

# **Pope Francis' Reform of the Catechism. The Death Penalty is Inadmissible for the Catholic Church**

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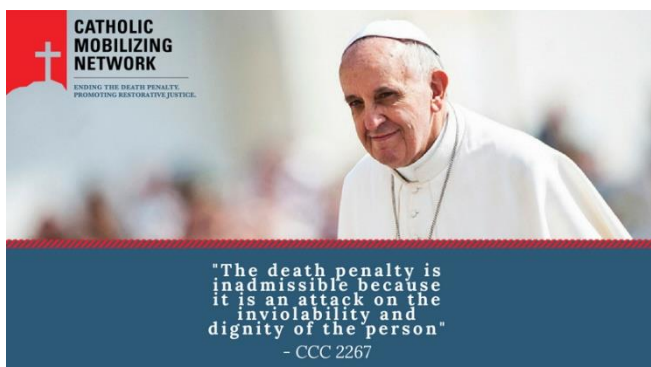
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## I

### **Introduction**



The first surprise that Pope Francis gave us was that he neither only spoke to Catholics nor only to Christians, but to all people of goodwill. And the first surprise for the jurists was

that on the first Holy Thursday of 2013, instead of washing the unsullied feet of twelve cardinals in the Vatican, he went to the juvenile detention centre of *Regina Coeli* and washed the feet of precisely twelve juvenile inmates, two of whom were women and, to top it all, one of them a Muslim. That was it, in a word.

Pope Francis had already voiced his unqualified opposition to the death penalty in front of criminal lawyers from all over the world and their international scientific organizations in Rome, in 2014. At the same event, he expressed utter rejection of life sentences as a concealed death penalty. In

effect, although the catechism drafted in the 1992 edition by John Paul II had broadly rejected the death penalty, it remained as an exception under section 2267 “if this is the only possible way of effectively defending human lives against the unjust aggressor”. A clause that permitted its abusive use in many countries, as happens in the systems that claim exceptions.

On 20 March 2015, a private audience of the Pope took place with Federico Mayor Zaragoza, president of the International Commission against the Death Penalty, which had been established in 2010 at the request of President José Luis Rodríguez Zapatero. He was accompanied by Asunta Vivó, secretary general of the Commission, Roberto Carles, General Secretary of the Latin American Association of Penal Law and Criminology, and myself. It is a solemn feeling to be alone with the Pope around the table of that office that we have seen so many times when he receives Heads of State. To see the Pope in papal gown and speaking in Spanish produces a tremendous impression. Neither he, nor Federico Mayor ceased to talk of so many things, not least the death penalty, because Francis upon taking his seat moved a document over the table towards Mayor and said “I will now concern myself with this matter”. Thus, Mayor went on to recall the men of peace who had been assassinated from Kennedy to Isaac Rabin. Francis spoke in Argentinian of the latter as “a great” man. The Pope related what he intended to say at the American Congress and at the UN on his forthcoming journey, at which point Mayor warned him of the Republicans, although as a reader of the Pope’s first apostolic exhortation, he knew that the Pope was well informed<sup>1</sup>. We were not to find out until later, but the Pope had just been informed of the threat of an attack on the following morning at an open-air

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<sup>1</sup> Apostolic exhortation *Evangelii Gaudium* of the holy father Francis to the bishops, clergy, consecrated persons and the lay faithful on the proclamation of the Gospel in today’s world, November 24, 2013. Specially Cap. II, [http://w2.vatican.va/content/francesco/en/apost\\_exhortations/documents/papa-francesco\\_esortazione-ap\\_20131124\\_evangelii-gaudium.html](http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html)

mass in Naples, that had come from the Mafia, which held no pardon for a Pope who had excommunicated them. Likewise, no few conservative Catholics are enamoured of a Pope who tells them what is wrong.

A month later, we went to the Vatican to present the book that our scientific societies had edited to the Pope accompanying his text “For a really human justice”. When, after José Luis de la Cuesta had handed him the book, I went up to present myself, he gave me no opportunity to finish. “You’re the death penalty one, aren’t you” he quipped at me, and forthrightly ordered “and tell Mayor and our friend from Seville that I have instructed Cardinal Schönborn from Vienna to study the matter and have told him to hurry it up”.

It happened just like that, fortunately, and was so announced on 1 August 2018, by the Spanish Jesuit Cardinal Luis Ladaria, president of what was first the Office of the Inquisition, then the Holy Office, and that since 1965 has been called the Congregation for the Doctrine of the Faith. It is not only a change of name, it is the renouncement of the purifying fire.

## II

### **New text for number 2267 of the Catechism of the Catholic Church on the death penalty**

The letter<sup>2</sup>, expressly approved by the Pope, makes it clear that, if in the past the death penalty might have seemed to be an acceptable instrument for the protection of the common good, today the awareness that the dignity of the person is not lost, not even after having committed the most serious of

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<sup>2</sup> Congregation for the Doctrine of the Faith. Letter to the Bishops on the new version of num. 2267 of the Catechism of the Catholic Church on the death penalty. 1 August 2018, with abundant bibliographic quotes. <http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/08/02/180802b.html>

crimes, is more alive than ever. It is also said that a new understanding has spread on the meaning of penal sanctions, which must above all be oriented towards the social rehabilitation and reinsertion of criminals and, finally, that effective systems of detection have been introduced that guarantee the necessary defence of the public, all of which has given rise to a new consciousness that recognizes the inadmissibility of the death penalty. The letter assumes the earlier arguments of the Pontiff himself, especially the one that the death penalty implies a cruel, inhuman and degrading treatment, which is applied with broad social and racial discrimination and that is irremediable in the context of judicial error. In justification for it all, the letter referred to the one handed to the President of the International Commission, Mayor Zaragoza<sup>3</sup>. In effect, the Pope, as he told us at the aforementioned meeting, has taken charge of the matter and has complied with what is within the sphere of his competences, while maintaining his commitment towards the abolitionist movement. The Pope reaffirmed the sense of the catechistical reform in his speech to the members of the International Committee against the Death Penalty on the occasion of their visit on 17 December 2018. There, the Pope recognized that, earlier, at the time of the first reforms of the relevant article from the catechism, “the present-day degree of development of human rights had not been reached and recourse to the death penalty was presented as a logical and fair consequence. Even in the Pontifical State they had resorted to this inhuman form of punishment, ignoring the primacy of mercy over justice”. With the renewal of the Catechism, the official doctrine is that “the death penalty is inadmissible because it is an attack on the inviolability and the dignity of the person”<sup>4</sup>.

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<sup>3</sup> Letter of his holiness Pope Francis to the President of the International Commission against the Death Penalty, [http://w2.vatican.va/content/francesco/en/letters/2015/documents/papa-francesco\\_20150320\\_lettera-pena-morte.html](http://w2.vatican.va/content/francesco/en/letters/2015/documents/papa-francesco_20150320_lettera-pena-morte.html).

<sup>4</sup> Address of his Holiness Pope Francis to the delegation of the International Commission against the Death Penalty, Monday, 17 December 2018,

The process at the pace that the Church follows has been very quick. Reasoning abolition upon the idea of human dignity has been a great contribution to the 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights. Francis has been very coherent with his programme of reforms and renewed ideas ever since his very first apostolic exhortation of 2013 and his critical view of the international economic order, his Encyclical on the environment and human ecology, *Laudato Si*, his campaign against hunger, and his key diplomatic initiatives in war zones such as the Ukraine, Iran and Syria, and in visits fraught with risks to such places as the Central African Republic and to Chile, although there for very different reasons.

### III

#### **The effects of the prohibition of the death penalty by the doctrine of the Catholic Church for Europe and Latin America**

The papal condemnation of the death penalty will have influence not so much in the Europe that stretches from Lisbon to Vladivostok, where only Belorussia stands isolated in the whole territory of the Council of Europe, but in America. In the America that runs from the Rio Grande to Patagonia where Catholic influence is dominant, abolition will serve in the Catechism to reinforce the prohibition of this cruel and inhuman punishment and to urge the countries that still maintain it in their laws towards full abolition, as very possibly happens in Guatemala and in Cuba itself, even though they are very different political realities. In turn and in this same sector of the continent, it will during electoral periods help those political parties that in a demagogic manner like to resort to the inclusion of a return to capital punishment in

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[http://w2.vatican.va/content/francesco/en/speeches/2018/december/documents/papa-francesco\\_20181217\\_commissione-contropena-dimorte.html](http://w2.vatican.va/content/francesco/en/speeches/2018/december/documents/papa-francesco_20181217_commissione-contropena-dimorte.html)

their programmes; as in the last presidential elections in Mexico, where one candidate proposed to return to the death penalty and the other only to “cut off” the hands of criminals. Nevertheless, the rigid doctrine of the Inter-American Court of Human Rights against the death penalty side-steps proposals protected in old and new punitive approaches<sup>5</sup>. Neither would it be surprising if the political spectrum linked to the evangelists, without doubt the most reactionary and retrograde of Latin America, could find a religious banner here and, above all a political one. In Brazil, although the new president considers that the constitutional prohibition of the death penalty is a closed matter, his own son and mainstream political leader promotes it, as well as the governor of Rio de Janeiro,<sup>6</sup> which is a cultivating broth for the increase in extrajudicial killings.

#### IV

### **The prohibition of the death penalty in Catholic doctrine and its effects in the USA**

Where the moral and the doctrinal proscription of the death penalty will certainly start to have beneficial and relatively immediate effects is in the United States. The reactions to the announcement of the change in the catechism were very immediate there. On the following day, Andrew Cuomo, the governor of New York, announced his support and the immediate presentation of a draft law for the complete abolition of the death

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<sup>5</sup> Sergio García Ramírez

<sup>6</sup> [https://www.clarin.com/mundo/jair-bolsonaro-dice-pena-muerte-hijo-aprueba-pide-referendum\\_0\\_8AXNcr7Py.html](https://www.clarin.com/mundo/jair-bolsonaro-dice-pena-muerte-hijo-aprueba-pide-referendum_0_8AXNcr7Py.html); the governor affirmed that the proper thing to do is to kill the criminal: [https://elpais.com/internacional/2018/11/02/america/1541183857\\_849386.html](https://elpais.com/internacional/2018/11/02/america/1541183857_849386.html).

penalty in his state<sup>7</sup>. It also stimulated favourable declarations from the mayor of the city of New York, who had already stated his views before the visit of the Pope to the USA.

As the professor of the theory of religion at the University of Pennsylvania, Marcy Hamilton said<sup>8</sup>, up until now it has been acceptable to say that, as the Catholic Church held the position that the death penalty was acceptable in some circumstances, it therefore raised no moral objections. Now, it will be more difficult for Catholic jurists to assume the present positive law of North-America in the states in which capital punishment is foreseen and in federal legislation. It is a question here of numerous people in relevant positions in the application of Law, especially in the Supreme Court. In such a defining situation, the balance of votes in the High Court on judgements concerning the death penalty over the past twenty years would have been broken with the new doctrine and the death penalty would have been declared “cruel and unusual”, if the judge Antonio Scalia had been a good catholic. Undoubtedly, were he alive, and after constant self-acclamation of his avowed religious faith, he could not have maintained that he considered the death penalty immoral. In the present Supreme Court, of nine judges four are catholic and so is the one incorporated by president Trump to substitute the judge now in retirement, Brett Kavanaugh.<sup>9</sup>

Some catholic governors will have difficulties, as in the case of the governor of Nebraska, Pete Ricketts, who had to recur to the veto in response to a draft

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<sup>7</sup> <https://www.politico.com/states/new-york/city-hall/story/2015/09/de-blasio-and-the-catholic-vote-025946>.

<sup>8</sup> New York Times, 6 August 2018, Timothy Williams, *Death Penalty Decree could be a quandary for US politicians*. For immediate reactions in the USA, see Death Penalty Information Center, *Pope Francis Formally Changes Catholic Church Stance on Death Penalty, Calling It “Inadmissible” (11.8.2018)*

<sup>9</sup> On the argument of Antonin Scalia on his justification of the death penalty from the texts of earlier Popes, see Cardinal Dulles and others in the journal “First Things” America's most influential journal of religion and public life, as it says in its publicity, “Antonin Scalia and His Critics: The Church, the Courts, and the Death Penalty”, Various, October 2002. (20.02.19); Richard Wolf, *Death penalty divides Supreme Court after Scalia's death*, USA TODAY, May 13, 2016 (20.02.19) <https://www.snopes.com/fact-check/scalia-death-penalty-quote/>.

law on abolition adopted in the legislative assembly by 30 votes against 19. Abolition was annulled in 2016 in a popular vote at the same time as elections, with a majority of 60% in favour of capital punishment capital. Governor Ricketts and his family have invested over one million dollars in maintaining capital punishment. In the days after the publication of the catechism they worked hard to bring about the execution of a convict after 20 years without one who had been on death row for 38 years<sup>10</sup>. No less Catholic is the governor of Texas, the state of the Union that has carried out most executions, as many as the rest of the United States put together.

The religious argument is very relevant in America, as Catholic and Protestant politicians live in a political climate in which they incessantly argue every day that their faith determines everything they do. The editorial piece of the New York Times, on 31 December 2017, was significant for the moral atmosphere of the United States, when the executioners of the state of Ohio, after 80 minutes injecting the convict Alba Campbell without finding the right vein in him, refused to continue and returned him to the cells, only to schedule a new attempt for June 2019. The North-American newspaper titled its editorial “Capital punishment deserves a quick death”. The response of the same newspaper to the decision of the Pope on 3 August 2018 resorted to the fifth commandment as the title of its editorial *You Shalt Not Kill*<sup>11</sup>. The editorial also recalled that 1479 people have been executed over the past 45 years, and 162 of those convicted and awaiting execution on death row have been exonerated after a review of the proceedings. On numerous occasions

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<sup>10</sup> New York Times, 3 August 2018: *Pope’s Death Penalty Stance Won’t Stop Execution, Nebraska’s Catholic Governor Says*.

<sup>11</sup> Pope Francis Declares Death Penalty Unacceptable in All Cases, Elisabetta Povoledo and Laurie Goodstein, Aug. 2, 2018, <https://www.nytimes.com/2018/08/02/world/europe/pope-death-penalty.html>; Editorial Board NYT, *Thou Shalt Not Kill. Pope Francis declares capital punishment unambiguously wrong. No exceptions*. Aug. 3. <https://www.nytimes.com/2018/08/03/opinion/editorials/thou-shalt-not-kill.html>.



because of the application of new ADN detection techniques that have invalidated the evidence for the prosecution or because of spectacular procedural errors inconceivable in the country that invented the legal categories of due process. In reality, the greatest strength of the retentionist countries e.g., China is found precisely in the persistence of capital punishment in the United States of America. A radical change in the “country of free men” would have a strong domino effect in the world.