

Recent history of the death penalty in the U.S. and the Church

Two days after Pope Francis forcefully repeated the Church's condemnation of capital punishment, the Supreme Court began a new term with challenges to aspects of the death penalty once more clamoring for its attention.

This convergence of events – the pope's condemnation and the court's new term – was a coincidence, but the sort of coincidence that underlines a fact: Capital punishment is, and for the foreseeable future will remain, a significant issue in church and state alike.

In *Fratelli Tutti*, Pope Francis' new encyclical on “fraternity and social friendship,” which he signed Oct. 3 and released the next day, the pope shared the Church's position on the death penalty: “Saint John Paul II stated clearly and firmly that the death penalty is inadequate from a moral standpoint and no longer necessary from that of penal justice. There can be no stepping back from this position. Today we state clearly that ‘the death penalty is inadmissible’ and the Church is firmly committed to calling for its abolition worldwide” (No. 263).

Legal history

In the United States, capital punishment has had a checkered history in modern times. Between 1967 and 1977 there were no U.S. executions at all, and in 1972 in a case called *Furman v. Georgia*, the Supreme Court struck down federal and state laws providing for the death penalty on the grounds that they had been applied in an unconstitutionally arbitrary and racially discriminatory manner.

States then moved to enact new death penalty statutes to address the concerns raised by the Supreme Court, and in 1976 the court responded by approving of the death penalty in a case called *Gregg v. Georgia*.

By far the largest number of executions now take place under state laws. Since 1976, death sentences for state violations have numbered more than 7,800, with the penalty actually carried out in more than 1,500 cases. As of the end of last year, the number of people on death row awaiting execution was over 2,600.

In recent years, nevertheless, there has been a growing reaction against the death penalty, with 32 states either abolishing capital punishment entirely or, as of the end of 2019, not having carried out any executions in over a decade.

At the federal level, Congress in 1988 adopted a new federal law providing the death penalty for some drug-related offenses. Then in 1994 it enacted a broader statute, the Federal Death Penalty Act, applying to a range of federal crimes.

Since 1988, sentences of death have been imposed under federal law on 79 persons, but up to the recent past only three of these people had been executed and none since 2003. Last year, however, the Department of Justice [announced that federal executions would be resumed](#), and since then [seven people have been executed](#), with another execution scheduled to take place Nov. 19.

The Church's stance

Last month, two archbishops who chair committees of the U.S. Conference of Catholic Bishops protested the new federal executions and called for them to halt.

"We say to President Trump and Attorney General [William] Barr: Enough. Stop these executions," stated Archbishop Paul

S. Coakley of Oklahoma City, chairman of the USCCB Committee on Domestic Justice and Human Development, and Archbishop Joseph F. Naumann of Kansas City, Kansas, chairman of Committee on Pro-Life Activities.

While acknowledging that “accountability and legitimate punishment” are a necessary part of society’s response to capital crimes, the two archbishops nevertheless cited the teaching of Popes St. John Paul II, Benedict XVI and Francis in declaring the execution of offenders to be “completely unnecessary and unacceptable.”

In recent times the Church has moved steadily in the direction [of rejecting capital punishment](#) after centuries in which there was a theological consensus extending guarded approval to the practice. The first edition of the Catechism of the Catholic Church, published in 1992, briefly reviewed this history, but it added that, where available, “bloodless means” of punishment should be used in preference to the death penalty as being “more in conformity to the dignity of the human person” (No. 2267).

In his 1995 encyclical *Evangelium Vitae* (“The Gospel of Life”), Pope St. John Paul went a step further, making allowance for the death penalty only in cases of “absolute necessity” for the protection of society while adding that such situations today are “very rare, if not practically non-existent” (No. 56). Pope Benedict in an address in 2011 called on governments worldwide to “eliminate capital punishment.”

In 2018, Pope Francis directed that the language of the Catechism be strengthened [to declare the death penalty “inadmissible.”](#) His new encyclical in effect ratifies and reinforces that judgment.

Abolishing the death penalty

As matters now stand, there seems little chance that the

Supreme Court will come out flatly against the death penalty as it did in 1972. But petitions continue to pour in from prisoners on death row asking the justices to review their cases – something the court very seldom does.

Supreme Court observers nevertheless have pointed to three cases that raise new questions it might choose to consider.

One of these involves alleged “ineffective assistance of counsel” – a claim that the defense lawyer botched the job. Another concerns whether defendants in capital cases can decide on their not to pursue a claim of “intellectual disability.” A third involves the respective roles of judge and jury in a trial involving a capital crime. Whether the Supreme Court does or doesn’t take up any of these cases in its new term, the legal and procedural chipping away at the death penalty that they reflect will almost certainly continue.

That presumably is something Pope Francis would welcome. Quoting from an address he delivered in 2014 to an international meeting on penal law, he says in *Fratelli Tutti*: “The arguments against the death penalty are numerous and well known. The Church has rightly called attention to several of these, such as the possibility of judicial error and the use made of such punishment by totalitarian and dictatorial regimes All Christians and people of goodwill are today called to work ... for the abolition of the death penalty” (No. 268).

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