

Testimony on House Bill 9  
25 February 2009

Chairman Ramras and members of the Judiciary Committee:

Good afternoon. My name is Charles Rohrbacher and I am a deacon of the Roman Catholic diocese of Juneau. As a Catholic I am pro-life and I believe that as a society we have a duty to protect human life from conception to natural death. In keeping with the Church's magisterial teaching, as a matter of faith and of principle I am opposed to capital punishment in every circumstance.

But I have come to speak to you this afternoon about my personal experience with the death penalty. In 1977 as a journalist, I became involved in the case of a young Korean immigrant named Chol Soo Lee. He had been wrongfully convicted of a 1973 gang slaying in San Francisco and while in prison was attacked by another inmate and in self-defense killed his attacker. But having been convicted as a gang killer already, his plea of self defense was brushed aside and in short order he was convicted and sentenced to death.

As a journalist I helped in the investigation into the circumstances of the first degree murder conviction that landed Chol Soo Lee in prison in the first place. We discovered that he had been convicted on the basis of being identified as the murderer by white tourists who had witnessed the crime from a distance. He barely spoke English, his public defender got a change of venue and then pulled out of the case two weeks before trial and he was defended by a pro bono attorney appointed by the court at the last minute. In addition, there was a tremendous amount of pressure from the public and from political officials to get a conviction.

Years later it was discovered that police and prosecutors had suppressed important, exculpatory evidence: they failed to inform his defense attorney that the police had statements from other witnesses to the crime who had told police that he wasn't the gunman or who identified an entirely different person as the killer.

## The Gospel of Life and the Sentence of Death: Catholic Teaching on Capital Punishment

*By Rev. Augustine Judd, O.P.*

Many Catholics find the Church's teaching on capital punishment confusing. While Christian faith affirms the sanctity of human life, the Church also affirms the legitimacy of executing a duly convicted criminal in particular circumstances. To eliminate this confusion, two distinct but related questions need to be considered: 1) Does society have the right to put a criminal to death for a heinous crime? If so, 2) Do today's circumstances justify the exercise of this right?

### The Public Debate

Certainly, recent developments have prompted public officials to reconsider these two issues. For example, last year the State of Illinois released Anthony Porter after more than fifteen years on death row and officially reversed his conviction. Another man had confessed on videotape and was charged with the double murder for which Porter had been convicted and sentenced to die.

On one level, extraordinary circumstances mark Porter's case. In 1998 Porter came within two days of his execution before the court spared him on the grounds it wanted to examine his mental capacity. Porter has an IQ of fifty-one. Nor was the new case for his innocence uncovered in the usual manner. It did not come through the work of attorneys, but through the efforts of an independent investigator collaborating closely with a professor at Northwestern University and his journalism students. In the course of their investigation, they found a witness at the trial who had been pressured by police to testify against Porter.

On another level, Porter's case is not extraordinary at all. Too frequently the administration of justice comes dangerously close to what Illinois governor George Ryan calls "the ultimate nightmare, the state's taking an innocent life." According to the Death Penalty Information Center, since 1973 almost ninety people have been freed from death row after the discovery of exculpatory evidence.

For this reason, public officials in jurisdictions supporting capital punishment have begun recently to question whether it can ever fairly be put into practice. On January 31, 2000, Governor Ryan—a death penalty proponent—inaugurated a moratorium on Illinois executions for an indefinite period. His move was prompted by the exoneration of thirteen Illinois death row inmates since 1977—one more than the number actually executed in that state.

Others have followed Ryan's lead. Although the governor vetoed it, the Nebraska legislature passed a moratorium bill last year. At the time this article was being written, the New Hampshire House of Representatives passed a bill abolishing the death penalty and sent it on to the state Senate for further consideration.

At the national level, doubts about the death penalty have spurred legislative efforts. Sen. Patrick Leahy of Vermont has introduced a bill to preserve biological evidence in capital cases for later testing while making that testing more accessible. It would also establish defense counsel competency requirements, inform juries of alternative sentencing options, and limit the federal government's seeking the death penalty in non-death penalty states. In the House of Representatives, Rep. Jesse Jackson Jr. of Illinois has introduced a bill requiring a minimum seven-year moratorium on all executions. Its purpose is to allow all death row inmates the opportunity to explore potentially exculpatory evidence. The executive branch has been involved in this issue as well. Many have recently called upon President Clinton to suspend federal executions, while the Justice Department has announced it will conduct an internal study on whether bias exists in applying for capital sentences.

The changed attitude about the death penalty among public officials seems to mirror a change in the general population. A recent Gallup poll showed support for the death penalty at its lowest level in nineteen years. At sixty-six percent, it represents a drop of fourteen percentage points in six years. Moreover, only fifty-two percent support the death penalty if there is an existing law allowing life without parole. Ninety-one percent

practice. St. Clement of Alexandria (c. 150-215) was the first Christian teacher to attempt to devise a theory accommodating capital punishment. He justified his position from the standpoint of self-defense. He suggested that one could become evil beyond any expectation for reform or "cure." In this case the evildoer may be removed by death to prevent further evildoing. He was the first to argue that an evildoer is like an infected limb that plagues the body. If it cannot be cured, the physician (the judge and executioner) must remove it to prevent the infection from harming the rest of the body (society). Others like Tertullian (c. 160-220) and Origen (c. 185-220) accepted capital punishment as a civil reality, but condemned Christian participation in it. St. John Chrysostom (349-407) and St. Augustine (354-430) recognized the Christian emperor's "power of the sword," even while they thought its application severe on occasion. Still others like Lactantius (d. 317) believed that the Fifth Commandment's prohibition against killing allowed no exceptions, even civil.

By the Middle Ages, Christians widely accepted the civil power's right to put evildoers to death. Even so, the Church was quick to condition this right. St. Thomas Aquinas (1225-1274), for example, points out that only a public authority may judge and execute a serious offender where the society's defense is at stake, and where the offender's reform is not expected. St. Thomas leaves no room for private vigilantism.

Following St. Thomas, Catholic moral theologians down to our own day continued to qualify the situations where the death penalty may be applied. Eventually, they formulated three general prerequisites:

1. *For the defense of society*, only a public authority may impose capital punishment. This condition excludes both individual and mob acts of vengeance.
2. *Capital punishment may be imposed only if it corresponds to the gravity of the crime*. In peacetime, capital punishment is chiefly reserved for the crime of murder.
3. *Capital punishment may be imposed only if the accused person's guilt is morally certain*. In normal circumstances this means the accused has the right to a fair trial and a reasonable defense.

### The Church Asks: Should We?

Up to this point, we have only examined whether, according to Catholic teaching, society has the right to impose capital punishment. There is another pertinent question Catholic teaching considers, namely, "Should society exercise that right?" Those answering in the affirmative traditionally appeal to three arguments:

1. **Capital punishment as retribution.** It restores the balance of justice by inflicting punishment in exchange for the harm done to an individual and society. Opponents of this argument criticize it for being vindictive. They argue capital punishment cannot be applied in degrees. Yet a convict's culpability for a capital crime often does admit of degrees.
2. **Capital punishment as deterrence.** The threat of death discourages someone from committing heinous acts against individuals and society. Critics dispute the deterrent capability of capital punishment. They say capital punishment may even harden a criminal, who, to avoid arrest and the prospect of execution, is driven to further acts of desperation. Nor will capital punishment effectively deter murders committed "in the heat of passion," or by the mentally ill or those under the influence of drugs. Finally, critics wonder how executions performed in the presence of just a few witnesses can *publicly* deter potential wrongdoers.
3. **Capital punishment as reform.** The threat of imminent death can spur the conversion and repentance of the convicted, aptly preparing him or her for the next life. Yet, execution poignantly eliminates a converted criminal's period of earthly grace and penitence, since one's lifetime is the only period of "probation" one can enjoy.

Authoritative Catholic teaching draws upon all that has been discussed thus far. It distinguishes between society's *right* to inflict capital punishment, and the *need* to do so. While the Church does not deny the death penalty's proper legitimacy under certain conditions, she does oppose its modern *application*, given the particular circumstances of our culture.

# What Every Catholic Should Know About the Death Penalty

## Scripture and the Death Penalty

In *A Culture of Life and the Penalty of Death*, the bishops explain the scriptural roots of Catholic teaching on the death penalty. This begins with the story of creation which teaches "that every life is a precious gift from God (see Gn 2:7, 21-23). This gift must be respected and protected. We are created in God's image and redeemed by Jesus Christ, who himself was crucified."

The bishops also explain "some argue that biblical statements about 'life for life, eye for eye, tooth for tooth' (see Ex 21:23-25, Lv 24:17, Dt 19:21) require that the death penalty be used for certain crimes. A correct interpretation of these passages indicates, however, that the principal intent of such laws was to limit the retribution that could be exacted for an offense, not to require a minimum punishment. Furthermore, it is important to read individual passages in the context of Sacred Scripture as a whole. While the Old Testament includes some passages about taking the life of one who kills, the Old Testament and the

teaching of Christ in the New Testament call us to protect life, practice mercy, and reject vengeance."

### ***From a Victim's Family...***

"No one in our family ever wanted to see the killer of our brother and his wife put to death. We felt instinctively that vengeance wouldn't alleviate our grief. We wanted this murderer in prison so he could never hurt another person. But wishing he would suffer and die would only have diminished us and shriveled our own souls. Hatred doesn't heal. Every time the state kills a person, human society moves in the direction of its lowest, most base urges. We don't have to make that choice. Our lawmakers have the capacity to help us abolish the death penalty and along with it, the fantasy that it will make the pain go away."

—Mary Bosco Van Valkenburg, whose brother and sister-in-law were murdered

## Catholic Teaching and the Death Penalty

Catholic teaching offers a unique perspective on crime and punishment. It begins with the recognition that the dignity of the human person applies to both victims and offenders. It affirms our commitment to comfort and support victims and their families, while acknowledging the God-given dignity of every human life, even those who do great harm.

Catholic teaching on human life is rooted in the belief

***I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary. . .***

*Pope John Paul II,  
St. Louis, Missouri, January 27, 1999*

that all life is a gift from God that must be respected and defended from conception to natural death. In his encyclical *The Gospel of Life*, the Holy Father challenges followers of Christ to be "unconditionally pro life." He reminds us that "the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform" (*Gospel of Life*, 27).

The *Catechism of the Catholic Church* explains that "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. If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means" (*CCC*, 2267). The test of whether the death penalty can be used is not the gravity of the offense, but whether it is absolutely necessary to protect society. The *Catechism* adds that today "the cases in which the execution of the offender is an absolute necessity 'are very rare, if not practically non-existent'" (*CCC*, 2267).

The Catholic bishops of the United States have spoken out clearly and strongly against the use of the death penalty. In 1999 they issued *A Good Friday Appeal to End the Death Penalty*. They explained their opposition to the death penalty is based on more than concern for "what it does to those guilty of horrible crimes but for what it does to all of us as a society." In 2005 they issued *A Culture of Life and the Penalty of Death*. They acknowledged that sentences such as "life in prison without parole" provide non-lethal alternatives and called for an end to the use of the death penalty in the United States, stating "it is time for our nation to abandon the illusion that we can protect life by taking life."

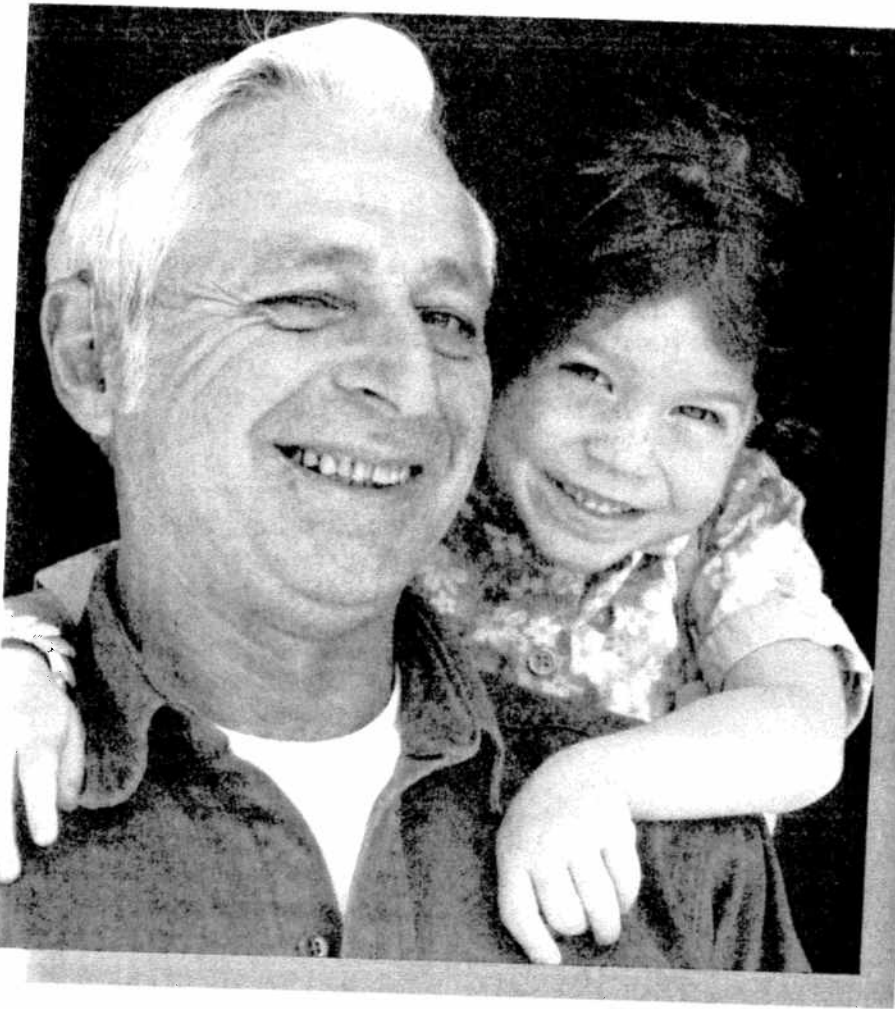
***Ending the death penalty would be one important step away from a culture of death and toward building a culture of life.***

*United States Catholic Bishops, 2005 A Culture of Life and the Penalty of Death*

An abbreviated version of

## The Gospel of Life

Pope John Paul II's Pro-life Encyclical



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**T**HE GOSPEL OF LIFE is at the heart of Jesus' message. Lovingly received by the Church, it is to be preached as "good news" to the people of every age and culture. This encyclical is meant to be a

pressing appeal addressed to each and every person, in the name of God: *Respect, protect, love and serve life, every human life!*

The Second Vatican Council, in a passage which retains all its relevance

today, forcefully condemned a number of crimes and attacks against human life:

"Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed.

"They poison human society, and they do more harm to those who practice them than to those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator."

Unfortunately, this disturbing state of affairs, far from decreasing, is expanding. With the new prospects opened up by scientific and technological progress there arise new forms of attacks on the dignity of the human being.

The end result of this is tragic. Not only is the fact of the destruction of so many human lives, still to be born or in their final stage, extremely grave and disturbing. No less grave and disturbing is the fact that conscience itself, darkened as it were by such widespread conditioning, is finding it increasingly difficult to distinguish between good and evil in what concerns the basic value of human life.

### Recognize positive signs

**M**any initiatives of help and support for people who are weak and defenseless have sprung up and continue to spring up in the Christian community and in civil society.