Antoinette Bosco, and all those discussed in Chapter 6 show that while a life taken in a murder can never be restored to what it was, much can

¹¹⁶ Ibid.

be accomplished by, as Augustine states, “[leaving] someone to learn the lesson.”¹¹⁷

Restorative justice does not negate the need for punishment, nor does it do away with the societal requirement for an answer to wrongdoing for which Suthers so strongly advocates. Instead, restorative justice combines corrective elements for a wrongdoer with Suthers’s vengeance-free version of retribution through punishment, a middle ground that Suthers should reconsider.

As I finished my interview with Suthers, he stressed that he is a well-read and faithful Catholic. “I went to Catholic schools for sixteen years,” he reminded me. “I read my catechism dutifully and kept up with all that the Church taught. No one ever told me that the death penalty was wrong.”¹¹⁸ As Suthers is well aware, the Church has, until very recently, acknowledged the death penalty as a necessary practice to defend society from individuals intent on causing harm. He is also aware, however, that the same teaching, on the surface, is changing. In *No Higher Calling*, he concludes his discussion of capital punishment with the following:

I’ll continue to examine my conscience concerning the issue, but I suspect I’ll continue to view death as an appropriate punishment in a narrow class of particularly heinous murders that combine obvious premeditation and overwhelming evidence of guilt and for which any other penalty seems to me to be an inadequate societal response.¹¹⁹

¹¹⁷ Augustine, *Political Writings*, 124.

¹¹⁸ Suthers, Interview by author.

¹¹⁹ Suthers, *No Higher Calling*, 61.

It is encouraging that Suthers will continue to weigh the morality of capital punishment as a Catholic and prosecutor. He might start, as suggested previously, with a wider reading of Aquinas and Augustine to expand his understanding of the historical view of the Church hierarchy, which, though it may appear to be changing, authors a message of correction that remains consistent in that of the present Magisterium, albeit calling for a different outcome in life than previously sanctioned state executions. Suthers points to some of society's most tragic and difficult cases of violence as circumstances in which the death penalty remains necessary and falls outside of the scope of society's ability to defend and protect. As a prosecutor and guardian of society, he knows these cases better than anyone. If he is correct in that the death penalty is a necessary answer, his Catholic faith still calls for rehabilitation of all offenders to the greatest extent possible, rehabilitation that might exist more successfully outside of death row.

These points aside, Suthers has proven his commitment to enforcing society's code throughout his career as a prosecutor, and has done so in a way that has engaged his Catholic faith, rather than artificially separating it from his vocation. He, like Antonin Scalia, is a faithful steward of the Constitution and understands the intended design of American society and the necessary mode of altering it. "If I had felt differently about capital punishment at the start of or at any point during my career, I couldn't have been a prosecutor," Suthers promised me, indicating he would, like Scalia, step down from his position if his personal conviction regarding the death penalty changed, rather than force his conviction on society.¹²⁰ Keeping with Scalia and Suthers's shared affinity for

¹²⁰ Suthers, Interview by author.

Thomas More, Suthers, a Catholic jurist with a strong commitment to the oaths of his life, may be the closest individual that Colorado (if not the United States) has to a contemporary Thomas More – a Catholic prosecutor for all seasons. As Suthers’s career experience shows, “we see that avarice, anger, envy, pride, sloth, lust, and stupidity commonly profit [today] far beyond humility, chastity, fortitude, justice and thought, and we have to choose, to be human at all,” some of More’s final words to Meg during their last meeting in Bolt’s *A Man for All Seasons*.¹²¹ Our society and its legal system *need* men like John Suthers, men who choose to be human, even when this choice, like the public service to which he has dedicated his life, is less than profitable. We need Suthers to continue to examine his conscience in order to find the best societal answer for the greatest evils of our time, balancing his experience with an informed sense of morality and faith. Additionally, we need to join him in the truest efforts of corrective and restorative justice, considering how we must choose to be human in the action and conduct of our lives.

¹²¹ Bolt, *A Man for All Seasons*, 140-141.

VI

Living on the Ground with Helen Prejean: Facing the Realities of American Capital Punishment

I first met Sr. Helen Prejean in April 2009 at a talk she gave at Naropa University in Boulder, CO. When I arrived at Naropa before the talk, I saw Prejean finish a conversation with a Naropa student and head to the bathroom before taking her spot on a stage in a lecture hall. Although a somewhat inconsiderate move on my part, I stopped her before she reached the bathroom, thinking it might be my only chance to request a personal interview at a later date. I told her who I was, that I was studying at Regis University, and that I was writing a thesis on Catholic social teaching and capital punishment. Though I'm sure she wished she could have just gone to the bathroom in peace to gather her thoughts before speaking, she agreed to a personal interview at a later date, smiling at me with a certain gleam in her eye – a gleam for the Jesuits, I thought, or perhaps recognition of Regis, where she has spoken before. As I've since interviewed Prejean and studied her writing and work as a death penalty activist and abolitionist, I now understand the gleam in her eye was one of hope for what I might come to learn through the process, and hope that my work might influence others, particularly Catholic others, to inform their consciences regarding the practice of capital punishment in contemporary American society. It is a tremendous statement to Prejean's character that, given her rigorous travel schedule and work load, she volunteered her time to speak with

me, a lowly undergraduate dipping my toes in the oceanic study that is the topic of this exercise. The same can be said of John Suthers, who in our conversation acknowledged Prejean as someone who “has lived what she talks about and actually knows the intricacies of our American legal system and the death penalty debate,” high praise from someone with an opposing view on the subject.¹²² Prejean “lives on the ground,” as she often states, to fight what she views as one of the greatest moral problems of contemporary American society.¹²³ Her story is one of true gumption, and it meets and surpasses Suthers’ praise.

Prejean grew up witnessing many of the evils she would combat as a consecrated woman. “Daddy, an attorney, represented a slew of black clients, charging them five dollars for his services,” she remembers from her childhood, pointing to her father’s pro bono offerings as one of her first inspirations to stand up for the poor, discriminated, and marginalized. “It would take me a long time to understand how systems inflict pain and hardship in people’s lives and to learn being kind in an unjust system is not enough.”¹²⁴ This realization, one that called her to a vocation of action, is one of the first she makes in *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*, now a landmark work in the study of capital punishment and a major motion picture. In *Dead Man Walking*, Prejean chronicles her journey in accompanying two men, Elmo Patrick Sonnier and Robert Lee Willie, to the execution chamber after both were convicted of capital homicide. As each man’s spiritual advisor during his time on death

¹²² Suthers, Interview by author.

¹²³ Helen Prejean, Interview by author, Telephone, January 11, 2010.

¹²⁴ Helen Prejean, *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* (New York: Vintage Books, 1994), 7.

row, Prejean discovered pain, hardship, and other injustices present in the American legal system. She continued this process in advising three additional men during their time on death row, two of whom were Dobie Williams and Joseph O'Dell, whose stories she relates in *The Death of Innocents*, her second book. As the title suggests, Prejean strongly believed both Williams and O'Dell were innocent of the murders for which they were convicted and executed for crimes that they did not commit. Prejean now travels the globe, speaking, advocating, and acting in various capacities against the practice of the death penalty, particularly in the United States. For the adversity she observed in the situations of Patrick Sonnier and Robert Willie, the legal failure she believes occurred in the cases of Dobie Williams and Joe O'Dell, and various other reasons, Prejean calls for an end to capital punishment, acting daily on her Catholic conviction to preserve life, regardless of circumstance.

When I asked Prejean for a consolidated, comprehensive explanation of the basic reasons for her disagreement with the practice of the death penalty, she pointed me back to the 2005 statement from the United States Conference of Catholic Bishops regarding capital punishment, a document I referenced in Chapter 3. The statement, entitled "A Culture of Life and the Penalty of Death," lists the following four reasons for which the United States should no longer exercise the death penalty:

- The sanction of death, when it is not necessary to protect society, violates respect for human life and dignity.
- State-sanctioned killing in our names diminishes all of us.

- Its application is deeply flawed and can be irreversibly wrong, is prone to errors, and is biased by factors such as race, the quality of legal representation, and where the crime was committed.
- We have other ways to punish criminals and protect society.¹²⁵

The Bishops' statement, which centers on these four points, calls ultimately for "common action to end the use of the death penalty, to reject a culture of death, and to build a culture of life."¹²⁶ It encompasses the loss of life Prejean has witnessed in execution chambers, the mistakes and wrongful executions she has discovered in her time with death row inmates, the hard-heartedness and indecency of government officials, corrections officials, and other operators of the machinery of death with whom she has interacted, and a line of thought that directly mirrors Pope John Paul II's statements in *Evangelium Vitae* and the most recent version of the Catholic Catechism. "The Church doesn't need another statement besides [the USCCB's]," Prejean told me when I asked if the Catholic Church needs to issue a more binding or inclusive doctrine on the subject of capital punishment. "We need action," she continued, "and we need education."¹²⁷ Given her experiences, Prejean has seen what Catholics and the rest of the American population need to know about capital punishment. She has lived in solidarity with the evils she identifies as present in the American practice of capital punishment, and now writes and speaks of these evils in the hope that action will be taken to do away with them.

¹²⁵ United States Conference of Catholic Bishops, "A Culture of Life and the Penalty of Death," 2005 (<http://www.usccb.org/sdwp/national/penaltyofdeath.pdf>), 4.

¹²⁶ *Ibid.*, 20.

¹²⁷ Prejean, Interview by author.

In accompanying five men to death row, Prejean has interacted with the multitude of individuals who stand in and along the road to an execution chamber. This multitude includes death row inmates themselves, Supreme Court Justices and other jurists, state governors, district attorneys, public defenders, and other attorneys, family and friends of victims of capital murders, family and friends of capital murderers, wardens, executioners, and all those who work in corrections and the penal system, social workers, politicians, lobbyists, priests and other clergy, the media, and other interested persons. This multitude, many of whom, in Prejean's experience, were of a Christian disposition, if not Catholic, faces the same challenge Antonin Scalia, John Suthers, Prejean, and all those involved in legal matters engage: the integration of personal faith and morality with the duties and action vocation. For some, this integration permits the death penalty, or even demands it. For others, this integration results in a position in opposition to capital punishment, or an irreconcilable conflict of conscience that ends in the abandonment of a career. And still others, like Prejean, find inspiration in this integration to act against the death penalty, taking on a new role and vocation to advocate for change and reform. The individuals that line the road to a death chamber, though their positions on capital punishment may differ, together illustrate the breadth of choices that Catholics and other Christians make when confronted with the difficult moral questions of the death penalty. As Prejean demonstrates, these choices, when coupled with the actions that result from them, often carry the weight of life and death.

Elmo Patrick Sonnier was the first man Prejean accompanied to an execution chamber. Adapted in part as Michael Poncelet (Sean Penn) in *Dead Man Walking's* film,

Sonnier's story and death sparked Prejean's career and present work as a death penalty abolitionist. In the early hours of the morning on November 5, 1977, Sonnier and his brother, Eddie, abducted Loretta Bourque and David LeBlanc, two teenagers from New Iberia, Louisiana. In a remote Iberia oilfield, the brothers handcuffed LeBlanc to a tree, Sonnier raped Bourque, and Bourque then agreed to consensual intercourse with Eddie when the brothers promised to release the couple safely if she agreed. Fearing the couple would report the brothers' actions to authorities upon release, and that this report would result in Sonnier's return to the Louisiana State Penitentiary, where he had previously served time, the brothers decided to kill the couple. The next morning, Louisiana authorities found the couple face-down in the Iberia oilfield, each dead after being shot three times in the back of the head at close range with a .22-caliber rifle. Initially, after mutually accusing each other at trial, Louisiana juries convicted both brothers of first-degree murder and sentenced them to death, but upon review, a Louisiana appellate court reversed both convictions and sentencings. Eddie's retrial resulted in a sentence of life imprisonment without parole, and at Sonnier's retrial, Eddie, now without the fear of death, recanted his initial accusation that Sonnier shot the couple and took responsibility for the killings himself. Sonnier later confirmed this version of the incident in private conference with Prejean during his time on death row. It appears that Eddie changed his account of the incident numerous times in an effort to avoid a death sentence, and Louisiana prosecutors successfully impeached his testimony at Sonnier's second trial. Though Eddie avoided death at retrial, Sonnier was not so fortunate, and received another conviction for first-degree murder and the death sentence that accompanied it. Despite

various appeals and petitions, Sonnier's conviction stood. The state of Louisiana executed him by electrocution on April 5, 1984.

Advising Sonnier during his time on death row not only revealed to Prejean a case in which the government executed an individual for a crime he may not have committed, but Prejean's relationship with Sonnier also opened her eyes to other failures of the American legal system and the brutal inhumanity of capital executions. Put simply, Sonnier hardly met the expectations Prejean had before meeting him, and for that matter, whatever expectations the average American likely entertains for a capital murderer. When Prejean first arrived at the penitentiary to meet with Sonnier, a convicted rapist and murderer, he presented her with a picture frame he created in his cell with empty cigarette packages, a gift from a man she quickly found to be quite the opposite of the evil and malevolent villain that the media and reports of his crime had construed him to be. In talking with Sonnier, Prejean quickly discovered the badly blurred truth of fact in Sonnier's trials, and the poor and inadequate state-appointed legal counsel who had represented him throughout the proceedings. Had Sonnier received the time and attention initially of a competent defense attorney (as in Millard Farmer, the attorney who would try to save his life in his final days), the wide discrepancies in accounts of his crime may have been exposed, and he may have avoided the electric chair. To Prejean, Sonnier was a troubled, underprivileged man who felt extreme sorrow for the wrongful actions of his life and deeply regretted all that had brought him to death row. When asked by the executioner if he had any last words, Sonnier turned to Lloyd LeBlanc, David's father, a man intent on seeing Sonnier executed, and said, "Mr. LeBlanc, I don't want to leave this

world with any hatred in my heart. I want to ask your forgiveness for what me and Eddie done, but Eddie done it.”¹²⁸ Sonnier understood what he had done, and was sorry for his action. He was also fully aware of various injustices and irreconcilable aspects of the entire ordeal, an awareness that likely contributed to his decision not to apologize to Godfrey Bourque, Loretta’s father, also intent on Sonnier’s execution, who sat with Lloyd LeBlanc during the execution. Sonnier’s last words highlight the immense difficulty of *forgiveness* that capital cases present, another of Prejean’s discoveries in the process. Prejean listened to Sonnier’s last words, held his hand seconds before his death, and watched him die. Shortly after departing from the penitentiary after the execution, Prejean’s car pulled over to side of the road, she leaned out a door, and vomited, a physical manifestation of the moral nausea that Patrick Sonnier’s death brought her.

Although Patrick Sonnier died on April 5, 1984, he came alive again in various capacities in Prejean’s interaction with the other men she has accompanied to the death chamber. Six months after Sonnier’s execution, Prejean began writing to Robert Lee Willie, whom Louisiana executed on December 28, 1984, for the kidnapping, raping, and murdering of eighteen-year-old Faith Hathaway. In serving as Willie’s spiritual advisor, she found another indigent man convicted of and sentenced for a terrible crime without proper legal counsel, developed a relationship with a disturbed, but penitent, inmate, and watched him die. From July 24, 1996, to July 23, 1997, Prejean repeated the same cycle with Joseph O’Dell, the convicted murderer, rapist, and sodomist of forty-four-year-old Helen Schartner. Overzealous Virginia prosecutors, a jailhouse informant, and again,

¹²⁸ Prejean, *Dead Man Walking*, 93.

inadequate defense counsel, doomed O'Dell. With the help of Prejean and Lori Urs, a prison ministry volunteer who believed in O'Dell's innocence and married him in prison only days before his death, O'Dell disputed his conviction to the very end. His story and its controversy contributed to the 1997 changes in the Catholic catechism as discussed in Chapter 2. On January 8, 1999, Prejean witnessed Dobie Williams's execution. Mentally disadvantaged, incredibly poor, and facing racial discrimination as an African-American, Williams also met an unforgiving justice system when convicted of stabbing and killing Sonja Knippers, a forty-three-year-old woman from Louisiana, another case in which questions remain as to the convicted's guilt. Like O'Dell, Williams denied his conviction as a murderer until his execution, but to no avail. "I just want to say I got no hard feelings for anybody. God bless everybody," Williams said in the spirit of forgiveness as he stepped into the execution chamber's gurney to receive his lethal injection.¹²⁹ Given all that Prejean experienced with Williams and the other men she has accompanied to death row, the message at the core of her work emerges in the underlying theme of Williams' last words: mercy, and the option for reconciliation. But where Prejean found mercy in the hearts of death row inmates, she struggled to find it in many of the other individuals she encountered on the road to execution chambers. These individuals often separated themselves from the reality of capital punishment, complying with their expected duties and responsibilities while suppressing their personal beliefs and faith, whether merciful or otherwise.

¹²⁹ Prejean, *Death of Innocents*, 50.

When the Fifth Circuit Court of Appeals refused to overturn Patrick Sonnier's second death sentence, Prejean met with then-Louisiana Governor Edwin Edwards in the hope that Edwards would either commute Sonnier's sentence or sway the state Pardon Board toward clemency. As governor, Edwards had the ability to commute sentences as he deemed necessary and prevent criminals from facing the death penalty, a privilege many governors still hold today. On March 27, 1984, a week before Sonnier's execution, Edwards publicly refused to commute Sonnier's sentence at a televised meeting with Prejean and others who sought mercy for Sonnier. "I'm the governor and represent the state and must carry out the laws and must submerge my own personal views to carry out the expressed will of the people," Edwards explained at the meeting, cleaning his hands of Sonnier's end.¹³⁰ Edwards was Louisiana's first Catholic governor in the twentieth century, and presided over fifteen state executions during his four terms in office. "Edwards trie[d] to put the death process as far from himself as possible," Prejean recalls from conversations with Edwards, in regard both to Sonnier's case and other executions. "Still, he [couldn't] escape the red telephone in the corner of the death chamber, where a call from him, even at the last minute, [would mean] life for the man being strapped in the chair and silence means death."¹³¹ Edwards chose, fifteen times over, to remain silent, subordinating his personal belief regarding capital punishment, whatever it might have been, to the will of the Louisiana people and the death penalty they supported during his time in office. He often encouraged those who opposed the death penalty to raise legislation to abolish it, a suggestion he made to Prejean and those present at the meeting

¹³⁰ Prejean, *Dead Man Walking*, 56.

¹³¹ *Ibid.*, 57.

on March 27. In 16 years as Louisiana's governor, Edwards never made an affirmative action to execute a criminal. He did, however, make fifteen choices, and fifteen times, he chose to allow the machinery of death to operate as it would.

Sixteen years following Prejean and Edwards's meeting, then-Illinois Governor George Ryan, a Methodist, declared a state-wide moratorium on the death penalty in January 2000. Three years later, on January 11, 2003, Ryan commuted the death sentences of the 167 convicts on Illinois's death row at the time, changing their sentencing agreements to life imprisonment as appropriate. "I don't know if we'll ever go back to the death penalty as we knew it, as long as I'm governor," Ryan stated, opting for what he saw as the only guaranteed solution to prevent the conviction and execution of a rapidly growing number of innocent individuals convicted of capital crimes in the state.¹³² "He blamed rogue cops, zealous prosecutors, incompetent defense lawyers, and judges who rule on technicalities rather on what is right" as the basis for the moratorium, Prejean explains in *Death of Innocents*.¹³³ Ryan picked up the red telephone at the end of execution chambers throughout the state and, unlike Edwards, chose not to remain silent. He saw a flawed and broken system of capital justice in Illinois, and moved to fix it given the power of his office as governor. As a Republican and consistent political supporter of the death penalty, Ryan drew significant criticism for his decision. Many questioned the motive behind his decision, and some suspected he declared the moratorium to resurrect his public image given ongoing corruption investigations and other scandals during his

¹³² Dirk Johnson, "No Executions in Illinois Until System Is Repaired," *New York Times*, May 21, 2000, <http://www.nytimes.com/2000/05/21/us/no-executions-in-illinois-until-system-is-repaired.html> (accessed January 12, 2010).

¹³³ Prejean, *Death of Innocents*, 222.

time in office. Others criticized him for abusing the power vested in him as governor. Regardless of motive, Ryan acted as he did because he saw a problem with the death penalty and commutation as the solution to it, and by acting, revived the longstanding national debate on the morality of capital punishment. His action was one of personal conviction and belief, a difficult choice that elicited the expected response of controversy and saved the lives of 167 Illinois convicts.

In considering Ryan's mass commutation, Prejean predictably praises his action, while detailing her disagreement and disappointment with Governor Edwards. "Politics plays its part," Prejean concludes in her analysis of Edwards's decision. "Dare [a governor] risk his political career to save the lives of a few condemned criminals? What's a governor to do?" she asks.¹³⁴ "Every human being must take a stand when discerning the morality of capital punishment," she told me in our interview. "Some will choose based on politics, others on justice. But everyone must separate what they need to do from what they want to do."¹³⁵ Edwards and Ryan both took a stand as governor. Edwards placed his personal feelings on the death penalty aside, or refused to admit them, in order to rule as expected. His choice was one of politics and, though it complicates Prejean's posed dichotomy, one he felt was just. His Catholic faith, however, was an afterthought. The difficulty he experienced in separating the needs and wants of his choice and the turmoil of conscience therein are quite evident given Prejean's interaction with him as he deliberated over Sonnier's fate. Conversely, Ryan's choice, though quite the opposite and rooted in impassioned personal conviction, was also one of

¹³⁴ Prejean, *Dead Man Walking*, 58-59.

¹³⁵ Prejean, Interview by author.

politics, and one he felt was just. Of the 167 individuals pardoned, some were indeed innocent of the capital crimes for which they were sentenced, and others still guilty. For this reason and others, many criticized him for an exercise of power that stepped outside of the voting will of the people of Illinois, its courts, and its juries. Prejean applauds Ryan's action as governor, but despite the lives saved, questions remain as to the personal motivation behind his action and the means of arriving at it. So, what, then, is the best course of executive action for a governor given the situations Edwards and Ryan faced, particularly a governor of a Catholic or Christian disposition? Is it possible to separate needs and wants in decision making given the will of the people and the power of a gubernatorial office? As governors, Edwards and Ryan attempted to walk lines that separate just pardoning and judicial policymaking, personal faith and the will of the people, and quite literally, life and death. Their choices mark the path of their walk, a path that, given the Christian understanding of their faith traditions, assumes the powers of mercy and condemnation that ultimately belong to God, powers that perhaps exceed the scope of a gubernatorial office.

Shortly before Patrick Sonnier's execution, Prejean spoke with Paul C. Phelps, the head of the Louisiana Department of Corrections at the time and supervisor of executions, a "good, Catholic man" with the ability to exercise powers of mercy and condemnation, to discuss Sonnier's fate and her objections to the execution process.¹³⁶ Phelps listened intently, explained that all would go on as planned, and arranged for Prejean to attend Sonnier's execution. He promised her he would "make sure that [the]

¹³⁶ Prejean, *Dead Man Walking*, 101.

event [was] carried out with as much dignity and respect as possible,” and when the day of Sonnier’s execution came, he calmly and willingly fulfilled his promise.¹³⁷ After the execution, Prejean met again with Phelps, remembering that his “cool, professional tone had terrified [her],” a man far too comfortable with the duties of one who supervises executions.¹³⁸ When she asked Phelps what he believed executions accomplished, he replied, “Nothing,” detailing his view that the death penalty is not an effective deterrent and concluding that “By its nature the criminal justice system will always be somewhat arbitrary.”¹³⁹ Prejean challenged these responses, asking how Phelps reconciled his duties as a supervisor of executions with personally held beliefs that seemingly opposed the expectations of his job. “Do you experience any conflict of conscience between your personal religious beliefs and what your job calls you to do?” she questioned.¹⁴⁰ Phelps responded, in language reminiscent of Governor Edwards, that the law was not his, and he had no choice but to follow it, maintaining that he had no “personal responsibility” in the process.¹⁴¹ He then clarified, like Antonin Scalia and John Suthers, that if he morally opposed any part of his job, he would resign, and would have refused to take the job initially. When Prejean asked if he would ever consider attending one of the executions he supervised, he said, quite plainly, that he never would – an odd choice, she thought, for a supervisor to so adamantly separate himself from that which he supervises. Their interaction ended in this type of oddity and paradox. “From a personal standpoint it is

¹³⁷ Ibid., 79.

¹³⁸ Ibid., 101.

¹³⁹ Ibid., 102.

¹⁴⁰ Ibid., 102-103.

¹⁴¹ Ibid., 103.

very, very bizarre to design a process like this,’” Phelps explained to Prejean.¹⁴² But, despite all reservations, Phelps designed and supervised executions, separating personal belief and public duty in a way Prejean never understood and forever rejected.

In *Death of Innocents*, Prejean praises the work of Donald Cabana, a man quite similar to Phelps in title and career, but quite dissimilar in the practice of his vocation. Cabana, a devout Catholic, spent twenty-five years in prison work, during which he gave orders to execute two men during his time as the prison warden at the Mississippi State Penitentiary in Parchman, MS. One of the men, Connie Ray Evans, catalyzed in Cabana a powerful execution room epiphany reminiscent of Prejean’s encounter with Patrick Sonnier and her other spiritual mentees. Cabana gives an account of Connie’s final minutes in *Death at Midnight: The Confession of an Executioner*, detailing both his work as an executioner and the experiences that brought him to oppose the societal practice of capital punishment. After the prison chaplain led the execution chamber in the Lord’s Prayer in the moments leading up to Connie’s execution, Connie turned to Cabana and left the following indelible mark on his conscience:

As we shook hands, Connie thanked me for the many kindnesses extended to him by the staff. Then, with a sheepish laugh, he asked if the warden would be embarrassed if an inmate hugged him. Searching fruitlessly for comforting words, we silently embraced for a long moment.¹⁴³

¹⁴² Ibid.

¹⁴³ Donald Cabana, *Death at Midnight: Confessions of an Executioner* (Boston, MA: Northeastern University Press, 1996), 9.

After their embrace, Cabana felt compelled to comfort the man whose life he was prepared to end. “Connie spoke quietly [...] He wanted to whisper his final words to me,” Cabana recalls. “He thanked me for being his friend. I started to speak, but he asked me to wait, and then told me softly, ‘From one Christian to another, I love you.’ I wanted to respond, but no words would come. Now I was the one in shock, shaken to my very soul.”¹⁴⁴ Connie found forgiveness and thanksgiving in his final moments of life. He transformed the retribution cited as cause for his execution, returning the hardship of his time on death row with love for his executioners. Cabana hardly knew what to do, or how to respond. Connie’s love for him redefined the intersection of his work as an executioner with the beliefs of his Catholic faith, and Cabana was never the same.

Connie’s execution, as indicated, shook Cabana’s very soul. It questioned the justice he once found in the death penalty, and challenged him to reconsider the punishment of death he had previously held as a societally necessary measure of retribution. “If Connie Ray Evans was some awful monster deemed worthy of extermination, why did I feel so bad about it?” he remembers thinking. “As I watched a grieving mother leave her son for the last time,” reflecting on Connie’s final goodbye to his mother, “I questioned how the sordid business of executions was supposed to be the great equalizer.”¹⁴⁵ Cabana stepped outside of what Phelps defined as the “proper role of an executioner,” allowing his personal feelings and emotions from the experience to compromise the expectations of his office. It took years for him to settle the turmoil Connie raised in his conscience. Cabana never stepped down from his position as warden,

¹⁴⁴ Ibid., 15-16.

¹⁴⁵ Ibid., 177.

as Phelps promised Prejean he would have had he experienced the transformation Cabana did. Instead, he continued along in his work. “Each new day’s crises kept me from having to think or remember. But nothing could dispel the feelings I harbored inside. Try as I did, I could not remove the lingering doubt or bewilderment,” Cabana confesses.¹⁴⁶ When he wrote about his experience with Connie and as a warden years later, it was only then that he could muster the courage to reveal his true sentiment: that he had done wrong as an executioner, he felt tremendous guilt for his action, and he had no option in moving forward but to call for the abolishment of capital punishment and save not only the lives of sentenced murderers, but the lives of executioners committed to carrying out the supposed justice of the state without any consideration for their own convictions. He concludes his book with the following prescription:

This is not a particularly good time in which to find myself an opponent of capital punishment. Paradoxically, however, [...] it may also be the best of times. Never has there been a greater need for rationality and clear thinking. Absent the emotionalism and histrionics that have always been so characteristic of the debate, the present offers greater opportunity than ever for pragmatism and calm deliberation. There is much need, and room, for both.¹⁴⁷

Given Cabana’s career choice, he never found a particularly good time to oppose capital punishment, but as he suggests, he found plenty of opportunities. His call for an intentional, thorough, and critical review of the practice of capital punishment in

¹⁴⁶ Ibid., 192.

¹⁴⁷ Ibid., 192-193.

contemporary society is as necessary today as when he authored his book, particularly for executioners and those directly involved in carrying out the death penalty. And finally, there is much need, and much room, for not only pragmatism and calm deliberation, but for action as well, as Prejean's work suggests. It is time for those involved in capital matters to take into account what they personally believe and act upon it in responsible and appropriate ways, like Cabana, rather than hide behind a cloak of duty without thought and acquiesce to the present system of punishment in passivity.

Prejean, obviously, is one who has accepted this challenge, but not without difficulty. Although she reflects on her experiences with Patrick Sonnier and other death row inmates with the impassioned conviction and humble confidence of an activist, the true struggle of her work emerges in her interaction with the families of those murdered, and the only regret of her experiences, particularly in Sonnier's case, remains her initial failure to care for these families as she should have. Prejean did not interact with either family until an irreparable impression of negligence had been made. After Sonnier's Pardon Board hearing, David LeBlanc's father, Lloyd, introduced himself to Prejean for the first time and said, "Sister, I'm a Catholic. How can you present Elmo Patrick Sonnier's side like this without ever having come to visit with me and my wife or the Bourques to hear our side?"¹⁴⁸ LeBlanc's question brought Prejean down to the pain and suffering of the situation in which she was engaged. She took the confrontation to heart, and never again neglected the presence and concerns of victims' families. "I see now that I devoted my energies exclusively to Pat Sonnier's plight when I should have shouldered

¹⁴⁸ Prejean, *Dead Man Walking*, 64.

the struggles of the victims' families," she acknowledges in *Dead Man Walking*. "I should have reached out to the Bourques and LeBlancs immediately and offered them love and comfort, even if they chose to reject it."¹⁴⁹ Prejean's regret led to action on behalf of victims and their families. In 1988, Prejean teamed with Janet Yassen, a coordinator of the Victims Violence Program in Cambridge, Massachusetts, and Dianne Kidner, a New Orleans Mennonite Volunteer, to create *Survive*, a New Orleans-based victim assistance group still in existence today.¹⁵⁰ "All the sorrow and loss is overwhelming, yet I don't feel devastated," Prejean reported in 1991 after attending a women's meeting of *Survive* and hearing mothers' stories of murdered loved ones. "There's something in the women that strengthens me [...] they have grace, tenacity, a great capacity to absorb pain and loss and yet endure."¹⁵¹ After overcoming her initial lapse in attending to victims' families, this became Prejean's general sentiment: the stories of murder victims are inevitably horrific tragedies, but hope and resolve outlast hatred and vengeance in the hearts of those that survive their loved ones. Several years after Patrick Sonnier's execution, Lloyd LeBlanc corroborated this conclusion. Though he continues to struggle with expected animosity toward Sonnier, LeBlanc eventually recanted his wish for Sonnier's execution and told Prejean he would have accepted life imprisonment in lieu of the death penalty. LeBlanc's example is the greatest testament to forgiveness Prejean has encountered in decades of work with death row inmates and the families of murder victims. Though she missed him at the start of her journey, LeBlanc

¹⁴⁹ Ibid., 32.

¹⁵⁰ Ibid., 234.

¹⁵¹ Ibid., 241.

confirmed for Prejean that tragedies of murder and death can find reconciliation in those that remain.

This reconciliation, however, is never easy, and no one made this distinction clearer to Prejean than Vernon Harvey, who Prejean met during her counsel of Robert Lee Willie. Harvey, the stepfather of Faith Hathaway, Willie's victim, anxiously anticipated Willie's execution, telling the press he couldn't wait to see "“smoke fly off [Willie's] body”" and find consolation for the loss of his stepdaughter in watching Willie die.¹⁵² Harvey's first words to Prejean upon their introduction in Baton Rouge, "“Watch out or someone is going to hurt you,”" set the tone for what would be a contentious relationship that lasted long past Willie's eventual execution.¹⁵³ Although Prejean and Harvey entertained several friendly exchanges at the Harvey's home and elsewhere both throughout and following Willie's death, their viewpoints never converged, as in the case of Lloyd LeBlanc. An elated Harvey told reporters immediately following Willie's execution that Willie died too quickly and should have underwent the same torment and anguish his stepdaughter did, and that he was so happy Willie died that he could dance.¹⁵⁴ In frustration and relative helplessness, Prejean resolved to avoid Harvey and his wife, Elizabeth, following Willie's execution, but quickly found she could not avoid them. She ran into the Harveys again and again – at death penalty rallies, executions, conferences, seminars, a Parents of Murdered Children group session, even in the New Orleans Veterans' hospital following Harvey's open-heart surgery. At these meetings, Harvey

¹⁵² Ibid., 118.

¹⁵³ Ibid., 131.

¹⁵⁴ Ibid., 212.

typically rattled off his favorite pro-death penalty arguments, many grounded in retribution, and Prejean responded with her favorite counterarguments, often calling for Harvey to reconsider the violent effect of state executions on society. Harvey never truly found the satisfaction in Willie's death he sought, frequently lamenting the speed and painlessness of his execution. Their difference of opinion produced a strange friendship and lively, albeit contentious, conversation. Harvey complicated Prejean's belief in reconciliation for all involved in capital matters. He demonstrated that while forgiveness is always possible, it must be chosen, fought for, and worked toward. The families of murder victims should be angry, and sometimes, they remain so, even when vengeance is not enough.

On August 19, 1993, Antoinette "Toni" Bosco, a New York-based Catholic, writer, columnist, and mother of six, received word that John, one of her sons, and his wife, Nancy, had been murdered in their Montana home. As the investigation of their deaths progressed and the police identified their murderer, Bosco underwent the expected hardship of a mother of victims of a brutal homicide. "I had felt the anger that makes one crazy enough to kill," she retells in *Choosing Mercy*, her account of the incident and aftermath, "and at times I believed that if ever the murderer was caught, I would not know if I could want his life spared."¹⁵⁵ But when she first viewed the room in the Montana home where her son and daughter-in-law had died, viewed the stain of blood on the walls and floor, and touched the scattered bullet holes with her own hands, a powerful

¹⁵⁵ Antoinette Bosco, *Choosing Mercy: A Mother of Murder Victims Pleads to End the Death Penalty* (Maryknoll, NY: Orbis Books, 2001), 23.

transformation occurred within her that reviled all forms of the “evil of unnatural death.”¹⁵⁶ She explains:

I knew that I could never accept unnatural death at the hands of another again, not even when it is called legitimate, but more so, I knew why. Life and death are God’s territory, not ours. I wanted the killer found, put away, and punished. I knew I would have to struggle a long time with my feelings, because the anger was still so fresh. But never would I be able to say, ‘Kill the killer.’¹⁵⁷

Bosco’s experience led not only to her rejection of unnatural death by way of murder, but to her denial of the legitimacy of unnatural death as state-authored defense. She could not accept the human regulation of life and death, shying away from the moral ground of ultimate judgment. She refused to support murder as retributive punishment, answering the anger and violence of her son’s death with forgiveness and a renewed pursuit of life, and has since taken her cause on the road with Prejean and many others, calling for the abolition of capital punishment in the United States.

Bosco’s translation of personal belief to action is a bold commitment not without challenge and doubt. “I had to ask myself back then, and over and over since then,” she acknowledges in *Choosing Mercy*, “do I have enough of God’s love in me to pray for this young killer? Perhaps. Because I do pray for him, knowing in my soul that I must, for the sake of my own redemption.”¹⁵⁸ Bosco insists that she pray for the man who murdered

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid., 35.

her son, an exercise of humility that can only come through true forgiveness. Not only does she strive to pray for him, but she equates herself with him, an innocent victim's mother paralleled with a heinous killer. She realizes that she is one with the murderer in the solidarity of sin and the greater need for redemption. In solidarity with murderers, therefore, Bosco passionately pleads for their lives. "Very often they (people in support of capital punishment) point to people like me," she notes. "They say the only way I can have 'justice' is to see the murderer killed. But I ask, what good can come of heaping more violence upon the violence already done? I beg, please don't ask to kill in my name."¹⁵⁹ Based on her own experience of having her son violently and unexpectedly taken, Bosco pleads that violence not beget more violence, and shows that specious definitions of justice often rely on the merit of violent punishment and vengeance. Her experience demands that she, like Prejean, take her understanding of justice without violence to a higher level of action and advocacy, a step beyond her identity as a murder victim's mother to solidarity with the murdered *and* their murderers.

The stories of those Prejean has met in courtrooms, on death row, in execution chambers, and elsewhere within the American capital legal process – the stories of Patrick Sonnier, Edwin Edwards, Lloyd LeBlanc, Vernon Harvey, and even Justice Antonin Scalia – tell Prejean's story. Given the enormity of her work, the characters and people involved in her experience demonstrate concretely what she means when she states that she "lives on the ground." These stories and their characters, therefore, bring out one of the central messages in her work, a message as or more important than her

¹⁵⁹ Ibid., 223.

general call to end the death penalty in America: get involved, meet the people the law serves and regulates, and ultimately, *join her on the ground*.

At the conclusion of her discussion of Scalia in *Death of Innocents*, Prejean tells the story of one, final individual. His name is David Bates, and during a question-and-answer portion of remarks Antonin Scalia gave at the University of Chicago regarding the death penalty, he stood up and told about his experience with the American legal system. “I’m a formerly incarcerated individual, served ten years in prison, was falsely accused of a crime, tortured, beaten,” he explained. “You have innocent people on death row right now, who have been forced to sign confessions, who have been tortured, suffocated, beaten [...] I’m scared. I’m worried.”¹⁶⁰ Reflecting on Bates’ bravery, Prejean writes:

At that polite, intellectual conference he stood up, the only speaker that day who knew personally that the broken, flawed criminal justice system does to people. Bates spoke with an authority that cut through the jocular atmosphere, confronting everyone with hard realities, because he’s been there, he’s lived on the ground.¹⁶¹

Prejean’s work paints a rather gruesome picture of the criminal justice system, a portrayal that emphasizes many elements that need reform, and very few aspects of the system which function well, despite many aspects that do. Though Bates was the only speaker that day who stood up and told his story, an unfortunate, awful story, the law serves the public that were present at that conference and elsewhere, in a general sense, better than Prejean admits. Her work can leave readers wondering if our nation’s legal system does

¹⁶⁰ Prejean, *Death of Innocents*, 223.

¹⁶¹ *Ibid.*

anything right or just, or if it is simply a biased, discriminatory, and thoughtless system of violence and vengeance. This is not Prejean's intent, and fortunately so, because our legal system does do justice, and it does seek what is right. Her lasting point, however, that our nation needs individuals like Bates to stand, speak, and act to reform the legal system where reformation is needed, could not be more true given the various testimonies of her work. The American practice of capital punishment is one area in need of reformation and reconsideration, whether or not Prejean's call to abolish the death penalty completely should be enacted. As societal standards of defense and justice evolve in the United States, so also should the consciences of individuals in society, whether informed by Catholic faith, some other form of Christianity, or otherwise. Her work invokes a duty on all to seek out the best response to the most challenging evils of our time, with murder, whether by the state or an individual, being perhaps the most apparent evil, and pursue without end the best means of preserving and sustaining human life.

CONCLUSION

It is tempting, given the span of Catholic viewpoints on capital punishment in the United States that Antonin Scalia, John Suthers, and Helen Prejean provide, to wonder who has it right, and who does not. Are Scalia and Suthers justified in their consistent support for the death penalty, even in light of Church teaching that suggests otherwise? Is Prejean more correct in her view that the death penalty should be abolished entirely, and that all who murder, regardless of circumstance, should live nonetheless? Or is there some middle ground or position that combines differing viewpoints in a way that best follows Church teaching and applies the teaching in the most rational manner on behalf of society?

At some level, it seems that each viewpoint is correct. Scalia and Suthers are correct in that society *must* answer the wrong that murderers commit with a punishment of commensurate weight. Punishment is a necessary component in maintaining social order and enforcing a society's social contract. But Prejean's belief that punishment should function to change the life of a murderer in a positive way, rather than automatically end it, also has merit. She personally and intimately understands the renewal to which murderers can aspire, and commendably fights for their lives. At the same time, however, Scalia, Suthers, and Prejean all seem wrong in certain aspects. Scalia and Suthers are misguided in their overall understanding of Church teaching on the

death penalty. They are too unyielding in their conviction that heinous murderers *deserve* the death penalty, and unwisely obstinate in their support of the state's motivation to enact retribution. The most tragic cases of heinous murder, however, repeatedly test Prejean's position that no murderer should die as punishment for killing, regardless of how premeditated, widespread, and/or blatantly evil the action of murder. She also promotes a general skepticism of the American system of criminal justice that threatens the potential for mutually agreeable future action to limit or remove the state's option to exercise capital punishment.

But if Scalia, Suthers, and Prejean are all right, and if Scalia, Suthers, and Prejean are all wrong, who wins in the end? What, ultimately, should be done?

When angry, troubled individuals end innocent lives, and a state of divinely-given authority entrusted with the governance of a broken society must provide an answer for killing, *no one wins*. The presence of Augustine's City of Man¹⁶² in the United States is an unfortunate, yet plainly apparent, reality. Sinful humans will never stop killing. They will only find more efficient means of cruel and calculated murder, and tragically enough, more victims. The state, then, has no future option but to continue to respond to murder to the best extent possible, pushing onward in improving correctional systems and developing corresponding means of defending society and preventing the action of killing. This conflict will not cease. A change in mindset, therefore, must occur: a shift away from adversarial, right-wrong, win-lose thinking among those like Scalia, Suthers,

¹⁶² See Augustine, *City of God against the Pagans*. I reference the City of Man and City of God in previous chapters, but fundamentally, the City of Man and City of God refers to a duality Augustine posits between those in society who stray from God and those who deny earthly victory or pleasure in favor of a higher standard of Christian values, respectively.

and Prejean to a new, cooperative agenda aimed at modeling the City of God with **life** as society's highest attainable prize.

Given the contemporary practice of capital punishment in the United States, the Cities of God and Man may not be very far apart. Scalia, Suthers, Prejean, and those like them already hold the prize of life in high esteem. But action can be taken to hold life in the *highest* esteem – wider circulation and understanding the Catholic Church's teaching on the death penalty, increased societal commitment to restorative justice and the renewal of murderers, and reform, improvement, and further development of society's ability to defend itself without recourse to the death penalty – and with this action, American society can continue in its search for the answer of greatest justice for the greatest evils it faces. It is, perhaps, inconclusive whether or not the United States needs the death penalty, and inconclusive whether or not the Catholic Church explicitly condones or condemns its use in every American context. But the tremendous value of human life, and the enormous importance of the task of promoting human life, is anything but inconclusive.

AFTERWORD

When I started this project, I thought that just by reading, thinking, and writing, I might answer Helen Prejean's call and make a contribution to our nation's discussion of the death penalty and our discernment of its practice. The time for me to act and live in this realm, I thought, remains in the future. The true opportunity to inform my conscience through action will come, I decided, but for now, I am doing all I can. Some day, I will defend capital offenders, or prosecute them on behalf of society, or assume divinely-given authority and issue judgments that promote life, or witness an execution, but not today. For the time being, my written work is enough.

But when I started to read and study Helen Prejean's work and truly grasp the intent of her message, I realized I could not just write and wait, even though I hope this work achieves the force of effect with which it is given, and makes some impact in itself. Presently, I cannot practice law or participate through the other roles I have listed here. But as I came to the end of this project of research and discovery, I knew I had to do something; not everything, not answer the greatest and hardest questions about the death penalty, not save the world, but something. In January, at a radio interview in which I discussed my work with Michael J. Sheridan, Bishop of Colorado Springs, he encouraged me to pray for those on death row and our society as a whole as we wrestle with the

difficult issues at play in our practice capital punishment. I prayed as he suggested, but wanted to do more.

So, in January, I wrote to Matt Puckett for the first time. Matt is a death row inmate at Mississippi State Penitentiary in Parchman, MS, the penitentiary at which Donald Cabana was warden when two executions shook his soul irreparably. I found Matt's contact information online at a website that advertises death row inmates looking for pen pals. (Many such websites are available, though Matt's profile has since been removed.) Given the multitude of inmates seeking correspondence by writing, I chose Matt, oddly enough, because he reminded me of myself. His profile picture featured a young man in a baseball hat at a restaurant or some other public locale, blond hair, blue eyes, and Catholic. The profile expressed an interest in sports, featured an extensive reading list, and briefly discussed his background in the military. "My life held great potential for adventure and excitement," he wrote in his profile. "I came from a loving family and had many friends. Then things went horribly wrong."

In February, Matt wrote back for the first time. His letter did not include details regarding what and how things went horribly wrong. Frankly, I am not too concerned with what Matt did. In time, he will tell me if he wishes, and I could probably find the information on the Internet, but I do not plan to search. From what I have read, Matt was born on January 3, 1977. He was sentenced to death on August 5, 1996, and began serving his sentence on August 10, 1996. Another date looms on which his death sentence will come to bear, unless circumstances provide otherwise, but for now, like me, he spends his days reading, thinking, and writing.

Then again, who am I kidding? Of course I am curious about what Matt did to end up on death row, and I would be lying if I suggested otherwise. It has been hard to avoid publicly available information about his crime. I have done my best to steer around it, but where I have failed, I have only glimpsed the details of an awful murder. His story, though I do not know it completely, is strikingly tragic in the way Pope John Paul II discusses such incidents in *Evangelium Vitae*. I do not know all of the details, and I intend to continue to navigate around them as possible, unless Matt writes me otherwise. Regardless, I am frequently reminded that I write letters to a murderer, and the process continually calls me to separate the human, baseball hat-wearing reader from the worst action of his life, and, as Augustine first said, separate sin from sinner.

In his letter, Matt wrote about boredom, the greatest hardship he faces in prison. He wrote about his goals and New Year's resolutions, one of which is to write at least one letter every day. Over the last three years, he's written 1267 letters, one way to combat the boredom of life imprisonment. He also tries to learn a new vocabulary word every week, and is in the process of reading toward a "college-level science education."¹⁶³ Matt also writes short stories and essays, and some of his work is available online. Though Matt's education ended with a high school diploma, his written work is impressively creative and articulate. In "Too Close for Comfort," an essay posted on *Prisoner Express: The bridge between prisoners and the outside world*, Matt discusses the process of "taking turns" in life. He begins the essay with one such turn:

¹⁶³ Larry Matthew Puckett, Personal Letter. On file with recipient.

It's your turn. Picture yourself on deck in a baseball game. The bat is in your hands and you feel the weight and texture of it as you do warm-up swings [...] You step up to the plate with a tingling excitement coursing through you. You stare down the pitcher, daring him to pitch anything remotely to your liking [...] The pitch comes and in a second your mind calculates the speed and direction as your eyes never leave the ball [...] Your body torques, swinging the bat; it connects with the ball with a resounding crack. The ball has left you quicker than it came to you and sails out of the park. As you make the circuit of bases the excitement in you can barely be contained. A huge smile crosses your face that you aren't even aware of. The thrill is wonderful.¹⁶⁴

The thrill is so wonderful, Matt suggests, because the activity he describes – warming-up on deck, stepping-up to the plate, hitting the ball, rounding the bases, smiling – is entirely voluntarily, all a product of the wonderful thrill of choice. Activities are less wonderful in life, Matt explains, when they come involuntarily, in instances in which turns are not chosen or preferred. “It's just too close for comfort for me,” Matt concludes in the essay. “I know how close my turn is and it even makes my heart race to write about a sequence of events that I am, at present, safely removed from.”¹⁶⁵ Six men have been executed during Matt's time in prison, and he fears each day that his name might come next in the batting order.

¹⁶⁴ Larry Matthew Puckett, “Too Close for Comfort,”
http://www.prisonexpress.org/?mode=essay&file=Too%20Close%20for%20Comfort_Puckett.xml.

¹⁶⁵ Ibid.

“I hope you don’t get offended,” Matt wrote in the beginning of his letter to me, “but this question needs to be asked [...] What I want to know is should I expect this correspondence to be nothing more than a research jaunt, or will you look to write even afterwards?”¹⁶⁶ When you are finished writing, are you finished with the project, Matt seemingly asked me, or has the process and research impacted you enough to commit to action? *Am I just writing this thesis for scholarship’s (or graduation’s) sake*, I thought immediately, *or do I actually care about the people I have encountered along the way?* “Everybody has questions, totally normal, but it doesn’t feel all that great if people write [to me] with only the intent to sieve information and not get to know the person – me,” Matt explained. “You need both to get the full effect.”¹⁶⁷ I do not intend to stop writing to Matt anytime soon. He will get plenty of letters, as well as other reading material. I intend to send him a copy of the final draft of this project, and after that, a copy of *Dead Man Walking* to add to his reading list. In the years to come, I hope our relationship will continue to develop, and that I gain a wider understanding of both his person and the information he possesses through our letters.

Though my conscience regarding the practice of capital punishment in American society remains labored and somewhat unresolved as this project ends, I am sure enough that I will never be able to separate myself from the questions and individuals involved in this effort, particularly Matt. In the future, when I continue to contemplate many of the questions and issues I have raised in this effort, I am confident that I will remember the words of Thomas Aquinas, Pope John Paul II, and John Suthers. More so, however, I am

¹⁶⁶ Puckett, Personal Letter, Ibid.

¹⁶⁷ Ibid.

certain that I will think of Matt, and pray that if his turn in the order does indeed come, he steps up to the plate with courage and belief in the eternal peace that awaits him. Until then, I will continue to picture him in an imagined prison yard at the Mississippi State Penitentiary, firmly gripping the handle of a baseball bat, gazing intently at an incoming pitch, swinging, connecting, rounding the bases, smiling, and living each day with hope not yet lost.

BIBLIOGRAPHY

- Aquinas, Thomas. *Summa Theologiae*. Trans. Timothy McDermott. Notre Dame, IN: Christian Classics (Ave Maria Press), 1989.
- Augustine, Saint, Bishop of Hippo. *The City of God against the Pagans*. Trans. R.W. Dyson. New York, NY: Cambridge University Press, 1998.
- . *Political Writings*. New York, NY: Cambridge University Press, 2001.
- Bernardin, Joseph Cardinal. "The Death Penalty in Our Time." In *Consistent Ethic of Life*, 59-65. Kansas City, MO: Sheed and Ward, 1985.
- Bolt, Robert. *A Man for All Seasons*. New York, NY: Random House, 1962.
- Bosco, Antoinette. *Choosing Mercy: A Mother of Murder Victims Pleads to End the Death Penalty*. Maryknoll, NY: Orbis Books, 2001.
- Brugger, E. Christian. *Capital Punishment and Roman Catholic Moral Tradition*. Notre Dame, IN: University of Notre Dame Press, 2003.
- . "Rejecting the Death Penalty: Continuity and Change in the Tradition." *Heythrop Journal* 49, no. 3 (2008): 391. *Academic Search Premier*, EBSCOhost (accessed September 15, 2009).
- Cabana, Donald A. *Death at Midnight: Confessions of an Executioner*. Boston, MA: Northeastern University Press, 1996.
- Callins v. Collins*, 510 U.S. 1141, 114 S. Ct. 1127 (1994).

- Catechism of the Catholic Church*. Libreria Editrice Vaticana. New York, NY: First Image Books (Doubleday), 1997.
- Dulles, Avery. "Catholicism and Capital Punishment." In *Change in Official Catholic Moral Teaching*, 132-144. Ed. Charles E. Curran. Mahwah, NJ: Paulist Press, 2003.
- John Paul II, Pope. *Evangelium Vitae*. Papal Encyclical, issued March 25 1995. Retrieved from the Librería Editrice Vaticana at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html.
- Lucero, Judy. Interview by author. Denver, CO. February 24, 2010.
- Mich, Marvin. *Catholic Social Teaching and Movements*. Mystic, CT: Twenty-Third Publications, 1998.
- Prejean, Helen. *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*. New York: Vintage Books, 1994.
- . *The Death of Innocents: An Eyewitness Account of Wrongful Executions*. New York: Random House, 2005.
- . Interview by author. Telephone, January 11, 2010.
- Recinella, Dale. *The Biblical Truth about America's Death Penalty*. Boston, MA: Northeastern University Press, 2004.
- Scalia, Antonin. "God's Justice and Ours." *First Things: A Monthly Journal of Religion & Public Life* (May 2002): 17-21. *Academic Search Premier*, EBSCOhost (accessed March 30, 2009).

Suthers, John. Interview by author. Telephone, January 6, 2010.

---. *No Higher Calling, No Greater Responsibility: A Prosecutor Make's His Case.*

Golden, CO: Fulcrum Publishing, 2008.

The United States Conference for Catholic Bishops. "A Culture of Life and the Penalty of

Death: A Statement of the USCCB Call for an End to the Use of the Death

Penalty." 2005. <http://www.usccb.org/sdwp/national/penaltyofdeath.pdf>.

The United States Conference for Catholic Bishops. *The New American Bible.*

<http://www.usccb.org/nab/bible/index.shtml>.