

**What does the Catholic Church teach about the imposition of the death penalty?**

The 1994 version of the *Catechism of the Catholic Church*:

**Legitimate defense**

**2263** The legitimate defense of persons and societies is not an exception to the prohibition against the murder of the innocent that constitutes intentional killing. "The act of self-defense can have a double effect: the preservation of one's own life; and the killing of the aggressor. . . . The one is intended, the other is not." [Note 65: St. Thomas Aquinas, *STh* II-II, 64,7,corp.art.]

**2264** Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one's own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow:

If a man in self-defense uses more than necessary violence, it will be unlawful: whereas if he repels force with moderation, his defense will be lawful. . . . Nor is it necessary for salvation that a man omit the act of moderate self-defense to avoid killing the other man, since one is bound to take more care of one's own life than of another's. [Note 66: St. Thomas Aquinas, *STh* II-II, 64,7,corp.art.]

**2265** Legitimate defense can be not only a right but a grave duty for someone responsible for another's life, the common good of the family or of the state.

**2266** Preserving the common good of society requires rendering the aggressor unable to inflict harm. For this reason the traditional teaching of the Church has acknowledged as well-founded the right and duty of legitimate public 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. For analogous reasons those holding authority have the right to repel by armed force aggressors against the community in their charge.

The primary effect of *punishment* is to redress the disorder caused by the offense. When his punishment is voluntarily accepted by the offender, it takes on the value of expiation. Moreover, punishment has the effect of preserving public order and the safety of persons. Finally punishment has a medicinal value; as far as possible it should contribute to the correction of the offender. [Note 67: Cf. *Lk* 23:40-43.]

**2267** If bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons, public authority should limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person.

*Evangelium vitae* (25 March 1995), after stressing the seriousness of violations of the commandment forbidding killing, goes on:

55. This should not cause 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.[Note 43: Cf. *Catechism of the Catholic Church*, Nos. 2263-2269; cf. also *Catechism of the Council of Trent* III, §§ 327-332.] There are in fact situations in which values proposed by God's Law seem to involve a genuine paradox. This happens for example in the case of *legitimate defense*, in which the right to protect one's own life and the duty not to harm someone else's life are difficult to reconcile in practice. Certainly, the intrinsic value of life and the duty to love oneself no less than others are the basis of *a true right to self-defense*. The demanding commandment of love of neighbor, set forth in the Old Testament and confirmed by Jesus, itself presupposes love of oneself as the basis of comparison: "You shall love your neighbor *as yourself*" (*Mk* 12:31). Consequently, no one can renounce the right to self-defense out of lack of love for life or for self. This can only be done in virtue of the heroic love which deepens and transfigures the love of self into a radical self-offering, according to the spirit of the Gospel Beatitudes (cf. *Mt* 5:38-40). The sublime example of this self-offering is the Lord Jesus himself.

Moreover, "legitimate defense can be not only a right but a grave duty for someone responsible for another's life, the common good of the family or of the State".[Note 44: *Catechism of the Catholic Church*, No. 2265.] Unfortunately it happens that the need to render the aggressor incapable of causing harm sometimes involves taking his life. In this case, the fatal outcome is attributable to the aggressor whose action brought it about, even though he may not be morally responsible because of a lack of the use of reason.[Note 45: Cf. Saint Thomas Aquinas, *Summa theologiae*, II-II, q. 64, a. 7; Saint Alphonsus de' Liguori, *Theologia Moralis*, l. III, tr. 4, c. 1, dub. 3.]

56. This is the context in which to place the problem of the *death penalty*. On this matter 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. The problem must be viewed in the context of the system of penal justice ever more in line with human dignity and thus, in the end, with God's plan for man and society. The primary purpose of the punishment which society inflicts is "to redress the disorder caused by the offense".[Note 46: *Catechism of the Catholic Church*, No. 2266.] Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority

also fulfills the purpose of defending public order and ensuring people's safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated.[Note 47: Cf. *ibid.*]

It is clear that, for these purposes to be achieved, *the nature and extent of the punishment* must be carefully evaluated and decided upon, and ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent.

In any event, the principle set forth in the new *Catechism of the Catholic Church* remains valid: "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." [Note 48: No. 2267.]

*Evangelium vitae* does not contradict the 1994 version of the *Catechism*. Both hold that public authorities can have a duty to impose capital punishment, and ground the rightness of imposing it, when it is a duty to do so, on St. Thomas's explanation of how legitimate defense can, when necessary, involve the use of death-dealing means. And the encyclical concludes its treatment by reaffirming the conclusion of the *Catechism's* treatment: Public authority *is not to use* the death penalty if other punishments are sufficient to protect public order and the safety of persons.

However, *Evangelium vitae* does add to what the 1994 version of the *Catechism* says about capital punishment. First, the encyclical observes that sometimes human goods recognized by divine law seem to conflict so that in practice they are hard to reconcile. Second, it applies this observation to legitimate defense and, in doing so, suggests--though it does not assert--that using deadly force in defense can be legitimate *only if* proper self-love or responsibility for the common good requires it. Third, on the basis of this suggestion, the encyclical states a clearer and, arguably, stricter requirement for legitimate capital punishment: Punishment "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society." And the encyclical asserts as a matter of fact: "Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent."

It also is worth noticing that the encyclical recognizes something the *Catechism* left unmentioned: Legitimate defense, as St. Thomas and St. Alphonsus explain it, does not presuppose moral guilt on the aggressor's part: "the fatal outcome is attributable to the aggressor whose action brought it about, even though he may not be morally responsible because of a lack of the use of reason."

In the definitive, Latin edition of the *Catechism of the Catholic Church*, which appeared in 1997, numbers 2263-2264 of the 1994 edition stand unchanged. Thus, public officials' possible right and duty to impose the death penalty still are grounded on St. Thomas's explanation of how legitimate defense can involve the use of lethal means. However, 2265-2267 are revised as follows:

**1997 definitive edition:**

**2265** Legitimate defense can be not only a right but a grave duty for one who is responsible for the lives of others. The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. For this reason, those who legitimately hold authority also have the right to use arms to repel aggressors against the civil community entrusted to their responsibility.

**2266** The efforts of the state to curb the spread of behavior harmful to people's rights and to the basic rules of civil society correspond to the requirement of safeguarding the common good. Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense. Punishment has the primary aim of redressing the disorder introduced by the offense. When it is willingly accepted by the guilty party, it assumes the value of expiation. Punishment then, in addition to defending public order and protecting people's safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.

**2267** Assuming that 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.

If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person.

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an 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." [Note: John Paul II, *Evangelium vitae*, 56.]

The content of numbers 2265-2266 has been rearranged so that, in the definitive edition, number 2265 lays down the general norm that legitimate public authorities may and should use arms if necessary to repel aggressors against the civil community, while number 2266 deals with the general right and duty of legitimate public

authorities to inflict punishment on malefactors proportionate to the gravity of their offenses.

Number 2267, which was one paragraph in the 1994 version, is expanded to three paragraphs in the 1997 definitive edition.

The first of these restates the point, made in the first paragraph of 1994's number 2266, that the Church's traditional teaching does not exclude recourse to the death penalty. But the definitive edition's formulation, while omitting reference to the extreme gravity of the crime as a condition for the just imposition of the death penalty, states two conditions that were not mentioned in the 1994 version: first, the guilty party's identity and responsibility have been fully determined; second, the death penalty "is the only possible way of effectively defending human lives against the unjust aggressor"--that is, in this context, the criminal.

The second of these conditions corresponds to a condition expressed in *Evangelium vitae*: Punishment "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society." Society, however, is replaced in the *Catechism* by human lives as the proper object to be defended, thus suggesting that capital punishment can be legitimate only for homicide or other crimes that threaten people's very lives.

This narrowing of grounds appears also in the second paragraph of number 2267 in the 1997 definitive edition, which corresponds to the single paragraph of 1994's number 2267. The 1994 version's "to defend human lives against an aggressor and to protect public order and the safety of persons" is reduced in the 1997 definitive edition: "to defend and protect people's safety from the aggressor." Since the reference of [*threatened*] *human lives* generally includes less than that of *people's safety* (Latin: *personarum securitatem*), the use of the latter expression in 1997's number 2267 perhaps is to indicate that the death penalty could be justly imposed for serious crimes against individuals and society--such as rape, kidnapping, and treason--that need not always threaten people's very lives but always seriously infringe upon personal security.

The third paragraph of number 2267 in the 1997 definitive edition restates the claim, absent from the 1994 *Catechism*'s treatment of legitimate defense and made in *Evangelium vitae*: "Today however, as a result of steady improvements in the organization of the penal system, such cases [in which it otherwise would be impossible to defend society] are very rare, if not practically non-existent." The restatement replaces "steady improvements in the organization of the penal system" with "the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm."

In sum, the revisions to numbers 2265-2267 in the 1997 definitive, Latin edition of the *Catechism of the Catholic Church* bring its teaching on the legitimate use of the death penalty into accord with the quite restrictive teaching of *Evangelium vitae*.

Therefore, the teaching of the Church about the imposition of the death penalty can be formulated as follows: Public officials may and ought to impose the death penalty if and only if two conditions are met: (1) the guilty party's identity and responsibility have been fully determined, and (2) no available non-lethal means is adequate to defend and protect the security of persons against future serious infringement by the guilty party.

**If an appellate judge who accepts this teaching as true is called upon to deal with cases in which people have been sentenced to death, what should he do?**

Though I may be mistaken, I assume that an appellate judge can and should act to prevent the carrying out of a death sentence if he has good reason to believe that the convict's criminal behavior and responsibility have not been fully determined.

But what about the availability of non-lethal means adequate to defend and protect the security of persons against future serious infringement by the guilty party? Both *Evangelium vitae* and the 1997 *Catechism* claim that today cases in which the offender's execution is absolutely necessary "are very rare, if not practically non-existent." However, this claim concerns a matter of technological and socio-political fact, not a matter of faith and morals, and the Church's teaching authority extends only to matters of faith and morals (see Vatican II, *Lumen gentium*, 25). So, the claim is incidental to the Church's teaching, not part of it.

Consequently, judging whether a sentence of death can be justly carried out in his jurisdiction, an appellate judge who accepts the Church's teaching should consider on their merits the views of others--those serving in the executive and legislative branches of the government, criminologists, and so on--who are likely to be more competent than the Church's pastors about whether available non-lethal means are adequate to defend and protect the security of persons against future serious infringement by guilty parties.

Perhaps in some exceptional case an appellate judge in the United States can reasonably believe today that carrying out the sentence of death is absolutely necessary to defend and protect the security of persons. But two facts argue against his thinking that the condition usually is met: first, most convicts spend many secure years on death row; and second, many first-world nations and some states of the United States have dispensed with the death penalty without apparent adverse effects on the security of persons living in those jurisdictions.

Perhaps an appellate judge who accepts as true the Church's teaching on this matter and who judges that the sentence of death cannot be justly carried out in the United States today will be able in some, or even in all, cases to act in good conscience to prevent the carrying out of the sentence. Perhaps he can somehow uprightly avoid dealing with other cases. But suppose he cannot. And suppose that in some case with which he cannot avoid dealing he judges that it is his duty to act according to the law

and the facts in a way that will contribute to the carrying out of a death sentence. May he then so act?

If he could not so act without intending that a death sentence he believes cannot be rightly carried out nevertheless be carried out, he would be morally bound not to so act--that is, not to do what would contribute to the carrying out of the death sentence, despite the fact that doing it otherwise would be his duty. If the only way to avoid both doing what would carry out the sentence and renegeing on his duty as a judge were to resign, he would be obliged to resign.

However, *intending* in the moral sense means choosing something as a means or anticipating it as a benefit for whose sake one chooses to do something else. An appellate judge who believes it his duty to act according to the law and the facts always can do so without in this sense intending any good or bad consequence of his action. Those consequences are neither what he chooses to do nor anticipated benefits for whose sake he chooses to do anything he does. Though he foresees them as certain--and even if he is certain they would not come about but for his action--the consequences of his action are, for him, only good and bad side effects that he accepts.

Still, without intending a bad consequence of one's action, one can do grave evil by accepting it as a side effect. So, the appellate judge should ask himself whether he may act according to the law and the facts in a way that contributes to others' wrongly carrying out a death sentence--*wrongly* here meaning objectively wrongly, whether or not those more directly involved believe themselves to be acting uprightly.

Various Church teaching documents and most Catholic moral theologians call a question of this sort "a problem about material cooperation in evil." Contributing to others wrongdoing in any way is cooperation in evil. If one intends the evil, one is said to cooperate formally. But if one contributes to others' wrongdoing without sharing any intention that makes it wrong for them, one is said to cooperate only materially: one shares in bringing about *what* they wrongly bring about but does not share in their *wrongful intent*.

How can the appellate judge find out whether he may materially cooperate in the wrongful carrying out of a death sentence by acting according to the law and the facts, as he believes himself bound to do? Church teaching provides no clear answer to this question. Many theologians have answered it, but on hard cases--of which this surely will be one--they tend to disagree. I dealt with many cooperation problems in a recently published book, *The Way of the Lord Jesus*, volume three, *Difficult Moral Questions*. In an effort to clarify the general theory of cooperation, I included in that book two appendixes. The first, "Human acts and moral judgments," clarifies many presuppositions; the second, "Formal and material cooperation in others' wrongdoing," deals directly with the subject.

In my view, the appellate judge must consider all the good and bad side effects of both proceeding to do what constitutes material cooperation and any alternative (for example, resigning) open to him, develop the best cases he can both for and against materially cooperating and any alternative, examine himself to ferret out and set aside mixed emotional motives, apply the Golden Rule and certain other imaginative exercises that implement moral requirements somewhat like it, and, if none of this answers the question, discern which of the possibilities--materially cooperating or some alternative--fits better with his fundamental commitment of Christian faith by comparing the feelings allied with his faith-commitment with the feelings allied with each of the possibilities.

In my view, the person with the problem must work through this process himself. He should not ask a moral teacher or guide to do it for him. And, if he does, the advice will not be trustworthy. However, a capable moral adviser who understood the process could help someone with a problem understand its steps and could talk along with him in taking them.

Suppose an upright appellate judge accepts the Church's teaching on the imposition of capital punishment, believes that he must either materially cooperate in the carrying out of a morally unacceptable death sentence or resign, and carefully works through the process I have described. What answer do I think he will find to his question? I really do not know, and I doubt that every appellate judge who does everything he should to find the truth will arrive at the same conclusion. Many personal variables, such as how badly he needs his position, come into play.

Still, for candor's sake, I must say that I am inclined to think at least some such judges and perhaps most, if not all, of them should resign and, in doing so, should bear witness as powerfully as they can to a series of things: the particular moral truth the Church teaches, the priority of moral honor over an honorable position, the authority of the Church's teaching, the truth of faith itself, and the incomparable dignity of the heavenly kingdom which moves those whose hope is focused upon it to forgo cheerfully or discard without regret the pleasures, possessions, and positions coveted or cherished by those whose many hopes are limited to this passing world.

So far, however, I have been considering the problem of an appellate judge who accepts as true the Church's teaching about the imposition of the death penalty. Another possibility remains to be considered, namely, that no Catholic ought to accept this teaching as true.

**Should a Catholic accept as true the Church's teaching that public authorities may not impose the death penalty if any available non-lethal means of punishing criminals would be adequate to defend and protect the security of persons against future serious infringement by guilty parties?**

Though some previous papal and episcopal statements of recent years have urged the disuse of capital punishment (see, for example, National Conference of Catholic

Bishops, "Statement on Capital Punishment," in *Pastoral Letters of the United States Catholic Bishops*, ed. Hugh J. Nolan [Washington, D.C.: NCCB-USCC, 1983], 4:427-34), the teaching of the *Catechism*, especially in its definitive edition, goes beyond prior statements by firmly asserting that imposing the death penalty is immoral whenever an adequate non-lethal alternative is available.

Recently formulated though it is, however, the position taken in *Evangelium vitae* and the 1997 edition of the *Catechism of the Catholic Church* surely is the present teaching of the Catholic Church. Though Cardinal Ratzinger talked about both of these documents in press conferences, their contents, including the position they take on capital punishment, cannot reasonably be dismissed as his private theological opinions. The former document is a papal encyclical; the latter a synopsis of Catholic teaching formally approved and promulgated by the pope and declared by him to be a "new, authoritative exposition of the one and perennial apostolic faith" that will serve as a "valid and legitimate instrument for ecclesial communion" and as a "sure norm for teaching the faith," as well as a "sure and authentic reference text" for preparing local catechisms (quotations are from the apostolic letter of John Paul II, *Laetamur magnopere*, AAS 89 [1997] 819-21; *Origins*, 27:15 [25 Sept. 1997], 262-63).

Is the restrictive position on capital punishment in *Evangelium vitae* and the 1997 edition of the *Catechism of the Catholic Church* proposed infallibly, so that Catholics owe it an unconditional assent either of divine faith or on the basis of their faith in other truths? No. The restriction on capital punishment is not asserted anywhere in sacred Scripture. The whole Church, from the bishops to the last of the faithful, have not received and held it with faith, as they have some moral teachings perhaps not clearly asserted in Scripture (see Vatican II, *Lumen gentium*, 12). In formulating the restrictive position in his encyclical and promulgating it in the *Catechism*, John Paul II gives no indication that he is solemnly defining it. And, though many bishops may agree with it, few if any have as yet proposed it to their faithful as a truth to be held definitively, and unless virtually all the bishops in communion with the pope do that, they cannot teach infallibly except by teaching definitively in an ecumenical council (see Vatican II, *Lumen gentium*, 25).

Still, teachings on matters of faith and morals that bishops and, especially, popes firmly assert without proposing them infallibly call for religious assent. *Religious assent* means accepting such teachings as true and putting them into practice, while realizing that in principle they *could* be mistaken. While many people today ridicule such assent as unreasonable submission to religious authorities, most people confidently entrust their vital concerns to other authorities: political leaders, physicians, lawyers, financial advisers, and so forth. Those who believe that the Lord Jesus and his Holy Spirit remain with the successors of Peter and his fellow apostles and ensure that they will guide God's people safely to their heavenly homeland have good reason to accept papal and episcopal teachings and put them into practice.

Still authoritative papal and episcopal teachings on matters of faith and morals not only can be mistaken but can be known to be mistaken. And that is true even of

teachings asserted firmly, as is the restrictive position on capital punishment by John Paul II. How can a believer reasonably judge that a mistake has been made in proposing such a teaching? Apart from cases in which presuppositions about matters of fact can be known to be mistaken, a believer can reasonably judge mistaken a firmly asserted papal or episcopal teaching on a matter of faith or morals when he sees it to be incompatible with a truth of faith asserted in Scripture, solemnly defined, or already proposed infallibly by the common, day-to-day teaching of bishops in communion with the pope. Though not definitive, Vatican II's teachings superseded earlier, noninfallible episcopal and papal teachings that they contradicted. Similarly, other things being equal, episcopal teaching does not call for religious assent if it is inconsistent with papal teaching that calls for it.

I shall not here discuss what is in Scripture, the long tradition, and past papal teaching on capital punishment that might provide, or would seem to provide, a believer with reasonable ground for judging that the present, restrictive teaching is mistaken. Without providing evidence for my opinions, however, I can summarize them.

First, I think the present teaching's restriction on the imposition of the death penalty is not only a new development but a position incompatible with much past teaching.

Second, I do not think that capital punishment can be imposed without choosing to kill the criminal and thereby intending his death, and so I think the present teaching is mistaken in treating capital punishment as a subclass of the legitimate defense St. Thomas treats in *Summa theologiae*, II-II, q. 64, art. 7. Thomas's teaching, as number 2263 of the *Catechism* makes clear, assumes that the killing of the aggressor is not intended. Thomas, in fact, treats capital punishment as justifiable, *intentional* killing (see *ibid.*, art. 2; note that this is *before* his treatment of justifiable killing in self-defense).

Third, since a just penalty by definition is authoritatively imposed on one reasonably judged guilty while legitimate self-defense may be carried out by anyone against an insane person whose guiltless behavior poses a grave threat, the use of the death penalty cannot reasonably be regarded as a subclass of legitimate self-defense.

Fourth, I do not think that Scripture contains any statement asserted by the human author that is correctly interpreted as saying that God authorizes or prescribes the death penalty (and only such statements are certainly true: see Vatican II, *Dei Verbum*, 11). Nor do I think that any prior teaching about capital punishment was infallibly proposed.

Fifth, I think that the choice to kill involved in capital punishment is incompatible with the truth that one should love one's neighbor as oneself. On this basis, I think that capital punishment everywhere and always is wrong and that previous teachings, *Evangelium vitae*, and the *Catechism* are mistaken in their common position that recourse to the death penalty is morally acceptable and even obligatory under some condition.